

The Growth of Presidential Power

Preview

OBJECTIVES

1. Explain why Article II of the Constitution can be described as “an outline.”
2. List several reasons for the growth of presidential power.
3. Explain how Presidents' own views have affected the power of the office.

WHY IT MATTERS

The Constitution establishes the office of the President in Article II. The interpretation of that article continues to be a battleground for people who want a stronger presidency and those who would curb presidential powers.

POLITICAL DICTIONARY

- ★ Executive Article
- ★ mass media
- ★ imperial presidency

The presidency is often called “the most powerful office in the world.” Is this what the Framers had in mind when they created the post in 1787? At Philadelphia, they purposely created a single executive with broad powers. But they also agreed with Thomas Jefferson, who wrote in the Declaration of Independence that “a Tyrant is unfit to be the ruler of a free people.” So, just as purposely, they constructed a “checked,” or limited, presidency.

Article II

Article II, the Constitution's **Executive Article**, begins this way:

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

With those few words, the Framers established the presidency. The Constitution does set out other, somewhat more specific grants of presidential power as well. Thus, the President is given the power to command the armed forces, to make treaties, to approve or veto acts of Congress, to send and receive diplomatic representatives, to grant

pardons and reprieves, and “to take Care that the Laws be faithfully executed.”

Still, the Constitution deals with the powers of the presidency in a very sketchy fashion. Article II reads almost as an outline. It has been called “the most loosely drawn chapter” in the nation's fundamental law.¹

Much of our political history can be told in terms of the struggle over the meaning of the constitutional phrase “executive power”—that is, over the extent of presidential power. That struggle has pitted those who have argued for a weaker presidency, subordinate to Congress, against those who have pressed for a stronger, independent, co-equal chief executive.

That never-ending contest began at the Philadelphia Convention in 1787. At that time, several Framers agreed with Roger Sherman of Connecticut, who, according to James Madison,

PRIMARY Sources “considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect, that the person or persons [occupying the presidency] ought to be appointed by and accountable to the legislature only, which was the depository of the supreme will of the Society.”

—Notes of Debates in the Federal Convention of 1787, James Madison

¹Edward S. Corwin, *The President: Office and Powers*. Most of the specific grants of presidential power are found in Article II, Sections 2 and 3. A few are elsewhere in the Constitution, such as the veto power, in Article I, Section 7, Clause 2.



▲ President Reagan met with Soviet leader Mikhail Gorbachev in Geneva, Switzerland, in 1985.

Those who argued for a stronger executive carried the day. The convention established a single executive, chosen independently of Congress and with its own distinct powers.

Why Presidential Power Has Grown

The Constitution's formal grants of power to the President have not been changed since 1789. Yet presidential power has grown remarkably over the past 200 years.

That expansion has come, in no small part, because of the unity of the presidency. The office, and its powers, are held by one person. The President is the single, commanding chief executive. In contrast, Congress consists of two houses, and both must agree before Congress can do anything. Moreover, one of those two houses is made up of 100 separately elected members, and the other of 435.

Several other factors have also been at work here. Not least are Presidents themselves, and especially the stronger ones—Abraham Lincoln and the two Roosevelts, for example.

The nation's increasingly complex social and economic life has also had a telling effect. As the country has become more industrialized and technologically advanced, the people have demanded that the Federal Government take a larger role in transportation, communications, health, welfare, employment, education, civil rights, and a host of other fields. And they have looked especially to the President for leadership in those matters.

Clearly, the need for immediate and decisive action in times of crisis, and especially in times of war, has also had a major impact. The ability of the President to act in those situations has done much to strengthen the executive power.

Congress has also been involved, as it has passed the thousands of laws that have been a key part of the historic growth of the Federal Government. Congress has neither the time nor the technical knowledge to provide much more than basic outlines of public policy. Necessarily, it has delegated substantial authority to the executive branch to carry out the laws it has enacted.

The President has a unique ability to attract public attention and build support for policies and actions. Every President since Franklin



Interpreting Cartoons This cartoon comments on the increasing power of the President—in this case, Harry Truman, who was President from 1945–1953. **According to the cartoonist, who is responsible for this growth in power?**

Roosevelt has used the **mass media**—forms of communication, especially radio, television, and the Internet—to that end.

Still, with all that has just been said, remember: no President can become all-powerful. In 1952, at the height of the Korean War, a labor dispute threatened to shut down the nation's steel industry and imperil the war effort. To avert a strike, President Harry Truman, acting as commander in chief, ordered the Secretary of Commerce to seize and operate several steel mills. But, the Supreme Court found that here the President had overstepped his constitutional authority. It held that only Congress, acting under its commerce power, could authorize the seizure of private property in time of war, and it had not done so, *Youngstown Sheet & Tube Co. v. Sawyer*, 1952.

In 2006, the High Court struck down President George W. Bush's plan to use military tribunals to prosecute "enemy combatants," persons captured in the war against terrorism. The President, citing his powers as commander in chief, had ordered the formation of those tribunals. However, the Court held that only Congress, not the President, has the power to provide for the creation of such court-like bodies.

The Court also found that several features of the President's plan violated various provisions

of an act of Congress (the Uniform Code of Military Justice) and a treaty of the United States (the Geneva Conventions of 1949 dealing with the treatment of prisoners of war), *Hamdan v. Rumsfeld*, 2006.

The Presidential View

Over time, Presidents have taken one of two contrasting views of the presidency and its powers. The stronger, more effective chief executives have seen the office in a broad light—a view that Theodore Roosevelt called “the stewardship theory”:

PRIMARY Sources “My view was that every executive officer . . . in high position, was a steward of the people bound actively and affirmatively to do all that he could for the people. . . . I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only [a President’s] right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. . . . I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare . . . unless prevented by direct constitutional or legislative prohibition.”

—Theodore Roosevelt,
Theodore Roosevelt: An Autobiography, 1913

Ironically, the strongest presidential statement of the opposing view came from Roosevelt’s handpicked successor in the office, William Howard Taft.

PRIMARY Sources “My judgment is that the view of Mr. Roosevelt, ascribing an undefined residuum of power to the President, is an unsafe doctrine. . . . 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 within such express grant. . . . Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest.”

—William Howard Taft,
Our Chief Magistrate and His Powers, 1916

In recent decades, critics of strong presidential power have condemned what is called the **imperial presidency**. The term paints a picture of the President as emperor, taking strong actions without consulting Congress or seeking its approval—sometimes acting in secrecy to evade or even to deceive Congress. Critics of the imperial presidency worry that Presidents have become isolated policymakers who are unaccountable to the American people through their representatives in Congress. The term *imperial presidency* has been used frequently in reference to President Richard Nixon and the political tactics that brought about his downfall.

Section 1 Assessment

Key Terms and Main Ideas

1. Why is Article II often called the **Executive Article**?
2. Give three reasons for the growth of presidential power.
3. Summarize the two competing views of the constitutional phrase “executive power.”
4. Why do some people worry about an **imperial presidency**?

Critical Thinking

5. **Understanding Point of View** What do you think Harry Truman meant when he said that “being President is like riding a tiger . . . [you must] keep on riding or be swallowed. A President either is constantly on top of events or, if he hesitates, events will be on top of him”?

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6. **Making Comparisons** Compare and contrast the quotations from Presidents Roosevelt and Taft on this page. (a) Whose view do you favor? Why? (b) Which view do you think most modern-day Presidents have favored? Explain.

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Executive Powers

Section Preview

OBJECTIVES

1. Identify the source of the President's power to execute federal law.
2. Define the *ordinance power*, and explain where it comes from.
3. Explain how the appointing power works.
4. Summarize the historical debate over the removal power.

WHY IT MATTERS

Much of the power of the presidency rests on the discretion the President has in the use of his powers to issue executive orders, to execute the laws, and to appoint key federal officials.

POLITICAL DICTIONARY

- ★ **oath of office**
- ★ **executive order**
- ★ **ordinance power**

Thomas Jefferson wrote this to a friend in 1789: "The execution of the laws is more important than the making of them." Whether Jefferson was altogether right about that or not, in this section you will see that the President's power to execute the law endows him with an enormous amount of authority.

Executing the Law

As chief executive, the President executes (enforces, administers, carries out) the provisions of federal law. The power to do so rests on two brief constitutional provisions. The first of them is the **oath of office** sworn by the President on the day he takes office:

FROM THE Constitution "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

—Article II, Section 1, Clause 8

The other provision is the Constitution's command that "he shall take care that the laws be faithfully executed."²

The President's power to execute the law covers all federal laws. Their number, and the different subject matters they cover, nearly boggle

the mind. The armed forces, social security, gun control, minimum wages, affirmative action, environmental protection, air traffic safety, immigration, housing, taxes—these only begin the list. There are scores of others.

The President and his subordinates have much to say about the meaning of the law, as do Congress and the courts. In executing and enforcing law, the executive branch also interprets it. The Constitution requires the President to execute *all* federal laws no matter what the chief executive's own views of any of them may be. Still, the President may, and does, use some discretion as to how vigorously and in what particular way any given law will be applied in practice.

To look at the point more closely: Many laws that Congress passes are written in fairly broad



▲ President George Washington took the oath of office on this borrowed Bible on April 30, 1789, and so, too, have other Presidents, including George W. Bush.

²Article II, Section 3; this provision gives the President what is often called the "take care" power.

terms. Congress sets out the basic policies and standards. The specific details—much of the fine print necessary to the actual, day-to-day administration of the law—are usually left to be worked out by the executive branch.

For example, immigration laws require that all immigrants seeking permanent admission to this country must be able to “read and understand some dialect or language.” But what does this literacy requirement mean in everyday practice? How well must an alien be able to read and write? What words in some language must he or she know, and how many of them? The law does not say. Rather, such answers come from within the executive branch—in this case, from U.S. Citizenship and Immigration Services in the Department of Homeland Security.

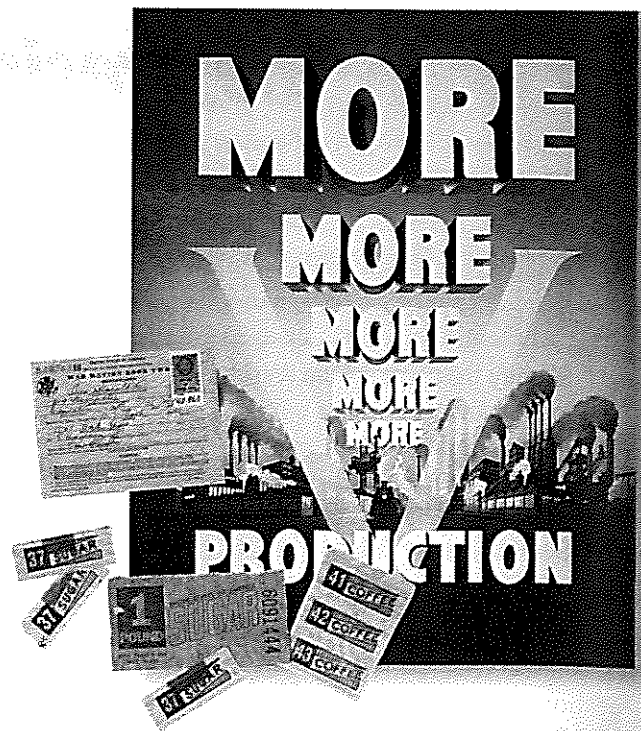
The Ordinance Power

From what has just been said, the President clearly deserves the title of chief administrator as well as chief executive. The job of administering and applying most federal law is the day-to-day work of all of the many departments, bureaus, offices, boards, commissions, councils, and other agencies Federal Government. All of the some 2.7 million men and women who staff those agencies are subject to the President’s control and direction.

The President has the power to issue executive orders. An **executive order** is a directive, rule, or regulation that has the effect of law. The power to issue these orders, the **ordinance power**, arises from two sources: the Constitution and acts of Congress.

The Constitution does not mention the ordinance power in so many words, but that power is clearly intended. In granting certain powers to the President, the Constitution obviously anticipates their use. In order to exercise those powers, the President must have the power to issue the necessary orders, as well as the power to implement them. The President must also have the power to authorize his subordinates to issue such orders.³

The number, the scope, and the complexity of governmental problems has grown over the years. As a result, Congress has found it necessary to delegate more and more discretion to the President and to presidential subordinates to spell out the policies and programs it has passed. Members of Congress are not, and cannot be expected to be, experts in all of the fields in which they must legislate.



▲ During World War II, President Franklin D. Roosevelt issued executive orders requiring gasoline and other strategic war supplies to be rationed—sold in limited quantities. **Critical Thinking** Why is it important that the President have such a power, instead of Congress?

The Appointment Power

A President cannot hope to succeed without loyal subordinates who support the policies of the President’s administration. The Constitution provides that the President

FROM THE Constitution “by and with the Advice and Consent of the Senate . . . shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for . . . but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”³

—Article II, Section 2, Clause 2

³All executive orders are published in the *Federal Register*, which appears five times a week. At least once a year, all orders currently in force are published in the *Code of Federal Regulations*. Both of these publications are issued by the National Archives and Records Administration.

Those officers whose appointments are “otherwise provided for” are the Vice President, members of the House and Senate, and presidential electors.

Acting alone, the President names only a handful of the 2.7 million federal civilian employees. Many of that handful fill the top spots in the White House Office, as you shall see shortly.

Appointees

With Senate consent, the President names most of the top-ranking officers of the Federal Government. Among them are:

- (1) ambassadors and other diplomats;
- (2) Cabinet members and their top aides;
- (3) the heads of such independent agencies as the Environmental Protection Agency and the National Aeronautics and Space Administration;
- (4) all federal judges, U.S. marshals, and attorneys;
- (5) all officers in the armed forces.

When the President makes one of these appointments, the nomination is sent to the Senate. There, the support of a majority of the senators present and voting is needed for confirmation.

The unwritten rule of senatorial courtesy plays an important part in this process. That rule applies to the choice of those federal officers who serve within a State—a federal district judge or a federal marshal, for example. The rule holds that the Senate will approve only those federal appointees acceptable to the senator or senators of the President’s party from the State involved. The practical effect of this custom, which is closely followed in the Senate, is to place a meaningful part of the President’s appointing power in the hands of particular senators.

Recess Appointments

The Constitution does allow the President to make “recess appointments,” that is, appointments “to fill up all Vacancies that may happen during the Recess of the Senate.”⁴ Any such appointment automatically expires at the end of the congressional term in which it is made.

Recess appointments have often been a matter of contention—in particular, because they make

⁴ Article II, Section 3. Over time, the words “may happen” have come to mean “may happen to exist” and “the Recess of the Senate” has come to include both the period between regular sessions of Congress and the several short recesses during a session.

it possible for the President to bypass the Senate confirmation process. So, as a rule, Presidents have not usually given these appointments to highly controversial personalities or to someone whom the Senate has previously rejected.

The Confirmation Process

For nominees who must be approved by the Senate, a multi-step process leads to their acceptance or rejection. Here are the steps involved in the confirmation of a high-level official nominated by the President, such as a Supreme Court justice.

Nomination

President’s staff conducts a thorough search for a competent and acceptable candidate, getting input from key experts inside and outside of government. The President submits his choice to the Senate.

In 1993, President Clinton nominated Ruth Bader Ginsburg (shown below), a federal Court of Appeals judge for the District of Columbia Circuit, to serve on the Supreme Court.

Senate Committee Hearings

The nomination goes to the appropriate Senate committee. The nominee testifies before the committee—a sometimes grueling process if there is strong opposition to the candidate. The committee calls other experts to testify for and against the nominee. A majority vote is needed to recommend the nominee to the Senate.

Ginsburg’s past doubts about the *Roe v. Wade* abortion ruling stirred initial resistance. She had favored a gradual legalization of abortion. But in the hearings she affirmed her support for abortion rights.

Senate Debate

The full Senate considers the nomination. Senators express their views before a floor vote is taken.

The White House had consulted key senators of both parties before submitting Ginsburg’s nomination. Thus, debate was minimal.

Confirmation

If a simple majority votes to approve the nominee, he or she is confirmed.

On August 3, 1993, by a vote of 97 to 3, the Senate confirmed Ginsburg’s nomination. She became the second woman ever to serve on the Supreme Court.

Rejection

If the nominee is rejected, another nomination is made. If strong opposition arises during the process, the President may withdraw the nomination or the nominee may bow out to avoid rejection.

Interpreting Diagrams In recent years, some nominees for top-level jobs have been subjected to bitter, hostile questioning at Senate hearings. Critics worry that the grueling process causes some talented people to shun public service. **Why, do you think, did the Framers create this multi-step process?**



Of course, not all executive branch employees are chosen by the President and Senate. Well over half of all the federal civilian work force is selected on the basis of competitive civil service examinations. Today, the Office of Personnel Management examines applicants for some 1.7 million positions.

The Removal Power

The power to remove is the other side of the appointment coin, and it is as critically important to presidential success as the power to appoint. Yet, except for mention of the little-used impeachment process,⁵ the Constitution does not say how or by whom appointed officers may be dismissed, whether for incompetence, for opposition to presidential policies, or for any other cause.

The Historical Debate

The question was hotly debated in the first session of Congress in 1789. Several members argued that for those offices for which appointment required Senate approval, Senate consent should also be required for removal. They insisted that this restriction on presiden-

⁵Article I, Section 2, Clause 5 and Section 3, Clauses 6 and 7, and Article II, Section 4.

► The only removal power specified in the Constitution is that of impeachment, the threat of which prompted Richard Nixon to resign the presidency and brought Gerald Ford to the office in 1974.



tial authority was essential to congressional supervision (oversight) of the executive branch. But others argued that the President could not “take care that the laws be faithfully executed” without a free hand to dismiss those who were incompetent or otherwise undesirable.

The latter view prevailed. The First Congress gave to the President the power to remove any officer he appointed, except federal judges. Over the years since then, Congress has sometimes tried, with little success, to restrict the President’s freedom to dismiss.

One notable instance came in 1867. Locked with Andrew Johnson in the fight over Reconstruction, Congress passed the Tenure of Office Act. The law’s plain purpose was to prevent President Johnson from removing several top officers in his administration, especially the secretary of war, Edwin M. Stanton. The law provided that any person holding an office by presidential appointment with Senate consent should remain in that office until a successor had been confirmed by the Senate.

The President vetoed the bill, charging that it was an unconstitutional invasion of executive authority. Johnson’s veto was overridden, but he ignored Congress and fired Stanton anyway. The veto and Stanton’s removal sparked the move for Johnson’s impeachment. Ultimately, the President was acquitted, and the law was ignored in practice. It was finally repealed in 1887.

Removal and the Court

The question of the President’s removal power did not reach the Supreme Court until *Myers v. United States*, 1926. In 1876, Congress had passed a law requiring Senate consent before the President could dismiss any first-class, second-class, or third-class postmaster.

In 1920, without consulting the Senate, President Woodrow Wilson removed Frank Myers as the postmaster at Portland, Oregon. Myers then sued for the salary for the rest of his four-year term. He based his claim on the point that he had been removed in violation of the 1876 law.

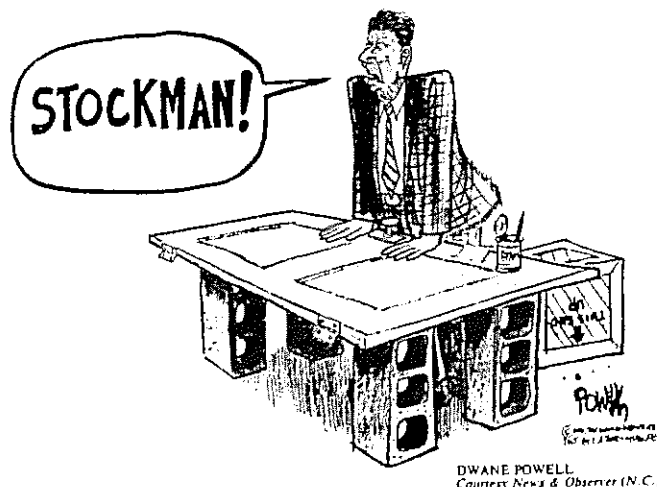
The Court found the law unconstitutional. The majority opinion was written by Chief Justice William Howard Taft, himself a former President. The Court held that the power

of removal was an essential part of the executive power, clearly necessary to the faithful execution of the laws.

The Supreme Court did place some limits on the President's removal power in 1935, in *Humphrey's Executor v. United States*. President Herbert Hoover had appointed William Humphrey to a seven-year term on the Federal Trade Commission (FTC) in 1931. When Franklin D. Roosevelt entered office in 1933, he found Humphrey to be in sharp disagreement with many of his policies. He asked Humphrey to resign, saying that his administration would be better served with someone else on the FTC. When Humphrey refused, Roosevelt removed him. Humphrey soon died, but his heirs filed a suit for back salary.

The Supreme Court upheld the heirs' claim. It based its decision on the act creating the FTC. That law provides that a member of the commission may be removed only for "inefficiency, neglect of duty, or malfeasance in office." The President had given none of these reasons when he removed Humphrey.

The Court further held that Congress does have the power to set the conditions under which a member of the FTC and other such agencies might be removed by the President. It did so because those agencies, the independent regula-



Interpreting Political Cartoons President Ronald Reagan's young budget director, David Stockman, cleverly and swiftly pushed through Congress severe budget cuts based on uncertain budget figures. When Stockman admitted as much in a famous magazine interview in 1985, Reagan fired him. **How does this cartoon reflect this newsmaking episode?**

tory commissions, are not purely executive agencies—a rather complicated point covered in the next chapter.

As a general rule, the President may remove those whom the President appoints. Occasionally, the President does have to remove someone. Most often, however, what was in fact a dismissal is called a "resignation."

Section 2 Assessment

Key Terms and Main Ideas

1. In taking the **oath of office**, what does the President promise to do?
2. How does the President affect the meaning of many of the laws passed by Congress?
3. What is an **executive order**, and in what ways does it give the President great power?
4. What is the **ordinance power**, and where does the President get this power?
5. (a) Which officials does the President appoint? (b) What is the Senate's role in the appointment process?

Critical Thinking

6. **Making Decisions** Should the President have the sole power to remove all officials he appoints? Or should the Senate have a role in deciding whether to remove officials

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that it confirmed? Summarize the arguments on both sides of this debate. Then decide which side you favor, and explain why.

7. **Making Comparisons** Compare and contrast the Supreme Court rulings in *Myers v. United States* and *Humphrey's Executor v. United States*.

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3 Diplomatic and Military Powers

Section Preview

OBJECTIVES

1. Explain how treaties are made and approved.
2. Explain why and how executive agreements are made.
3. Summarize for what purposes the power of recognition is used, and give historic examples.
4. Describe the powers that the President has in the role of commander in chief.

WHY IT MATTERS

The President shares various diplomatic and military powers with Congress, but in some areas the President's power is almost unlimited.

POLITICAL DICTIONARY

- ★ treaty
- ★ executive agreement
- ★ recognition
- ★ *persona non grata*

John F. Kennedy once described the pressures of the presidency in these words:

PRIMARY Sources

“When I ran for the presidency . . . I knew the country faced serious challenges, but I could not realize—nor could any man who does not bear the burdens of this office—how heavy and constant would be those burdens.”

—President John F. Kennedy, radio and TV broadcast on the Berlin crisis, July 25, 1961

When President Kennedy made that comment, he had in mind the subject of this section: the President's awesome responsibilities as chief diplomat and as commander in chief.

The Power to Make Treaties

A **treaty** is a formal agreement between two or more sovereign states. The President, usually acting through the secretary of state, negotiates these international agreements. The Senate must give its approval, by a two-thirds vote of the members present, before a treaty made by the President can become effective. Recall, the Constitution makes treaties a part of the “supreme Law of the Land.”

Contrary to popular belief, the Senate does not ratify treaties. The Constitution requires the Senate's “Advice and Consent” to a treaty made by the President. Once the Senate has approved a treaty, the President ratifies it by the exchange of formal notifications with the other party or parties to the agreement.

Treaties have the same legal standing as do acts passed by Congress. Congress may abrogate (repeal) a treaty by passing a law contrary to its provisions, and an existing law may be repealed by the terms of a treaty. When a treaty and a federal law conflict, the courts consider the latest enacted to be the law (*The Head Money Cases*, 1884). The terms of a treaty cannot conflict with the higher law of the Constitution (*Missouri v. Holland*, 1920), but the Supreme Court has never found a treaty provision to be unconstitutional.



▲ In 1945, the ailing President Franklin D. Roosevelt (right) undertook an ambitious trip to meet at sea with Saudi Arabia's King Ibn Saud, a key ally in the Middle East. *Critical Thinking* In what way are the President's diplomatic powers among his strongest?

Executive Agreements

Many international agreements, especially routine ones, are made as executive agreements. An **executive agreement** is a pact between the President and the head of a foreign state, or between their subordinates. Unlike treaties, executive agreements do not require Senate consent.

Most executive agreements flow out of legislation already passed by Congress or out of treaties to which the Senate has agreed. However, the President can make these executive agreements without any congressional action.⁷

A few executive agreements have been extraordinary—most notably, the destroyers-for-bases deal of 1940. That pact was struck in the first year of World War II, more than a year before the United States became directly involved in the conflict. Under its terms, the United States gave Great Britain 50 “over-age” U.S. destroyers, naval vessels that the British desperately needed to combat German submarine attacks in the North Atlantic. In return, the United States received 99-year leases to a string of air and naval bases extending from Newfoundland to the Caribbean.

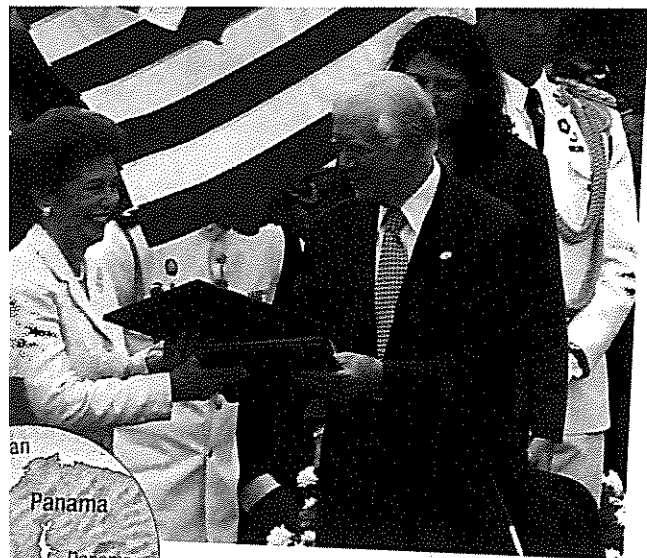
The Power of Recognition

When the President receives the diplomatic representatives of another sovereign state, the President exercises the power of **recognition**. That is, the President, acting for the United States, acknowledges the legal existence of that country and its government. The President indicates that the United States accepts that country as an equal in the family of nations. Sovereign states generally recognize one another through the exchange of diplomatic representatives.⁸

Recognition does not mean that one government approves of the character and conduct of another. The United States recognizes several governments about which it has serious misgivings. Among the most notable examples today is the People’s Republic of China. The facts of

⁷The Supreme Court has held executive agreements to be as binding as treaties and to be a part of the supreme law of the land, *United States v. Belmont*, 1937; *United States v. Pink*, 1942.

⁸Recognition may be carried out by other means, such as proposing to negotiate a treaty, since under international law only sovereign states can make such agreements.



▲ **The Panama Canal** Former President Jimmy Carter attended the ceremony transferring control of the Panama Canal to Panama on December 14, 1999.



The Framers considered the Senate—with, originally, only 26 members—a suitable council to advise the President in foreign affairs. Secrecy was thought to be necessary and was seen as an impossibility in a body as large as the House.

The two-thirds rule creates the possibility that a relatively small minority in the Senate can kill a treaty. Take one of the most dramatic examples: In 1920 the Senate rejected the Treaty of Versailles, the general peace agreement to end World War I. The treaty included provisions for the League of Nations. Forty-nine senators voted for the pact and 35 against, but the vote was 7 short of the necessary two thirds. More than once a President has been forced to bow to the views of a few senators in order to get a treaty approved, even when this has meant making concessions opposed by the majority.

At times, a President has had to turn to roundabout methods in order to achieve his goals. When a Senate minority defeated a treaty to annex Texas, President Tyler was able to bring about annexation in 1845 by encouraging passage of a joint resolution—a move that required only a majority vote in each house. In 1898 President McKinley used the same tactic to annex Hawaii, again after a treaty his administration had negotiated had failed in the Senate.

life in world politics make relations with these governments necessary.

Recognition is often used as a weapon in foreign relations, too. President Theodore Roosevelt's quick recognition of Panama in 1903 is a classic example of the use of the power as a diplomatic weapon. He recognized the new state less than three days after the Panamanians had begun a revolt against Colombia, of which Panama had been a part. Roosevelt's action guaranteed their success. Similarly, President Truman's recognition of Israel, within hours of its creation in 1948, helped that new state to survive among its hostile Arab neighbors.

The President may show American displeasure with the conduct of another country by asking for the recall of that nation's ambassador or other diplomatic representatives in this country. The official recalled is declared to be *persona non grata*, an unwelcome person. The same point can be made by the recalling of an American diplomat from a post in another country. The withdrawal of recognition is the sharpest diplomatic rebuke one government may give to another and has often been a step on the way to war.

Commander in Chief

The Constitution makes the President the commander in chief of the nation's armed forces.⁹ Recall, Congress does have extensive war powers; see pages 301–302. But the President dominates the field of military policy. In fact, the President's powers as commander in chief are almost without limit.

Consider this illustration of the point: In 1907 Theodore Roosevelt sent the Great White Fleet around the world. He did so partly as a training exercise for the Navy, but mostly to impress other nations with America's naval might. Several members of Congress objected to the cost and threatened to block funds for the President's project. To this Roosevelt replied:

“Very well, the existing appropriation will carry the Navy halfway around the world and if Congress chooses to leave it on the other side, all right.” Congress was forced to give in.

Presidents delegate much of their command authority to military subordinates. They are not required to do so, however. George Washington actually took command of federal troops and led them into Pennsylvania during the Whiskey Rebellion of 1794. Abraham Lincoln often visited the Army of the Potomac and instructed his generals in the field during the Civil War.

Most Presidents have not become so directly involved in military operations. Still, the President always has the final authority over and responsibility for all military matters, and the most critical decisions are invariably made by the commander in chief.

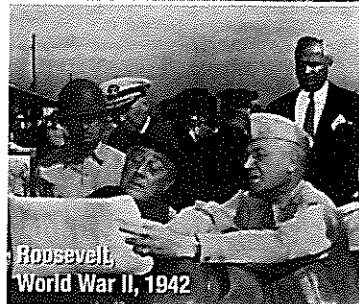
Making Undeclared War

Does the Constitution give the President the power to make war without a declaration of war by Congress? Although many argue that it does not, 200 years of American history argue otherwise. Presidents have often used the armed forces abroad, in combat, without a declaration of war.¹⁰ In fact, most Presidents have done so, and on several hundred occasions.

John Adams was the first to do so, in 1798. At his command, the Navy fought and won a number of battles with French warships harassing American merchantmen in the Atlantic and the Caribbean. Thomas Jefferson and then James Madison followed that precedent in the war against the Barbary Coast pirates of



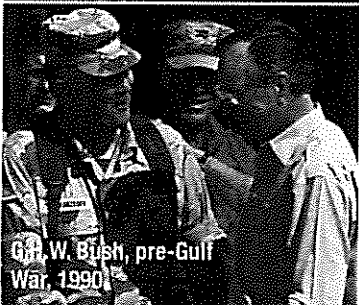
Lincoln, Civil War, 1862



Roosevelt, World War II, 1942



Johnson, Vietnam War, 1967



G.W. Bush, pre-Gulf War, 1990



G.W. Bush, War in Iraq, 2003

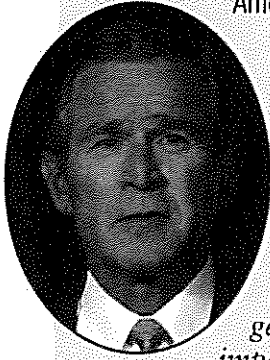
▲ Presidents have sent the nation's armed forces into combat on hundreds of occasions. *Critical Thinking* Why did the Framers choose the President, rather than a military officer, to be commander in chief?

⁹Article II, Section 2, Clause 1; see also Chapter 17.

¹⁰Altogether, Congress has declared war eleven times. It did so against Great Britain in 1812 (the War of 1812); Mexico in 1848 (the Mexican War); Spain in 1898 (the Spanish-American War); Germany and Austria-Hungary in 1917 (World War I); Japan, Germany, and Italy in 1941 and Bulgaria, Hungary, and Romania in 1942 (World War II).

Voices on Government

In his second inaugural address in 2005, President **George W. Bush** expressed the values underlying American foreign policy.



“We are led, by events and common sense, to one conclusion: The survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world. . . . Across the generations we have proclaimed the imperative of self-government, because no one is fit to be a master, and no one deserves to be a slave.”

Evaluating the Quotation

How might the President's comments be applied to events in the world today?

North Africa in the early 1800s. There have been a great many other foreign adventures over the past two centuries. The long military conflicts in Korea (from 1950 to 1953) and in Vietnam (from 1965 to 1973) were, at least to this point, the most extensive of those “undeclared wars.”

Congressional Resolutions

Congress has not declared war since World War II. On eight occasions since then, however, it has enacted joint resolutions to authorize the President to meet certain international crises with military force:

- President Dwight Eisenhower sought the first of these measures in 1955, to block the designs the People's Republic of China had (and still has) on Taiwan. That show of American resolve, and the presence of American warships, defused the situation.
- In 1957, Congress gave President Eisenhower the authority to use force to check Soviet efforts to gain a foothold in the Middle East. The President dispatched a large contingent of Marines to Lebanon in 1958, to forestall a Soviet-backed coup.

- In 1962, Congress authorized President John F. Kennedy to use the armed forces to deal with the extraordinary dangers posed by installation of Soviet missiles in Cuba.

- In 1962, Congress passed another resolution, to sanction any necessary military response to the erection of the Berlin Wall.

- In 1964, President Lyndon Johnson was directed “to take all necessary steps, including the use of armed force” to defeat communist aggression in Southeast Asia. American forces were not finally withdrawn from Vietnam until 1973.

- In 1991, President George H. W. Bush gained congressional approval for a military campaign to drive Iraq out of Kuwait. Immediately, an international coalition, led by the United States, launched Desert Storm—massive air and then ground attacks on Iraqi troops in Kuwait. The Persian Gulf War ended less than six weeks later, with the liberation of Kuwait and Iraq's defeat.

- In 2001, President George W. Bush was given the authority to use military force against those responsible for the September 11 attacks on the Pentagon and the World Trade Center. That resolution triggered the war in Afghanistan. The Taliban regime, which had sheltered Osama bin Laden and al Qaida terrorists, was eliminated within a few months, but sporadic fighting continues in that country even today. American military units are also engaged in anti-terrorist operations in several other places, including the Philippines, the Republic of Georgia, and Yemen.

- In 2002, Congress agreed that President Bush should take whatever measures were “necessary and appropriate” to eliminate the threat posed by Saddam Hussein and his Iraqi dictatorship. It was widely believed that that regime had amassed huge stores of chemical and biological weapons and was seeking to become a nuclear power—all in direct violation of the Gulf War's cease-fire agreement. In March 2003, a new (but smaller) international coalition, led by the United States, launched Operation Iraqi Freedom—a well-executed military campaign that ousted Saddam Hussein and his government from power. Some 140,000 American troops remain in Iraq today, engaged in the difficult and often dangerous tasks of stabilizing and rebuilding that country.

Other Uses of Military Power

Over the more than 60 years since the end of World War II, there have been many other critical situations in which Presidents have deployed the nation's armed forces—without a congressional resolution to support the action. Certainly, the Korean War stands as the foremost illustration of that fact. Among the other more notable instances:

- The lightning-quick invasion of Grenada, ordered by President Ronald Reagan in 1983, to frustrate a military coup in that Caribbean island nation.
- The invasion of Panama, at the command of President George H.W. Bush in 1989, to oust the dictatorship of General Manuel Noriega and protect American interests there—in particular, the Panama Canal.
- The dispatch of American forces to the Balkans by President Bill Clinton (to Bosnia in 1995 and to Kosovo in 1999) as part of NATO's response to a vicious civil war and the horrific "ethnic cleansing" campaign conducted by the forces of Serbian President Slobodan Milosevic.

The War Powers Resolution

In today's world, no one can doubt that the President must be able to respond rapidly and effectively to threats to this nation's security. Still, many people have long warned of the dangers

inherent in the President's power to involve the nation in undeclared wars. They insist that the Constitution never intended the President to have such power.

The nation's frustrations and growing anguish over the war in Vietnam finally moved Congress to pass the War Powers Resolution of 1973. The act is designed to place close limits on the President's war-making powers. President Nixon vetoed the measure, calling it "both unconstitutional and dangerous to the best interest of our nation." Congress overrode the veto.

The resolution's central provisions require that:

(1) Within 48 hours after committing American forces to combat abroad, the President must report to Congress, detailing the circumstances and the scope of his actions.

(2) A commitment of American forces to combat must end within 60 days, unless Congress agrees to a longer period. That 60-day deadline may be extended for up to 30 days, however, to allow for the safe withdrawal of the American forces involved.

(3) Congress may end the combat commitment at any time, by passing a concurrent resolution to that effect.

The constitutionality of the War Powers Resolution remains in dispute. A determination of the question must await a situation in which Congress demands that its provisions be obeyed but the President refuses to do so.

Section 3 Assessment

Key Terms and Main Ideas

1. Summarize the process by which treaties are negotiated and approved.
2. What is the difference between a **treaty** and an **executive agreement**?
3. Explain this statement: *The President's power of recognition can be used positively or negatively.*
4. Under what circumstances might the President declare a country's diplomat to be **persona non grata**?
5. Which of the President's powers is almost unlimited? Why?

Critical Thinking

6. **Making Inferences** Why might a new country eagerly seek diplomatic recognition from the United States?

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7. **Drawing Conclusions** Framer George Mason said, "The purse and the sword must never be in the same hands." How is this idea reflected in the War Powers Resolution?

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4 Legislative and Judicial Powers

Section Preview

OBJECTIVES

1. Describe the President's two major legislative powers, and explain how these powers are an important part of the system of checks and balances.
2. Describe the President's major judicial powers.

WHY IT MATTERS

The Constitution gives the President strong legislative and judicial powers as a part of the system of checks and balances.

POLITICAL DICTIONARY

- ★ line-item veto
- ★ reprieve
- ★ pardon
- ★ clemency
- ★ commutation
- ★ amnesty

As you know, the Federal Government is built on the principles of separation of powers and checks and balances. The Constitution gives to each of the three branches its own powers. It also gives to each of them powers with which to check—to delay or block—actions by the other two branches. As James Madison put it in *The Federalist* No. 51, each branch of the Federal Government has “the necessary constitutional means and personal motives to resist encroachments of the others.”

Legislative Powers

With his legislative powers, and the skillful playing of his roles as chief of party and chief citizen, the President can (and often does) have a considerable influence on the actions of Congress. The President is, in effect, the nation's chief legislator.

Recommending Legislation

The Constitution says that the President

“shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient. . . .”

—Article II, Section 3

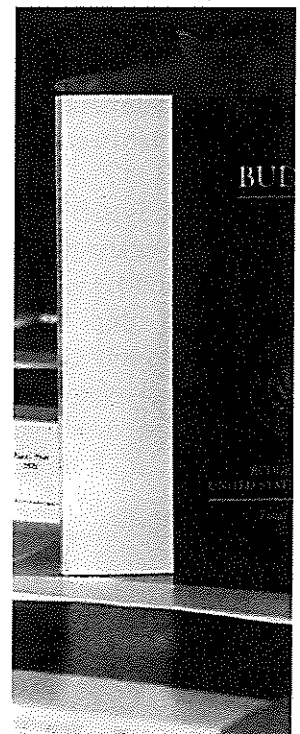
¹³Article I, Section 7, Clauses 2 and 3. Recall that, despite these words, joint resolutions proposing constitutional amendments and concurrent resolutions, which do not have the force of law, are not sent to the President.

This provision gives the President what is often called the *message power*.

The Chief Executive regularly sends three major messages to Capitol Hill each year. The first is the State of the Union message, a speech he almost always delivers in person to a joint session of Congress. The President's budget message and the annual Economic Report follow that speech soon after. The President often sends the lawmakers a number of other messages on a wide range of topics. In each of them, he calls on Congress to enact those laws he thinks to be necessary to the welfare of the country.

The Veto Power

The Constitution says that “Every Bill” and “Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President.”¹³



▲ Every year, huge bound volumes of the President's budget plan are presented to the Capitol, where they are discussed for Congress's consideration.

Remember, the Constitution presents the President with four options when he receives a measure passed by Congress. First, he may sign the bill, making it law. Or he can veto it, and the measure must then be returned to Congress. Of course, Congress can override a presidential veto by a two-thirds vote in each of its two chambers—but it seldom does.

As a third option, the President may allow the bill to become law by not acting on it, neither signing nor vetoing it, within 10 days (not counting Sundays). This rarely happens.

The fourth option, the pocket veto, can be used only at the end of a congressional session. If Congress adjourns within 10 days of sending a bill to the President and the chief executive does not act on it, the measure dies.

Because Congress can seldom muster a two-thirds vote to overturn a veto, the power is a valuable tool in the President's dealings with the legislative branch. The weight the power has in the executive-legislative relationship is underscored by this important point: The mere *threat* of a veto is often enough to defeat a bill or to prompt changes in its provisions as it moves through the legislative process. The

record of presidential vetoes over the years, and the fact that they are not often overturned, can be seen in the table below.

From Andrew Jackson in the 1830s, various Presidents have issued "signing statements" as they approved some measures. On occasion, those statements were used to point up constitutional or other problems the President saw in a newly enacted law. More often, the statements have been used to do such things as to direct the manner in which a new law is to be enforced.

President George W. Bush has issued signing statements far more frequently than any of his predecessors. To this point, he has used them to question the constitutionality of some 800 provisions in various measures he has signed. In doing so, he has claimed a power, on the one hand, to refuse to enforce those provisions or, on the other, to interpret them "in a manner consistent with" what he says is "the constitutional authority of the President." His critics claim that Mr. Bush has, in effect, used these statements as a substitute for the veto power. They say that he "cherry picks" new laws, deciding which of



► Presidential signings of legislation are commemorated with special pens, like this one from a Reagan bill signing.

Presidential Vetoes 1933–2006				
	Regular Vetoes	Pocket Vetoes	Total Vetoes	Vetoes Overridden
Franklin Roosevelt (1933–1945)	372	263	635	9
Harry Truman (1945–1953)	180	70	250	12
Dwight Eisenhower (1953–1961)	73	108	181	2
John Kennedy (1961–1963)	12	9	21	0
Lyndon Johnson (1963–1969)	16	14	30	0
Richard Nixon (1969–1974)	26	14	43	7
Gerald Ford (1974–1977)	48	18	66	12
Jimmy Carter (1977–1981)	13	18	31	2
Ronald Reagan (1981–1989)	39	39	78	9
George H. W. Bush (1989–1993)	29	15	44	1
Bill Clinton (1993–2001)	36	1	37	2
George W. Bush (2001–)	1	0	1	0

SOURCE: Congressional Research Service, Library of Congress



Interpreting Tables Some Presidents have used their veto power more often than others. (a) What might explain the huge variations in numbers of total vetoes? (b) Why, do you think, did some Presidents have fewer vetoes overridden?

them he will in fact execute and, in particular, how those laws will be interpreted and applied.

The Line-Item Veto

If the President decides to veto a bill, he must reject the *entire* measure. He cannot veto only a portion of it.

Since Ulysses S. Grant's day, most Presidents have favored expanding the veto power to include a **line-item veto**. They have sought the power to cancel specific dollar amounts (line items) in spending bills enacted by Congress. Many argue that the line-item veto would be a potent weapon against wasteful and unnecessary federal spending.

Opponents of the line-item veto have long argued that that move would bring a massive and dangerous shift of power to the executive branch. To this point, efforts to persuade Congress to propose a line-item veto amendment to the Constitution have failed.

In 1996 Congress did pass a Line-Item Veto Act. That measure was struck down by the Supreme Court, however, in *Clinton v. New York City*, in 1998. The Court held that Congress lacked the power to give the President a line-item veto. If the chief executive is to have that authority, said the Court, it can come only as the result of an amendment to the Constitution.

Other Legislative Powers

According to Article II, Section 3 of the Constitution, only the President can call Congress into special session. Most recently, President Truman did so in 1948, to have Congress consider post-World War II economic measures. The same constitutional provision also gives the President the power to prorogue (adjourn) Congress whenever the two houses cannot agree on a date for their adjournment—something that has never happened.

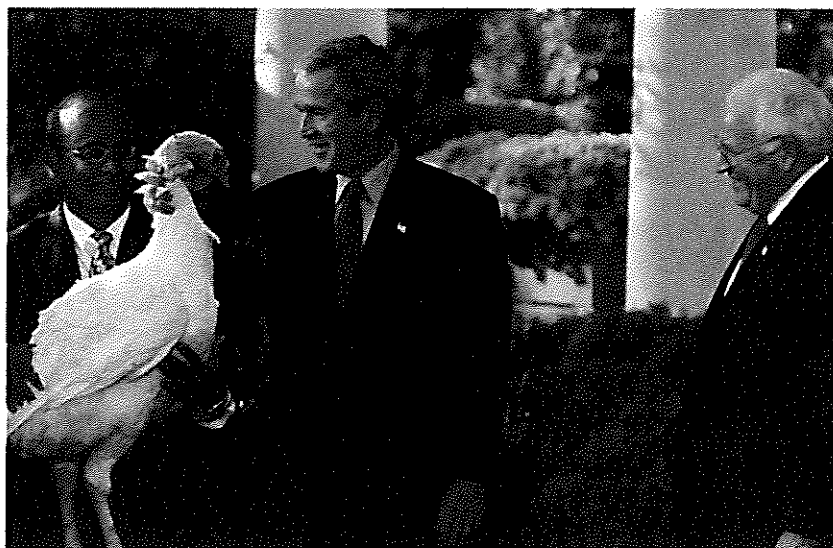
Judicial Powers

The Constitution gives the President the power to

FROM THE
Constitution

“ . . . Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment. ”

—Article II, Section 2, Clause 1



▲ **Thanksgiving Reprieve** President George W. Bush spares the life of a Thanksgiving turkey with a symbolic pardon.

A **reprieve** is the postponement of the execution of a sentence. A **pardon** is legal forgiveness of a crime.

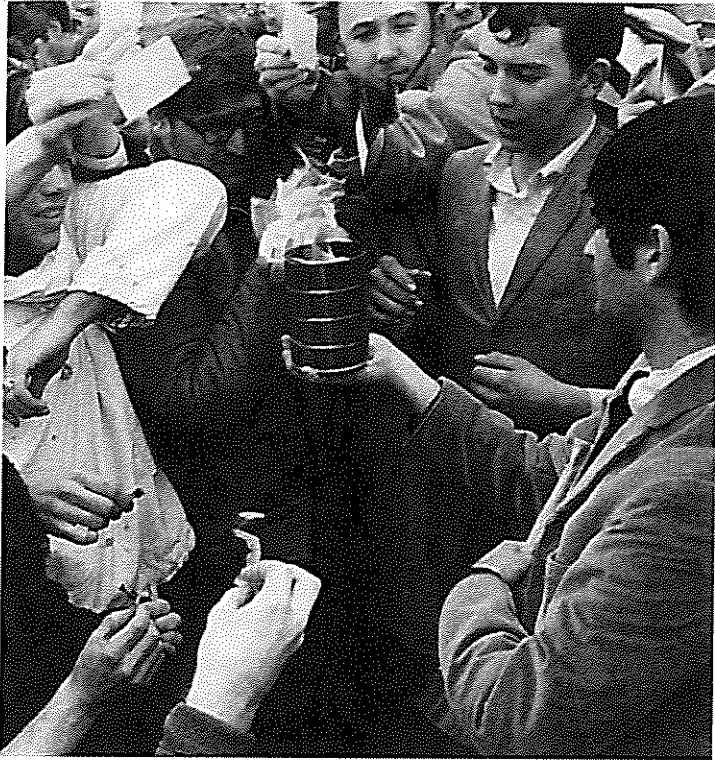
The President's power to grant reprieves and pardons is absolute, except in cases of impeachment, where they may never be granted. These powers of **clemency** (mercy or leniency) may be used only in cases involving *federal* offenses.

Presidential pardons are usually granted after a person has been convicted in court. Yet the President may pardon a federal offender before that person is tried, or even before that person has been formally charged.

Pardons in advance of a trial or charge are rare. The most noteworthy pardon, by far, was granted in 1974. In that year, President Gerald Ford gave “a full, free and absolute pardon unto Richard Nixon for all offenses against the United States which he . . . has committed or may have committed or taken part in during the period from January 20, 1969, through August 9, 1974.” Of course, that pardon referred to the Watergate scandal—the many and sordid events that ultimately forced Nixon to resign the presidency.

To be effective, a pardon must be accepted by the person to whom it is granted. When one is granted before charge or conviction, as in Nixon's case, its acceptance is regularly seen as an admission of guilt by the person to whom it is given.

Nearly all pardons are accepted, of course, and usually gratefully. A few have been rejected, however. One of the most dramatic refusals led to



▲ Some men called to serve in the Vietnam War burned their draft cards in protest. Others went into hiding, many fleeing to Canada. In 1977 President Carter pardoned them. **Critical Thinking** What might have been Carter's motive for using his presidential power to pardon the draft evaders?

... a Supreme Court case, *Burdick v. United States*, 1915. George Burdick, a New York newspaper editor, had refused to testify before a federal grand jury regarding the sources for certain news stories his paper had printed. Those stories reported fraud in the collection of customs duties. ... He invoked the 5th Amendment, claiming that

his testimony could incriminate him. President Woodrow Wilson then granted Burdick "a full and unconditional pardon for all offenses against the United States" that he might have committed in obtaining material for the news stories.

Interestingly, Burdick refused to accept the pardon, and he continued to refuse to testify. With that, the federal judge in that district fined and jailed him for contempt. The judge ruled that (1) the President's pardon was fully effective, with or without Burdick's acceptance and (2) there was, therefore, no basis for Burdick's continued claim of protection against self-incrimination.

The Supreme Court overturned the lower court's action. It unanimously upheld the rule that a pardon must be accepted in order to be effective, and it ordered Burdick's release from jail.

The pardoning power includes the power to grant conditional pardons, provided the conditions are reasonable. It also includes the power of **commutation**—that is, the power to commute (reduce) the length of a sentence or a fine imposed by a court.

The pardoning power also includes the power of **amnesty**, in effect a blanket pardon offered to a group of law violators. Thus, in 1893 President Benjamin Harrison issued a proclamation of amnesty forgiving all Mormons who had violated the antipolygamy (multiple marriage) laws in the federal territories. In 1977 President Jimmy Carter granted amnesty to Vietnam War draft evaders.

Section 4 Assessment

Key Terms and Main Ideas

1. What are the President's two major legislative powers?
2. What happened to the **line-item veto** law passed by Congress in 1996?
3. Explain how these judicial powers of the President differ: **reprieve, pardon, clemency, commutation, amnesty.**

Critical Thinking

4. **Expressing Problems Clearly** Write two paragraphs summarizing the arguments for and against the **line-item veto**.
5. **Predicting Consequences** Why, do you think, has no President had to use the power to prorogue Congress?

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6. **Making Inferences** In giving the President several important judicial powers, what kinds of situations might the Framers have been anticipating?

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