



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

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.

Con

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.