

# CONSTITUTION

## MODULE 8

# THE EXECUTIVE BRANCH AND THE ELECTORAL COLLEGE



## THE EXECUTIVE BRANCH AND THE ELECTORAL COLLEGE

Article II of the Constitution establishes the executive branch of the national government, headed by a single president. Article II outlines the method for electing the president, the scope of the president's powers and duties, and the process of removing one from office. The president's primary responsibility is to carry out the executive branch's core function—namely, enforcing the nation's laws. From the debates over how to structure the presidency at the Constitutional Convention to modern debates over executive orders, this module will explore the important role of the president in our constitutional system.

### Learning Objectives

At the conclusion of this module, you should be able to:

1. Discuss Article II of the Constitution and outline the requirements to be president, the election process, and the president's primary powers and duties.
2. Examine the origins of the presidency and describe the founders' vision for the nation's chief executive.
3. Describe how the president's role in our constitutional system has changed over time.
4. Review the role of the Supreme Court and Congress in checking the president.
5. Define what an executive order is, understand the roots of the president's authority to issue executive orders, and study the role of executive orders in our government over time.
6. Analyze competing constitutional visions of the presidency over time.

### 8.1 Activity: Jobs of the President

---

#### Purpose

Article II “vest[s]” the “executive Power . . . of the United States” in a single president. It sets out the details for how we elect a president (namely, through the Electoral College) and how we might remove one from office (namely, through the impeachment and removal process). It also lists some of the president's core powers and responsibilities. In this activity, you will explore the role of the president in our constitutional system.

## CONSTITUTION 101

### Module 8: The Presidency and Executive Power Lesson Plan

#### Process

Read the first line of [Article II](#) of the Constitution.

***The executive Power shall be vested in a President of the United States of America.***

Think about executive power and participate in a class discussion facilitated by your teacher. Answer the following questions:

- What reactions do you have to the opening text of Article II? What do you think it means?
- What is “the executive Power?”
- This text tells us that the Founding generation created a single chief executive—the president. Why do you think the founders decided to place the executive power in the hands of a single person rather than a committee? What are the benefits of a single chief executive? What are the potential downsides?
- What is the role/job of the executive branch? Who else is part of the executive branch?

After discussing the first line of Article II with your class, brainstorm a current list of roles/jobs for the president. Record them and share with your classmates.

Review the [Info Brief: Presidential Roles](#) document for a comprehensive list.

#### **Activity 8.1 Notes & Teachers Comments**

##### **Launch**

Provide students with a summary of the three branches of government. Within the national government, the executive branch is responsible for enforcing the laws. We commonly think of the president as the most powerful elected office in all of the world. Yet, the Constitution actually grants far fewer explicit powers to the president in Article II than it does to the Congress in Article I.

Give students time to read the first line of Article II.

Over the course of the week, ask students to try to match some of the key jobs of the president with what is spelled out in the Constitution.

**Note:** The 22nd Amendment limits the president to two terms in office. This is an example of a norm established by George Washington, held over time, violated by Franklin Delano Roosevelt, and then written into the Constitution. This is a great example to share with students of how a presidential norm may be written into the Constitution.

## CONSTITUTION 101

---

### Module 8: The Presidency and Executive Power Lesson Plan

#### Activity Synthesis

Ask students to discuss recent presidents and the roles they took on during their terms in office.

#### Activity Extension (Optional)

Now that students have a better understanding of the roles/jobs of the president, ask them to find a news article that demonstrates one or more roles of the president.

You can also ask students to speak to at least two adults and two peers outside of class, ask them the following questions, and write down their responses.

- What is the job of the president?
- What is the job of the executive branch?

## 8.2 Activity: How Does the Presidency Work?

---

### Purpose

In this activity, you will continue to explore the presidential jobs that are spelled out by the Constitution.

### Process

Review the text of Article II and the [Interactive Constitution essays on Article II - The Executive Branch](#) to help complete the [Activity Guide: How Does the Presidency Work?](#) worksheet.

Review the following sections in the *Constitution* and the *Interactive Constitution* Common Essays:

- Article II, Section 1: The Vesting Clause
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article II, Section 2: Commander in Chief Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article II, Section 3—the “Take Care” Clause and other Presidential Powers/Duties
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- The President’s Treaty Power and Appointment Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)

## CONSTITUTION 101

### Module 8: The Presidency and Executive Power Lesson Plan

- The Impeachment Process
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 7—The President's Veto Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 8—Congress's Declare War Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)

Compare your worksheet to the list you created as a class in the previous activity. Be prepared to discuss the similarities and differences as a class.

### **Activity 8.2 Notes & Teachers Comments**

#### **Launch**

Give students time to identify from memory as many roles/jobs of the president as they can remember from the previous activity. Compare that list to the list of roles/jobs that the adults and peers they asked identified.

Direct students to the text of Article II and the Interactive Constitution essays on Article II, The Executive Branch. Build a list of powers and duties for the president. Then, compare the crowdsourced list with the list developed from the primary and scholarly sources (the Constitution's text and the Constitution essays).

Review the following sections in the Constitution:

Article II, Section 1: The Vesting Clause

- [Text of the Constitution](#)
- [Common Interpretation](#)

Article II, Section 2: Commander in Chief Power

- [Text of the Constitution](#)
- [Common Interpretation](#)

Article II, Section 3—the "Take Care" Clause and other Presidential Powers/Duties

- [Text of the Constitution](#)
- [Common Interpretation](#)

## CONSTITUTION 101

---

### Module 8: The Presidency and Executive Power Lesson Plan

#### The President's Treaty Power and Appointment Power

- [Text of the Constitution](#)
- [Common Interpretation](#)

#### The Impeachment Process

- [Text of the Constitution](#)
- [Common Interpretation](#)

#### Article I, Section 7—The President's Veto Power

- [Text of the Constitution](#)
- [Common Interpretation](#)

#### Article I, Section 8—Congress's Declare War Power

- [Text of the Constitution](#)
- [Common Interpretation](#)

#### Activity Synthesis

When the comparison is complete, students could build a “Job Posting Advertisement” for a presidential candidate. Have students share ads with their classmates for review and discussion.

#### Activity Extension (Optional)

Review the résumés/background of several former presidents. Do you notice any patterns among the presidents? Does anyone stand out as having a unique background?

### 8.3 Video Activity: The Presidency

---

#### Purpose

In this activity, you will view a video on the presidency and what the Constitution says about it.

#### Process

Watch [the video](#) about the presidency.

Then, complete the [Video Reflection: The Presidency](#) worksheet.

Identify any areas that are unclear to you or where you would like further explanation. Be prepared to discuss your answers in a group and to ask your teacher any remaining questions.

## CONSTITUTION 101

---

### Module 8: The Presidency and Executive Power Lesson Plan

#### **Activity 8.3 Notes & Teachers Comments**

##### **Launch**

Give students time to watch the video and take notes to support their notetaking skills.

##### **Activity Synthesis**

Have students share their notes with a classmate and then review as a class.

##### **Activity Extension (Optional)**

Now that students have a better understanding of the presidency, ask them to identify what informal qualifications a president should have to be successful.

### **8.4 Activity: Electoral College**

---

#### **Purpose**

The delegates engaged in many debates over the presidency. One key debate involved the issue of how to elect the president. Today, many democratic nations elect their executives by direct popular vote. But we don't. Instead, we use a system known as the "Electoral College."

In this activity, you will read two sources to understand the founders' debates over how to elect a president and their vision for the Electoral College. You will also reflect on the Electoral College now versus back when it was created.

#### **Process**

Review the Electoral College resources below:

- [Info Brief: Electoral College](#)
- [NCC Scholar Exchange: The Electoral College](#)
- [Interactive Constitution Essay on the Electoral College](#)

Then, review the [Info Brief: Key Debate Notes](#) and examine the key debates around electing the president and other compromises among delegates that led to the Electoral College.

Be prepared to discuss what you have read and viewed.

## CONSTITUTION 101

---

### Module 8: The Presidency and Executive Power Lesson Plan

#### **Activity 8.4 Notes & Teachers Comments**

##### **Launch**

Give students time to read the briefing sheet on the Electoral College and watch this short video.

Review the key readings and debates and then examine the ideas and compromises as a group.

##### **Activity Synthesis**

Have students share their thoughts about the proposals for how to elect a president and discuss positive and negative aspects of each. Ask students if they think the Electoral College, as it functions today, should be eliminated, changed, or stay the same.

##### **Activity Extension (Optional)**

Have students run for president and then have the rest of the class divided into the states to vote for their preferred candidate, replicating the Electoral College. Have each candidate select (or select for them) a campaign manager. The campaign manager's job is to build a strategy for targeting which states they think will be most useful to gain the electoral votes needed. Have the campaign teams visit only five groups of students (replicating scarcity of time and money on the campaign trail), making strategy a key component in securing victory. Have students vote by state groups and individually to examine who wins the popular vote and who wins the Electoral College.

## **8.5 Activity: Test of Presidential Power**

---

### **Purpose**

There are still many ongoing debates over presidential power. When it comes to presidential power, the core constitutional question often comes down to this: Can the president do that? Over time, the Supreme Court has provided some guidance on how to analyze this important question.

In this activity, you will examine a major test of presidential power, the Supreme Court's landmark decision in [Youngstown Sheet & Tube Co. v. Sawyer \(1952\)](#), also known as "The Steel Seizure Case."

### **Process**

Begin by reading excerpts from [Primary Source: Youngstown Sheet & Tube Co. v. Sawyer \(1952\)](#) and reviewing your notes from Activity 8.3 and reference your notes from the [Info Brief: Methods of Constitutional Interpretation](#) from Module 1. If you would like to [watch the video](#) again, start at timestamp 12:25.



## CONSTITUTION 101

---

### Module 8: The Presidency and Executive Power Lesson Plan

This landmark case took place during the Korean War. Steel workers were going on strike and President Truman responded by seizing the steel mills. He argued that a steel strike was a threat to national security because the Army needed steel to conduct the war. Therefore, he had the constitutional authority to act on his own—in other words, without explicit congressional approval—under his Article II commander in chief power.

After reviewing the primary source and video, complete the [Case Brief: Test of Presidential Power](#) worksheet.

#### **Activity 8.5 Notes & Teachers Comments**

##### **Launch**

Give students time to read excerpts from Primary Source: *Youngstown Sheet & Tube Co. v. Sawyer* (1952), review your notes from the earlier video, and answer the questions provided.

##### **Activity Synthesis**

Have students share their responses to the questions and discuss as appropriate. Ask students how the presidency today compares with the founders' vision.

##### **Activity Extension (Optional)**

Have students review other court cases related to presidential power.

- [United States v. Nixon](#)
- [Chevron v. Natural Resources Defense Council, Inc.](#)
- [Morrison v. Olson](#)
- [Zivotofsky v. Kerry](#)

## 8.6 Activity: Analyzing Executive Orders

---

### **Purpose**

One of the key debates over presidential power today involves the president's use of executive orders. Defenders of presidential power argue that executive orders are central to the president's core responsibilities of overseeing the executive branch and enforcing laws already passed by Congress. Critics of presidential power often argue that presidents (of both parties) use executive orders to stretch their powers—using them to command executive-branch officials to promote policies that they can't get Congress to enact into law. In this activity, you will examine executive orders and how they have evolved over time.

## CONSTITUTION 101

### Module 8: The Presidency and Executive Power Lesson Plan

#### Process

In your group, review the following resources:

- [Executive Orders Data](#)
- [Info Brief: Analyzing Executive Orders](#)
- [Interactive Constitution Article II, Section 3 by William Marshall](#)

Record your answers to the following questions and prepare to discuss:

- What is an executive order?
- Where does the president get the authority to issue executive orders?
- Which president used executive orders the most? The least?
- Who are the three that used them the least?
- Has the use of executive orders changed over time? Can you chart the numbers to see a pattern?
- Are there any eras where you see a boost in executive orders? Why do you think that would be the case? What do you know about that time period?
- How have executive orders changed the role/job of the president? What are some of the benefits of executive orders? What are some of the dangers?

Then, review the [Activity Guide: Quotes on Visions of Presidential Power](#). Try to guess which quote belongs to which key historical figure. As a class, compare the different viewpoints on presidential power.

#### **Activity 8.6 Notes & Teachers Comments**

##### **Launch**

Give students time to review executive orders resources and answer the questions. Three sources to review are as follows:

- [Executive Orders Data](#)
- [Info Brief: Analyzing Executive Orders](#)
- [Interactive Constitution Article II, Section 3 by William Marshall](#)

##### **Activity Synthesis**

Have students record their answers to the following questions and review as a full class:

- What is an executive order?
- Where does the president get the authority to issue executive orders?
- Which president used executive orders the most? The least?
- Who are the three that used them the least?

## CONSTITUTION 101

---

### Module 8: The Presidency and Executive Power Lesson Plan

- Has the use of executive orders changed over time? Can you chart the numbers to see a pattern?
- Are there any eras where you see a boost in executive orders? Why do you think that would be the case? What do you know about that time period?
- How have executive orders changed the role/job of the president? What are some of the benefits of executive orders? What are some of the dangers?

Ask students to summarize the information from the lesson in three to five sentences.

#### Activity Extension (Optional)

When it comes to presidential power, the constitutional question often comes down to this: Can the president do that?

*Discuss the following examples with your class:*

- Can the administration issue a sweeping regulation to regulate air pollution?
- What about one to require everyone in the nation to wear a mask? Or to stay at home?
- Can the president send American troops to another country to overthrow that dictator?

Review a news item about executive orders today and see what leading questions are being posed on the balance of executive powers.

## 8.7 Test Your Knowledge

---

### Purpose

Congratulations for completing the activities in this module! Now it's time to apply what you have learned about the basic ideas and concepts covered.

### Process

Complete the questions in the following quiz to test your knowledge.

- [Test Your Knowledge: The Executive Branch and Electoral College](#)

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.1 Info Brief

## PRESIDENTIAL ROLES

### PRESIDENTIAL ROLES

- Chief of the executive branch: Oversees other members of the executive branch. Issues executive orders to carry out and enforce the nation's laws. Supervises agencies that issue regulations under the authority of laws passed by Congress. Takes care that the laws are faithfully executed. Appoints executive branch officials, subject to Senate approval or rejection.
- Leader on the world stage: Conducts diplomacy with other nations. Negotiates treaties, which the Senate must either ratify or reject. Appoints ambassadors and other key foreign affairs officials such as the secretary of state, subject to Senate approval or rejection.
- Political party leader: Coordinates with party members in Congress to advance a legislative agenda. Supports the election of members of the party and shapes the party's broader messaging to the public.
- Ceremonial head of state: Delivers a State of the Union address to Congress.
- Commander in chief: Oversees the armed forces of the United States.
- Legislative power player: Proposes an annual budget, which sets out legislative priorities. Deploys the Veto (and veto threat) to shape policy.
- Architect of the federal judiciary: Appoints federal court judges and Supreme Court justices, subject to Senate approval/rejection.
- Defender of the Constitution: Takes an oath to remain faithful to the Constitution.
- Law enforcement: Appoints U.S. attorneys and key officials at the Department of Justice who prosecute those who violate national laws. Those appointments are subject to Senate approval or disapproval. Has the power to extend pardons or clemency for federal crimes.
- National security: Appoints key figures involved in national security decisions like the secretary of defense, the director of the Central Intelligence Agency, and the secretary of homeland security, subject to Senate approval or disapproval. Oversees their activities.
- Economic policy: Appoints key officials shaping economic policy, including the secretary of the Treasury and the chair of the Federal Reserve, subject to Senate approval or disapproval. Oversees their activities.

### QUALIFICATIONS

The president must be at least 35 years of age, be a natural-born citizen, and must have lived in the United States for at least 14 years.

## CONSTITUTION 101

Module 8: The Executive Branch and Electoral College  
8.2 Activity Guide

### HOW DOES THE PRESIDENCY WORK?

In this activity, you will continue to explore the presidential jobs that are spelled out by the Constitution.

Read the text and *Interactive Constitution* essays for the following provisions of Articles II and I. As you read, circle or highlight key words and phrases. Then, complete the worksheet.

- Article II, Section 1: The Vesting Clause
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article II, Section 2: Commander in Chief Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article II, Section 3—the “Take Care” Clause and other Presidential Powers/Duties
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- The President’s Treaty Power and Appointment Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- The Impeachment Process
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 7—The President’s Veto Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 8—Congress’s Declare War Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.2 Activity Guide

Provision	What words of the text stood out to you?	Paraphrase the text	Notes on the Interactive Constitution Essay
Article II, Section 1: The Vesting Clause			
Article II, Section 2: Commander in Chief Power			
Article II, Section 3: The "Take Care" Clause and other Presidential Powers/Duties			
Article II, Section 2: The President's Treaty Power and Appointment Power			

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.2 Activity Guide

Article II, Section 4: The Impeachment Process			
Article I, Section 7: The President's Veto Power			
Article I, Section 8: Congress's Declare War Power			

Circle or highlight the powers, duties, or limits that you listed in the previous exercise.

Were there any that you missed?

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.2 Activity Guide

Using the information you gathered from the Constitution, create an “In Search of” advertisement for a presidential candidate.

WANTED: PRESIDENT OF THE UNITED STATES

Position	President of the United States
Reports to	The American People
Position Term	One _____-year term, with the option of _____ additional term(s).
Position Summary  (Write a brief paragraph summarizing the role of the president.)	
Duties and Responsibilities  (List the duties of the president, as listed in Article II.)	
Qualifications  (List the qualifications of the president, as listed in Article II.)	



## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.3 Video Reflection

## THE PRESIDENCY

In this activity, you will view a video on the presidency and what the Constitution says about it. You will begin to collect notes for the next two activities on Convention Debates over the Presidency and Tests of Presidential Power.

Watch the [video](#) and answer the questions below.

#### Key Debates During the Constitutional Convention

	What were some key arguments in this debate?	What was the solution proposed at the Convention?
How should the executive branch be structured?		
How should the president be elected?		
How long should the president hold office? Should the president be allowed to run for reelection?		
What is the president's role in the legislative process?		
How might the president be removed from office?		

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.3 Video Reflection

#### Can the President Do That? Executive Orders

How did the Progressive Era shape the executive branch and the role of the president? Who were some of the major players during this time period and how did they view the presidency?

#### *Youngstown Steel*

What is some of the background of the case?	What presidential power did President Truman draw on to take this action?	What did the Supreme Court decide?

What is the zone of twilight?

## ELECTORAL COLLEGE

Today, many democratic nations elect their executives by direct popular vote. But in the United States, we don't. Instead, we use a system known as the "Electoral College." How does it work?

At present, the Electoral College is made up of 538 electors drawn from the states and the District of Columbia. Under Article II of the Constitution, the states are given a number of electors equal to their congressional delegation. (So, if your state has two members in the U.S. House and two U.S. senators, you get four electoral votes in the Electoral College.)

Today, the American people vote for president and vice president on Election Day in November. But, technically speaking, these votes don't directly determine the outcome of the election. Technically, these popular votes determine which electors will be appointed to the Electoral College from each state. The electors eventually meet in December to cast their votes for president and vice president. If a candidate receives a majority of these votes in the Electoral College, she wins—even if she loses the popular vote.

If no candidate secures a majority in the Electoral College, then the election is sent to Congress (as happened in the election of 1824). The U.S. House of Representatives—voting as states, not individuals—selects the president and the Senate selects the vice president.

At the Constitutional Convention, the delegates staked out a range of positions on how to elect a president, including by a popular vote (James Wilson's preference), by state governors (Elbridge Gerry's idea), by Congress (a popular view held by many of the delegates), or by the Electoral College (a compromise).

For much of the Convention, the election of the president seemed like an unsolvable problem. Each idea had its own strengths and weaknesses.

- Election by the legislature had the advantage of placing the decision in the hands of the nation's most knowledgeable leaders. However, the concern was, as Gouverneur Morris warned, that the result would eventually be the **"work of intrigue, of cabal, and of faction,"** producing a pliable president who would become the willing tool of his supporters in Congress.
- Election by popular vote had the advantage of rooting the presidency in popular sovereignty. But many delegates were concerned that the size of the country would make it difficult for the average voter to know anything about an out-of-stater's record.

## CONSTITUTION 101

---

### Module 8: The Executive Branch and Electoral College

#### 8.4 Info Brief

- The third—and final—idea on the table was the Electoral College. The key advantage of this proposal was that it would keep the president independent of the legislature. He would have his own independent base of support that would dissolve after the election. Key disadvantages were the logistics of getting the electors to meet and the related expenses. Some framers like Hugh Williamson from North Carolina feared whether the electors would “be men of the 1<sup>st</sup> or even the 2d grade in the States.”

Late in the Convention, the delegates settled on the Electoral College as a compromise between those who supported congressional election of the president and those who supported a role for the American people in selecting a president. The Constitution left the method for selecting electors to the states. Over time, the Electoral College has remained in place, but within this system (and beginning in our nation’s earliest years), the American people have played a key role in presidential elections.

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College 8.4 Info Brief

## KEY DEBATE NOTES

### HOW DID WE GET ARTICLE II AND THE U.S. PRESIDENCY AS ENSHRINED IN THE CONSTITUTION?

The framers as a whole had a range of opinions when it came to the new executive. On one end of the spectrum, Alexander Hamilton and John Dickinson voiced admiration for the limited monarchy of Britain. On the other end of the spectrum, Roger Sherman suggested that no constitutional provision need be made for the executive because it was “nothing more than an institution for carrying the will of the Legislature into effect”—so, a weak president and a strong Congress. In the end, Pennsylvania’s James Wilson would be the driving force behind the presidency at the Convention.

The debate over the presidency was a long and winding road. In many ways, it often felt like the more that the framers discussed the executive, the more puzzled they became. Furthermore, unlike the debates over Congress, the framers’ positions often didn’t match the perceived interests of their states. Over time, they wrestled with five big issues:

- Structure of the presidency
- Selection of the president
- Length of president’s term and reelection
- The president’s role in the legislative process
- Removal from office

The delegates repeatedly learned that a decision made on one of these issues changed their views about one (or more) of the others. Under these conditions, no single delegate or faction could control the course of the debate—although, James Wilson can most persuasively lay claim to being called the “Father of the American Presidency.”

That’s a bit of the backstory, but how did Article II evolve through the course of the Convention?

Let’s begin with the Virginia Plan—the proposal introduced at the beginning of the Convention by Edmund Randolph and driven by James Madison—that helped frame so many of the Convention’s debates.

The Virginia Plan contained a thorough theory of the legislative branch of government, but little on the executive. Basically, it proposed two big things—that (1) there should be an executive, chosen by Congress, to serve a single term; and (2) that the executive should have a joint veto power (with the judiciary) over acts of the national legislature, subject to a supermajority legislative override.

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College 8.4 Info Brief

It's also worth noting what the Virginia Plan didn't say. It didn't specify the length of the president's term, state whether the president would play any role in matters of war and diplomacy, or grant the president any powers of appointment. So, everything else was left to further debate.

#### FIRST DEBATE: STRUCTURE OF THE PRESIDENCY

First, the delegates had a heated debate over whether to have a single president or whether to divide the executive power between multiple people.

It's easy to take the American presidency—with a single president—for granted today, but the decision to go with a single president was a big deal. Various states had more than one executive or limited the executive's power through some sort of council. At first, even Madison himself supported an arrangement like this. (This may have been in deference to fellow Virginian, Edmund Randolph, and his fear of a unitary executive.) James Wilson—initially standing alone—argued vigorously “that the Executive consist of a single person.” Two key delegates then attacked Wilson.

- Connecticut's Roger Sherman suggested leaving the entire subject—and the structure of the presidency itself—to Congress.
- Virginia's Edmund Randolph—sponsor of the Virginia Plan—described “unity in the Executive magistracy” (so, a single president) as “the foetus of monarchy.” In short, he criticized Wilson for taking the British Constitution (and its king) “as our prototype.”
- Wilson countered that a single president—if structured properly—would balance the advantages of a powerful king (namely, “energy” and “dispatch”) with “responsibility” (in other words, checks by Congress and the American people).

On June 4, Wilson eventually convinced his colleagues (including Madison) of the viability of an energetic, single president. Wilson saw before others that in a republic where even executive power rested directly or indirectly on the people, we had less to fear in a strong executive than under an unaccountable monarchy. Wilson (who was America's prophet of popular sovereignty) argued that the more the president was held responsible to the American people, the more power he could safely be given. (Wilson also supported a national popular vote for the president.) So, Madison—and the delegates—eventually went along with Wilson's plan for a single executive.

#### SECOND DEBATE: SELECTION OF THE PRESIDENT

The delegates debated how to elect a president.

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.4 Info Brief

Today, many democratic nations elect their executives by direct popular vote. But we don't. Instead, we use a system known as the "Electoral College." How does it work?

- Today, the Electoral College is made up of 538 electors drawn from the states and the District of Columbia. Under Article II of the Constitution, the states are given a number of electors equal to their congressional delegation. (So, if your state has two members in the U.S. House and two U.S. senators, you get four electoral votes in the Electoral College.)
- Today, the American people vote for president and vice president on Election Day in November. But, technically speaking, these votes don't directly determine the outcome of the election. Technically, these popular votes determine which electors will be appointed to the Electoral College from each state. The electors eventually meet in December to cast their votes for president and vice president. If a candidate receives a majority of these votes in the Electoral College, she wins—even if she lost the popular vote. If no candidate secures a majority in the Electoral College, then the election is sent to Congress (as happened in the Election of 1824).
  - The U.S. House of Representatives—voting as states, not individuals—selects the president and the Senate selects the vice president.

At the Constitutional Convention, the delegates staked out a range of positions on how to elect a president, including by a popular vote (Wilson's preference), by an Electoral College (Wilson's compromise), by members of Congress selected by lot (Wilson's ridiculous suggestion), by state governors (Elbridge Gerry's idea), or by Congress (a popular view held by many of the delegates). For much of the Convention, the election of the president seemed like an unsolvable problem. Each idea had its own strengths and weaknesses.

- Election by the legislature had the advantage of placing the decision in the hands of the nation's most knowledgeable leaders. However, the concern was, as Gouverneur Morris warned, that the result would eventually be the "work of intrigue, of cabal, and of faction," producing a pliable president who would become the willing tool of his supporters in Congress.
- Election by popular vote had the advantage of rooting the presidency in popular sovereignty. Many delegates were concerned that the size of the country would make it difficult for the average voters to know anything about an out-of-stater's record.
- The third—and final—idea on the table was the Electoral College. The key advantage of this proposal was that it would keep the president independent of the legislature. He would have his own independent base of support that would dissolve after the election. Key disadvantages were the logistics of getting the electors to meet and the related

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.4 Info Brief

expenses. The framers also feared whether the electors would “be men of the 1<sup>st</sup> or even the 2d grade in the States.”

Late in the Convention, the delegates settled on the Electoral College as a compromise between those who supported congressional election of the president and those who supported a role for the American people in selecting a president. Over time, the Electoral College has remained in place, but within this system (and beginning in our nation’s earliest years), the American people have played a key role in presidential elections.

#### THIRD DEBATE: LENGTH OF PRESIDENT’S TERM AND REELECTION

The delegates debated the length of the president’s time and whether to impose term limits on the president.

The Constitution sets the president’s term at four years and allows the president to run for reelection, but the delegates debated other options. For instance, in July, the delegates agreed to a president who would serve for a single term of six years.

- So, that’s a longer term than today but with term limits attached. This was consistent with the Virginia Plan. Remember, the longest term for a state governor at the time was *three* years—with most state executives serving for a term of only *one* year. The delegates were open to a relatively longer term because they wanted a president powerful enough to compete with Congress and also one with enough experience to do the job well.

The delegates forcefully debated whether or not to impose term limits on the president.

- On one side was George Mason, strongly in support of term limits. He argued that it was “the very palladium of Civil liberty, that the general officers of State, and particularly the executive, should at fixed periods return to that mass from which they were first taken, in order that they may feel & respect those rights & interests, which are again to be personally valuable to them.” This was hardly a surprise. He had already written this principle into the influential Virginia Declaration of Rights in 1776. On the other side were delegates—like Roger Sherman and Rufus King—who saw eligibility for reelection as valuable. They argued, “He who has proved himself to be most fit for Office, ought not to be excluded by the constitution from holding it.”

The delegates settled on a four-year term, with the president able to run for reelection.

#### FOURTH DEBATE: THE PRESIDENT’S ROLE IN THE LEGISLATIVE PROCESS

The delegates debated whether to grant the president a role in the legislative process as a check on Congress.



## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.4 Info Brief

James Madison proposed a “Council of Revision”—with the president sitting with members of the federal judiciary to review law passed by Congress and veto any bad ones. When Madison’s proposal came up for debate in early June, Elbridge Gerry immediately pushed to give the president a limited veto over laws passed by Congress. This would allow the president to veto congressional law, but also give Congress the right to override the president’s veto.

For Gerry and his Massachusetts colleague Rufus King, Madison’s proposed Council of Revision was flawed because it would give judges an improper role in legislating, while making it difficult for them to “expound the law as it should come before them, free from the bias of having participated in its formation.”

Wilson and Hamilton then pushed for an absolute veto for the president—one that couldn’t be overridden by a vote in Congress. But this was too much for the delegates to accept and drew the support of only Wilson, Hamilton, and Rufus King.

Gerry’s proposal for a limited veto passed decisively, 8–2. So, rather than having the president serve as part of Madison’s Council of Revision, the delegates gave the president his own veto power—with Congress given the authority to override it with a two-thirds vote in both houses of Congress.

#### FIFTH DEBATE: REMOVAL FROM OFFICE

Finally, the delegates debated the process for removing a president from office before the end of his term—in other words, the process of impeachment and removal.

In July, the delegates agreed to a version of the impeachment and removal power that was broader than the one in the final draft—with removal allowed for “mal Practice or Neglect of Duty.” This broad language could have even included allegations of general incompetence—not simply abuses of power.

The Committee of Detail—tasked with taking the Resolutions passed during the first phase of the Convention and creating the first full draft of the Constitution—then narrowed the impeachment and removal power, limiting it to “Treason or Bribery or Corruption.”

The final text settled on “Treason, Bribery, or other High Crimes and Misdemeanors.”

## CONSTITUTION 101

Module 8: The Executive Branch and Electoral College  
8.5 Primary Source

# YOUNGSTOWN SHEET & TUBE CO. V. SAWYER (1952) (STEEL SEIZURE CASE)

View the case on the National Constitution Center's website [here](#).

## SUMMARY

During the Korean War, there was a labor dispute between steel workers and steel mill operators. President Truman used an executive order to take control of the steel mills and ensure the continued production of steel during wartime. Youngstown and other steel mill operators challenged the president's executive order, claiming that Truman's action was an executive overreach because it was not authorized by statute. The Supreme Court held that the president had acted unconstitutionally because neither Congress nor the Constitution gave him the authority to seize the steel mills. In his influential concurrence, Justice Jackson described a three-category framework for analyzing separation of powers conflicts between the president and Congress. This key opinion took further steps toward defining the constitutional limits on executive orders and the boundaries between the branches of government.

[Read the Full Opinion](#)

### **Excerpt: Majority Opinion, Justice Black**

**The President must be able to root his authority for seizing the steel mills in some part of the Constitution.** It is clear that if the President had authority to issue the order he did, it must be found in some provisions of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "the executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States."

**The President can't derive this power from the Commander in Chief Clause; this is a job for Congress, not the President.** The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. . . . Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

NATIONAL CONSTITUTION CENTER

★ [constitutioncenter.org](http://constitutioncenter.org) ★

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.5 Primary Source

**We can't find this authority in any other provision of the Constitution either; the President's actions violate the separation of powers; he is trying to make the laws (Congress's job) rather than enforce them (his job).** Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States . . ." After granting many powers to the Congress, Article I goes on to provide that Congress may "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."

**This is Congress's job, not the President's.** The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President. The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution. The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution did not subject this law-making power of Congress to presidential or military supervision or control.

#### **Excerpt: Concurrence, Justice Frankfurter**

**The Court should decide no more than necessary today.** It is . . . incumbent upon this Court to avoid putting fetters upon the future by needless pronouncements today. . . .

**We shouldn't try to define all of the President's powers today; we should approach these sorts of separation of powers disputes with humility.** The issue before us can be met, and therefore should be, without attempting to define the President's powers comprehensively. I shall not attempt to delineate what belongs to him by virtue of his office beyond the power even of Congress to contract; what authority belongs to him until Congress acts; what kind of problems may be dealt with either by the Congress or by the President, or by both . . . ; what

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.5 Primary Source

power must be exercised by the Congress and cannot be delegated to the President. It is as unprofitable to lump together in an indiscriminating hotch-potch past presidential actions claimed to be derived from occupancy of the office as it is to conjure up hypothetical future cases. The judiciary may, as this case proves, have to intervene in determining where authority lies as between the democratic forces in our scheme of government. But, in doing so, we should be wary and humble. Such is the teaching of this Court's role in the history of the country. . . .

**We can't resolve all of these difficult issues by recourse to the Constitution's text or to broad theory; instead, we should turn to historical practice as a key guide to how we should read the Constitution in this context; this requires us to look at how the President and Congress have exercised their powers over time.** [T]he content of the three authorities of government is not to be derived from an abstract analysis. The areas are partly interacting, not wholly disjointed. The Constitution is a framework for government. Therefore, the way the framework has consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them. It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them. In short, a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the President by § 1 of Art. II. . . .

**The President's actions here can't be justified by historical practice.** No [well-settled] practice can be vouched for executive seizure of property at a time when this country was not at war, in the only constitutional way in which it can be at war. It would pursue the irrelevant to reopen the controversy over the constitutionality of some acts of Lincoln during the Civil War. . . . Suffice it to say that he seized railroads in territory where armed hostilities had already interrupted the movement of troops to the beleaguered Capital, and his order was ratified by the Congress. . . .

**I can't find a well-established line of historical precedent to support the President's actions here; at best, I see a few scattered examples.** Down to the World War II period . . . , the record is barren of instances comparable to the one before us. Of twelve seizures by President Roosevelt prior to the enactment of the War Labor Disputes Act in June, 1943, three were sanctioned by existing law, and six others were effected after Congress, on December 8, 1941, had declared the existence of a state of war. In this case, reliance on the powers that flow from declared war has been commendably disclaimed by the Solicitor General. Thus, the list of executive assertions of the power of seizure in circumstances comparable to the present reduces to three in the six-month period from June to December of 1941. We need not split hairs in comparing those actions to the one before us, though much might be said by way of

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.5 Primary Source

differentiation. Without passing on their validity . . . it suffices to say that these three isolated instances do not add up, either in number, scope, duration or contemporaneous legal justification, to the kind of executive construction of the Constitution revealed in [previous cases]. Nor do they come to us sanctioned by long-continued acquiescence of Congress giving decisive weight to a construction by the Executive of its powers.

#### **Excerpt: Concurrence, Justice Jackson**

**To resolve a separation of powers dispute like this one, we must consider the relationship between the President and Congress.** Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. . . .

**When the President acts side by side with Congress, his power is at its maximum.** 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth), to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

**When the President acts in an area in which Congress has not weighed in on the issue, he operates within a zone of twilight in which the relative powers of the branches is uncertain.** 2. 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, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

**When the President acts in a way opposed by Congress, his power is at its minimum.** 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.5 Primary Source

**The President isn't acting side by side with Congress here.** Into which of these classifications does this executive seizure of the steel industry fit? It is eliminated from the first by admission, for it is conceded that no congressional authorization exists for this seizure. That takes away also the support of the many precedents and declarations which were made in relation, and must be confined, to this category.

**Since Congress has acted on this issue, it also takes this case out of the zone of twilight.** Can it then be defended under flexible tests available to the second category? It seems clearly eliminated from that class, because Congress has not left seizure of private property an open field, but has covered it by three statutory policies inconsistent with this seizure. In cases where the purpose is to supply needs of the Government itself, two courses are provided: one, seizure of a plant which fails to comply with obligatory orders placed by the Government; another, condemnation of facilities, including temporary use under the power of eminent domain. The third is applicable where it is the general economy of the country that is to be protected, rather than exclusive governmental interests. None of these were invoked. In choosing a different and inconsistent way of his own, the President cannot claim that it is necessitated or invited by failure of Congress to legislate upon the occasions, grounds and methods for seizure of industrial properties.

**Truman is acting in opposition to Congress; so, his power is at its minimum.** This leaves the current seizure to be justified only by the severe tests under the third grouping, where it can be supported only by any remainder of executive power after subtraction of such powers as Congress may have over the subject. In short, we can sustain the President only by holding that seizure of such strike-bound industries is within his domain and beyond control by Congress. Thus, this Court's first review of such seizures occurs under circumstances which leave presidential power most vulnerable to attack and in the least favorable of possible constitutional postures.

#### **Excerpt: Dissent, Chief Justice Vinson**

**These are extraordinary times.** Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times. A world not yet recovered from the devastation of World War II has been forced to face the threat of another and more terrifying global conflict. . . .

**The stakes are high; the nation's steel industry would have been shut down in a time of conflict if the President didn't seize the steel mills; national security is at stake.** One is not here called upon even to consider the possibility of executive seizure of a farm, a corner grocery store or even a single industrial plant. Such considerations arise only when one ignores the central fact of this case—that the Nation's entire basic steel production would have shut down completely if there had been no Government seizure. Even ignoring for the moment whatever

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.5 Primary Source

confidential information the President may possess as “the Nation’s organ for foreign affairs,” the uncontroverted affidavits in this record amply support the finding that “a work stoppage would immediately jeopardize and imperil our national defense.”

**The President satisfied his duties under the Take Care Clause here.** Focusing now on the situation confronting the President on the night of April 8, 1952, we cannot but conclude that the President was performing his duty under the Constitution to “take Care that the Laws be faithfully executed”—a duty described by President Benjamin Harrison as “the central idea of the office.” . . .

**The President isn’t defying Congress; he informed Congress of his actions and stood ready to follow its directions.** Much of the argument in this case has been directed at straw men. We do not now have before us the case of a President acting solely on the basis of his own notions of the public welfare. Nor is there any question of unlimited executive power in this case. The President himself closed the door to any such claim when he sent his Message to Congress stating his purpose to abide by any action of Congress, whether approving or disapproving his seizure action. Here, the President immediately made sure that Congress was fully informed of the temporary action he had taken only to preserve the legislative programs from destruction until Congress could act.

**The President must have flexibility to act in moments like this one.** The absence of a specific statute authorizing seizure of the steel mills as a mode of executing the laws – both the military procurement program and the anti-inflation program – has not until today been thought to prevent the President from executing the laws. Unlike an administrative commission confined to the enforcement of the statute under which it was created, or the head of a department when administering a particular statute, the President is a constitutional officer charged with taking care that a “mass of legislation” be executed. Flexibility as to mode of execution to meet critical situations is a matter of practical necessity. . . .

**There is no congressional law saying that the President can’t do this.** There is no statute prohibiting seizure as a method of enforcing legislative programs. Congress has in no wise indicated that its legislation is not to be executed by the taking of private property (subject, of course, to the payment of just compensation) if its legislation cannot otherwise be executed. Indeed, the Universal Military Training and Service Act authorizes the seizure of any plant that fails to fill a Government contract or the properties of any steel producer that fails to allocate steel as directed for defense production. And the Defense Production Act authorizes the President to requisition equipment and condemn real property needed without delay in the defense effort. Where Congress authorizes seizure in instances not necessarily crucial to the defense program, it can hardly be said to have disclosed an intention to prohibit seizures where essential to the execution of that legislative program.

## CONSTITUTION 101

---

### Module 8: The Executive Branch and Electoral College

#### 8.5 Primary Source

**This is an emergency; the President should have the power to maintain the status quo.**

Whatever the extent of Presidential power on more tranquil occasions, and whatever the right of the President to execute legislative programs as he sees fit without reporting the mode of execution to Congress, the single Presidential purpose disclosed on this record is to faithfully execute the laws by acting in an emergency to maintain the status quo, thereby preventing collapse of the legislative programs until Congress could act. The President's action served the same purposes as a judicial stay entered to maintain the status quo in order to preserve the jurisdiction of a court. In his Message to Congress immediately following the seizure, the President explained the necessity of his action in executing the military procurement and anti-inflation legislative programs and expressed his desire to cooperate with any legislative proposals approving, regulating or rejecting the seizure of the steel mills. Consequently, there is no evidence whatever of any Presidential purpose to defy Congress or act in any way inconsistent with the legislative will. . . .

**There is no threat of presidential tyranny here.** There is no cause to fear Executive tyranny so long as the laws of Congress are being faithfully executed. Certainly there is no basis for fear of dictatorship when the Executive acts, as he did in this case, only to save the situation until Congress could act.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**



## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College 8.5 Info Brief

## METHODS OF CONSTITUTIONAL INTERPRETATION

Judges use their reasoning skills to decide what particular laws mean when they rule on cases. Different judges sometimes use different methods to interpret the Constitution, meaning that judges do not always agree on the meaning of the Constitution. There are seven widely accepted methods of interpretation that shed light on the meaning of the Constitution.

Method	Definition
Text	A judge looks to the meaning of the words in the Constitution, relying on common understandings of what the words meant at the time the provision was added.
History	A judge looks to the historical context of when a given provision was drafted and ratified to shed light on its meaning.
Tradition	A judge looks to any laws, customs, and practices established after the framing and ratification of a given provision.
Precedent	A judge applies rules established by precedents—taking rulings in old cases and applying them to new cases.
Structure	A judge infers structural rules (power relationships between institutions, for instance) from the relationships specifically outlined in the Constitution.
Prudence/ Consequences	A judge seeks to balance the costs and benefits of a particular ruling, including its consequences and any concerns about the limits of judicial power and competence.
Natural Law/ Morality	A judge draws on principles of moral reasoning—whether embodied in the natural law tradition or drawn from a judge’s own independent, present-day moral judgments.

## CONSTITUTION 101

Module 8: The Executive Branch and Electoral College  
8.5 Case Brief

### TESTS OF PRESIDENTIAL POWER

There are still many ongoing debates over presidential power. When it comes to presidential power, the core constitutional question often comes down to this: Can the president do that? Over time, the Supreme Court has provided some guidance on how to analyze this important question.

In this activity, you will examine a major test of presidential power, the Supreme Court's landmark decision in [Youngstown Sheet & Tube Co. v. Sawyer \(1952\)](#), also known as "*The Steel Seizure Case*."

---

Read excerpts from *The Steel Seizure Case* from the *Founders' Library* and complete the chart below.

**Facts:** Who are all the people (parties) associated with the case? What was the dispute between them?

**Issue:** What is the issue in the case? What constitutional provision is at issue? What is the constitutional question that the Supreme Court has to answer?

## CONSTITUTION 101

Module 8: The Executive Branch and Electoral College

8.5 Case Brief

**Outcome/Ruling:** How does the Court rule? What was the outcome in the case? Who won and who lost? How did the justices vote? What sort of rule does the Court come up with to resolve the issue?

**Jackson's Concurrence:** What did Justice Jackson say in his concurrence? Why was it important?

**Implications:** What are some implications of that decision for the balance of power between Congress and the president?

## CONSTITUTION 101

Module 8: The Executive Branch and Electoral College  
8.6 Info Brief

### ANALYZING EXECUTIVE ORDERS

When it comes to presidential power, the *constitutional* question often comes down to this: *Can the president do that?*

Over time, the Supreme Court has provided some guidance for analyzing this question. These battles often involve *executive orders*.

The American Bar Association describes an executive order as “a signed, written, and published directive of the President.” Executive orders go back to the very beginning of America—with President George Washington.

They aren’t specifically mentioned in the Constitution. For instance, there’s no “Executive Order Clause.” However, they *are* rooted in the president’s role in leading the executive branch and the president’s Article II duty to “take care” that the laws are “faithfully executed.”

In other words, the president is the boss of other people working in the executive branch of the government, and the president often uses executive orders to tell other executive-branch officials what to do.

Simply put, executive orders tell people working in the executive branch to do something.

For instance, President Washington used them to ask his executive-branch officials to prepare reports for him.

And President Truman used an executive order to desegregate the armed forces.

The main criticism is often that presidents use executive orders to stretch their powers—and sometimes command executive-branch officials to do things that presidents can’t get Congress to pass laws to do.

The leading case is [\*Youngstown Sheet & Tube Co. v. Sawyer \(1952\)\*](#) (also known as “The Steel Seizure Case”).

**BIG IDEA:** So, what’s the big idea that arises from the *Youngstown* decision?

When the president acts side by side with Congress, his power is at its highest level. (The Supreme Court tends to uphold his actions.) However, when the president acts on his own—especially in the face of congressional disapproval—his powers are at their lowest level. (And the Supreme Court may rule against him.)

## CONSTITUTION 101

---

### Module 8: The Executive Branch and Electoral College

#### 8.6 Info Brief

In the end, Justice Jackson's *Youngstown* concurrence remains a useful framework for analyzing constitutional debates over presidential power. In particular, it's a reminder to always ask the following question: Where is the president getting her authority to act? For instance, this is precisely the question that we ask when analyzing a president's executive order. (In those cases, the president is acting. But then, we must ask under what source—or sources—of legal authority?)

- Sometimes the president argues that the Constitution itself grants her the power to act.
- Sometimes she draws on laws passed by Congress.
- Sometimes she looks to previous court decisions to guide her actions.

Regardless, she must root her authority in some source of law. Otherwise, her executive action is invalid.

Of course, once we establish that the president can look to some source of authority to act in a particular situation, we must still ask whether the president's action violates any other provisions of the Constitution—whether that's a key Bill of Rights protection or some other part of the Constitution.

## CONSTITUTION 101

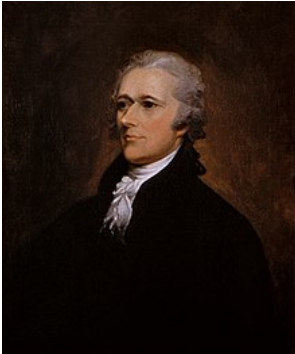
### Module 8: The Executive Branch and Electoral College

#### 8.6 Activity Guide

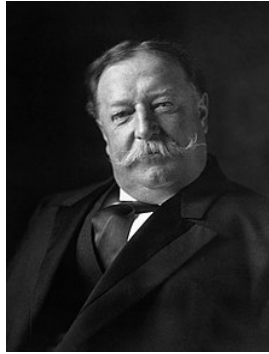
## QUOTES ON VISIONS OF PRESIDENTIAL POWER

Review the presidential quotes and try to guess which historical figure said which quote. Hints are also provided.

Alexander Hamilton



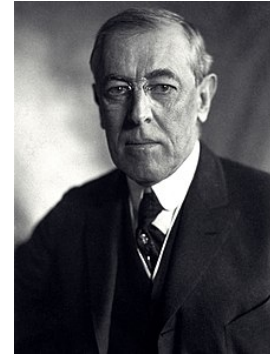
William Howard Taft



Theodore Roosevelt



Woodrow Wilson



Historical Figure	Quote
	<p>“My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. 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 his 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.”</p> <p><i>Hint: This figure issued 1,081 Executive Orders, which was significantly higher than any of his predecessors.</i></p>
	<p>“[T]he 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 as proper and necessary to its exercise.”</p> <p><i>Hint: Following his presidency, this figure served as chief justice of the United States.</i></p>

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.6 Activity Guide

“The makers of the Constitution seem to have thought of the President as what the stricter Whig theorists wished the king to be: only the legal executive, the presiding and guiding authority in the application of the law and the execution of policy. His veto upon legislation was only his ‘check’ on Congress, – was a power of restraint, not of guidance. He was empowered to prevent bad laws, but he was not to be given an opportunity to make good ones. As a matter of fact he has become very much more. He has become the leader of his party and the guide of the nation in political purpose...”

“Some of our Presidents have deliberately held themselves off from using the full power they might legitimately have used, because of conscientious scruples, because they were more theorists than statesmen. They have held the strict literary theory of the Constitution, the Whig theory, the Newtonian theory.... But the makers of the Constitution ... were statesman, not pedants..... The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution, it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and Congress has not. . . .”

*Hint: This figure was commander-in-chief during World War I.*

“THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy...”

*Hint: This figure outlined the role of the presidency in The Federalist Papers.*

## **CONSTITUTION 101**

---

Module 8: The Executive Branch and Electoral College  
8.6 Activity Guide

**Answers** - 1:TR, 2:WHT, 3:WW, 4:AH



## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.7 Test Your Knowledge

## THE EXECUTIVE BRANCH AND ELECTORAL COLLEGE

Complete the questions in the following quiz to test your knowledge of basic ideas and concepts covered in this module.

1. What does Article II of the Constitution tell us about the presidency?
  - a. The powers of the president
  - b. The process for electing the president
  - c. How a president may be removed from office
  - d. All of the above
  
2. Which of these is not a power of the president?
  - a. Serving as commander in chief
  - b. Approving new amendments to the Constitution
  - c. Appointing judges and executive branch officials
  - d. Granting pardons and reprieves
  
3. During the Constitutional Convention, James Wilson argued that the executive branch should be led by\_\_\_\_\_.
  - a. A tyrannical king
  - b. A single president
  - c. A multi-member executive counsel
  - d. A figurehead with no real executive authority
  
4. James Madison, known as the Father of the Constitution, thought that the president should be chosen by \_\_\_\_\_.
  - a. Members of Congress
  - b. State governors
  - c. State legislatures
  - d. Royal proclamation
  
5. After much debate during the Convention, what system of electing the president did the delegates finally agree to?
  - a. The president would be chosen directly by the people
  - b. The president would be a hereditary position
  - c. The Electoral College
  - d. The president would be chosen by members of Congress

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.7 Test Your Knowledge

6. In addition to the question of how the president should be elected, the delegates at the Constitutional Convention also had to address which big issue about the president?
  - a. How long the president's term should be
  - b. Whether the president should be allowed to run for reelection
  - c. How to remove a president from office
  - d. All of the above
  
7. Signed, written, and published directives by the president that tell the executive-branch officials what to do are known as \_\_\_\_\_.
  - a. Vetoes
  - b. Impeachments
  - c. Misdemeanors
  - d. Executive orders
  
8. Which former president referred to the executive power as “the steward of the public welfare” in his “New Nationalism” speech?
  - a. Abraham Lincoln
  - b. Theodore Roosevelt
  - c. Woodrow Wilson
  - d. Franklin Roosevelt
  
9. This president, who later became chief justice of the United States, argued that the people may carry out their will, but only after the wholesome delay and deliberation within the restrictions of the Constitution.
  - a. Theodore Roosevelt
  - b. William Howard Taft
  - c. Harry Truman
  - d. Richard Nixon
  
10. The Supreme Court ruled on the limits of presidential power in which landmark case?
  - a. *Youngstown Sheet & Tube Co. v. Sawyer*
  - b. *Brown v. Board of Education*
  - c. *Marbury v. Madison*
  - d. *McCulloch v. Maryland*
  
11. In *The Steel Seizure Case*, the Supreme Court ruled that executive orders must be supported by \_\_\_\_\_.
  - a. A specific clause in the Constitution granting that power to the president
  - b. The president's belief that she is acting in the best interests of the country
  - c. An act of Congress delegating that power to the president
  - d. Either A or C

## CONSTITUTION 101

### Module 8: The Executive Branch and Electoral College

#### 8.7 Test Your Knowledge

12. According to Justice Robert Jackson, the president has the greatest power when she acts \_\_\_\_\_.
- With congressional approval
  - In the face of congressional disapproval
  - Within a “Zone of Twilight”
  - When the Supreme Court is not in session
13. The total number of electors, and thus the total number of votes up for grabs in the Electoral College, is \_\_\_\_\_.
- 100
  - 270
  - 535
  - 538
14. Technically, Americans who cast their ballots on Election Day are determining \_\_\_\_\_.
- Who will win the presidential election
  - Only who becomes vice president
  - Which electors will be appointed to the Electoral College from each state
  - Who will be in the president’s cabinet
15. To win a presidential election, a candidate must receive \_\_\_\_\_ electoral votes.
- At least 100
  - At least 270
  - All of the (538)
  - It doesn't matter
16. Modern-day debates about the Electoral College include whether to keep or eliminate it. Constitutionally, eliminating the Electoral College would require \_\_\_\_\_.
- The president’s signature
  - The vice president’s approval
  - An amendment to the Constitution
  - A Supreme Court decision
17. According to Article II, presidential terms are limited to \_\_\_ years in office. The 22nd Amendment, ratified in 1951, forbids presidents from serving more than \_\_\_ terms.
- 2, 4
  - 4, 1
  - 4, 2
  - 6, 1

## CONSTITUTION 101

---

### Module 8: The Executive Branch and Electoral College

#### 8.7 Test Your Knowledge

18. Which of the following is a good example of asking a constitutional question about the powers of the president?
- Can the president do that?
  - Should the president do that?
  - The president should do that!
  - The president should not do that!
19. During a presidential election, if no candidate wins a majority in the Electoral College, then the matter is decided by \_\_\_\_\_.
- A duel
  - The Supreme Court
  - The House of Representatives
  - The sitting president remains in office
20. Which president holds the record for issuing the most executive orders with 3,728 orders?
- Theodore Roosevelt
  - Franklin Roosevelt
  - Woodrow Wilson
  - Ronald Reagan

## CONSTITUTION 101

---

### Module 8: The Executive Branch and Electoral College

#### 8.7 Test Your Knowledge

##### Answer Key

1. D
2. B
3. B
4. A
5. C
6. D
7. D
8. B
9. B
10. A
11. D
12. A
13. D
14. C
15. B
16. C
17. C
18. A
19. C
20. B