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# Presidential Powers

**An Inquiry Pack to Accompany [LegalTimelines.org](https://legaltimelines.org)**

**Inquiry Question:** Under what circumstances should presidents be able to expand their powers from those granted to them in the Constitution?

**Introduction: Powers of the President / page 2**

**Expressed Powers / page 4**

**Inherent Powers / page 6**

**Executive Powers / page 10**

**Emergency Powers / page 12**

**Informal Powers / page 14**

**Inquiry Question / page 16**

**Inquiry Extension Question / page 17**

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## Introduction: Powers of the President

After declaring independence, the United States adopted the Articles of Confederation as the nation's first constitution. In the government it set up, there was no president or executive branch because Americans did not want to give a leader the power to rule harshly, as King George III did during the colonial period. Government under the Articles of Confederation proved to be too weak, and soon the Founders realized it needed to be replaced. Among other changes, it became clear there was a need for an executive of some sort to help run the government.

In 1787, the Framers drafted the United States Constitution. The delegates debated whether there should be a unitary (singular) president or a plural executive (more than one president governing as a council). The Framers also debated the term or length of time in office; possible term limits (number of terms a person could hold an office); the powers the president should have, including veto power (ability to reject laws sent by Congress) and the power to grant pardons to forgive punishments; and the method of election. Delegates who wanted a strong national government and a strong singular president were ultimately successful.

Presidents get their power primarily from the Constitution. Some of those powers are spelled out in Article 2 of the Constitution, including the power to command the military, meet with foreign ambassadors, make treaties with other countries, and more. Some powers, like the power to veto legislation, are found elsewhere in the Constitution. Together these are called expressed powers of the president. It is clear that presidents have these powers, and they are rarely challenged.

Presidents throughout history have also claimed to have broad inherent powers. Inherent powers are those powers that are needed by the very nature of the presidency. For instance, when Thomas Jefferson purchased the Louisiana Territory, he reasoned that a president inherently (naturally) had the ability to acquire territory even though it was not expressly granted in the Constitution.

Inherent powers can also be inferred (derived) from the phrase in Article 2, Section 1 of the Constitution, which states that “the executive Power shall be vested in a President,” (called the “Vesting Clause”) and Article 2, Section 3, which states presidents shall, “take care the laws be faithfully executed” (called the “Take Care Clause”). Presidents have used the Vesting and Take Care Clauses to expand the powers of the president beyond the expressed powers that are explicitly written into the Constitution.

Executive powers are the powers needed by the president to be able to complete their duties as head of the executive branch. Some are expressed powers like appointing judges and executive officials. Some are inherent powers like forming a cabinet to help advise the president on aspects of the government. Another executive power used by presidents is issuing executive orders, written orders by the president to an agency within the executive branch, to implement policies. Presidents have used these powers to grow the executive branch from four to 15 departments over the years.

Emergency powers are powers the president uses during times of national crisis. These powers often give presidents increased authority to make decisions and act without the approval of Congress. These powers may be derived from the president's power as commander in chief (an expressed power) or their executive powers. Emergency powers are meant to be temporary; however, at times they have continued for long periods of time. Emergency powers were used by President Abraham Lincoln during the Civil War to imprison people without trial, President Franklin D. Roosevelt during the Great Depression to establish programs to improve the economy, and several, several presidents during the Korean and Vietnam Wars to send troops abroad and draft soldiers, and President George W. Bush after the September 11<sup>th</sup> terrorist attacks.

Emergency powers can also be used for other crises like an economic recession, strike, or natural disaster.

Informal powers are those not listed in the Constitution. They include inherent powers and other powers presidents have acquired over time, such as the use of executive orders. Informal powers also include presidents' use of the media. From President Franklin D. Roosevelt's use of the radio to President Donald Trump's use of Twitter, presidents have used various forms of media to connect immediately with the public. Presidents have used their unique power to attract an audience and connect directly with people to their advantage in gaining public approval for their programs and decisions.

Over the years, the presidency has become increasingly powerful. Presidents have expanded their informal and emergency powers to increase their authority. Some critics feel that the presidency has become too powerful therefore creating an imbalance of power with the other branches. Questions have been raised about which powers not expressly written in the Constitution presidents should have and whether Congress and the courts should curb some of the powers presidents have expanded over the years.

## Expressed Powers

At the Constitutional Convention there was much debate about which powers to give to the president. As president of the convention, George Washington had an advance copy of the document and made the notes in Source A about the resolution at the convention, which indeed made their way into the final draft of the document.

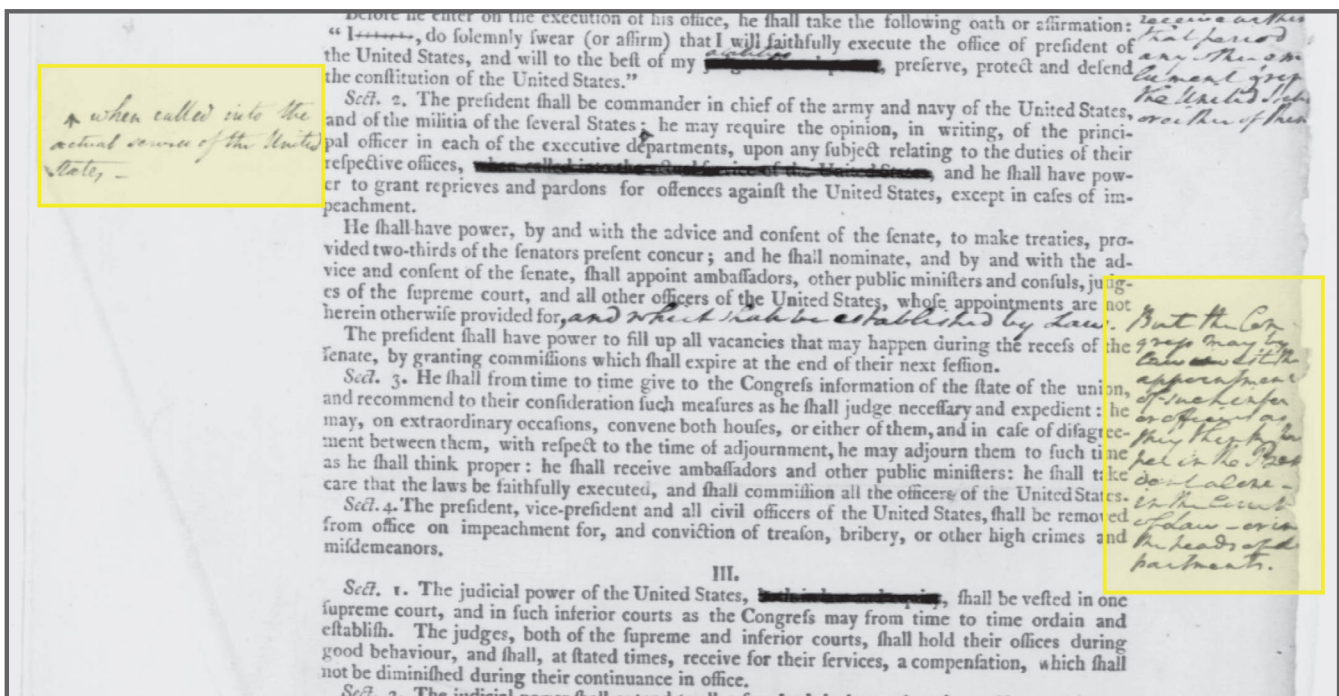
Article 2 of the Constitution established the expressed powers of the president. Expressed powers are the powers that are explicitly (clearly) written out in the Constitution.

The expressed powers include the power to:

- sign or veto (reject) legislation
- act as commander in chief of the armed forces
- ask for the written opinion of their cabinet
- convene (bring together) or adjourn (end) Congress
- grant reprieves and pardons (excuse from punishment)
- appoint U.S. ambassadors
- receive foreign ambassadors
- take care that the laws are faithfully executed
- appoint and remove executive officers
- make treaties with other countries, which need to be ratified by two-thirds of the Senate
- appoint federal judges including Supreme Court justices and some senior executive branch officers with the advice and consent of the Senate
- fill vacancies with temporary appointments when the Senate is not in session

As the first to hold the office, President George Washington knew to look to Article 2 for the expressed powers.

**Source A:** Early draft of the Constitution annotated by George Washington (September 12, 1787)<sup>1</sup>



### Transcript of President Washington's Annotations in Source A:

... when called into the actual service of the United States (top left of document)

...and which shall be established by law 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.  
(middle and bottom right of document)

**Source A Information:** This draft of the Constitution displays George Washington's handwritten notes in pencil, dated September 12 1787, recording the Philadelphia Convention's handling of each proposed clause. ([See source at Library of Congress.](#))

### Questions to Consider for Source A:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** Why do you think there was so much debate about which powers to expressly grant to the president in the Constitution? Why do you think George Washington, president of the Constitutional Convention, was interested in what powers the president would hold? The Constitution was a three-page document; how much of the document was devoted to listing the powers of the president? Why do you think the handwritten changes were added?
- 3. Question:** Write at least one question you have about this source.

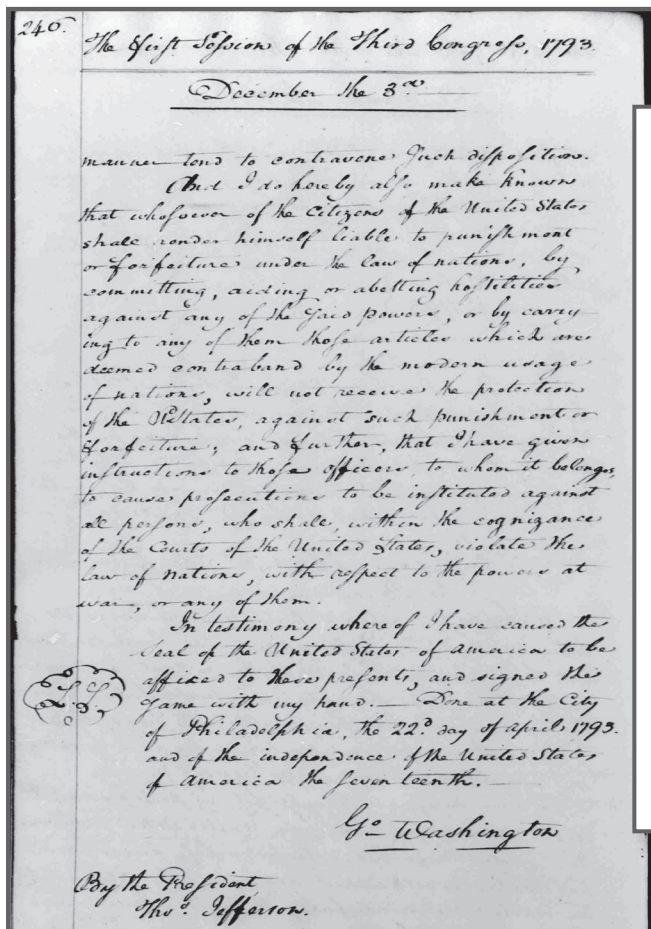
## Inherent Powers

President George Washington could look to Article 2 for the expressed powers, but he did not have any model to base his actions on when he needed to exercise a power that was not on that short list. President Washington helped shape the presidency by claiming certain inherent powers. Inherent powers of the president are powers claimed by the president that are not expressly written in the Constitution but are necessary for the president to be able to lead the country.

In one of the first uses of inherent powers, President Washington issued a Neutrality Proclamation calling for the United States to stay neutral and not take sides during a conflict between France and European allies including Great Britain. The Neutrality Proclamation warned Americans that the federal (national) government would prosecute (take to trial) citizens for aiding either side of the conflict. President Washington was particularly concerned because French representatives were trying to recruit Americans to fight in the French Revolution, which had become more violent with public beheadings including of the King of France.

Some people opposed the Neutrality Proclamation. They questioned whether the president had the authority to issue the proclamation because this power was not explicitly included (clearly written) in Article 2 of the Constitution. Supporters felt the Neutrality Proclamation was part of the president's inherent powers. The question of the president's authority never went to court nor was resolved, however, because in 1794, the Neutrality Act was passed by Congress giving the order the force of law.

### Source B: President Washington's Neutrality Proclamation (1793)<sup>2</sup>



#### Source B Excerpt Transcript:

And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding or abetting hostilities against any of the said powers, or by carrying to any of them, those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the Courts of the United States, violate the law of nations, with respect to the powers at war, or any of them.

**Source B Information:** This is an excerpt from President Washington’s letterbook of the Neutrality Proclamation issued on April 22, 1793. The president, with the assistance of his secretaries, kept studious records of his correspondence in letterbooks. Notice that the date at the top of the source reads December 3, 1793. This is likely the date that the Neutrality Proclamation was copied into the letterbook, which is why it is several months later than the date the proclamation was issued. ([See source at Library of Congress.](#))

### Questions to Consider for Source B:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What powers granted to presidents in Article 2 might have led President Washington to believe he had the power to issue this proclamation? Do you think it is an inherent power of the president to enforce neutrality? Explain why or why not.
- 3. Question:** Write at least one question you have about this source.

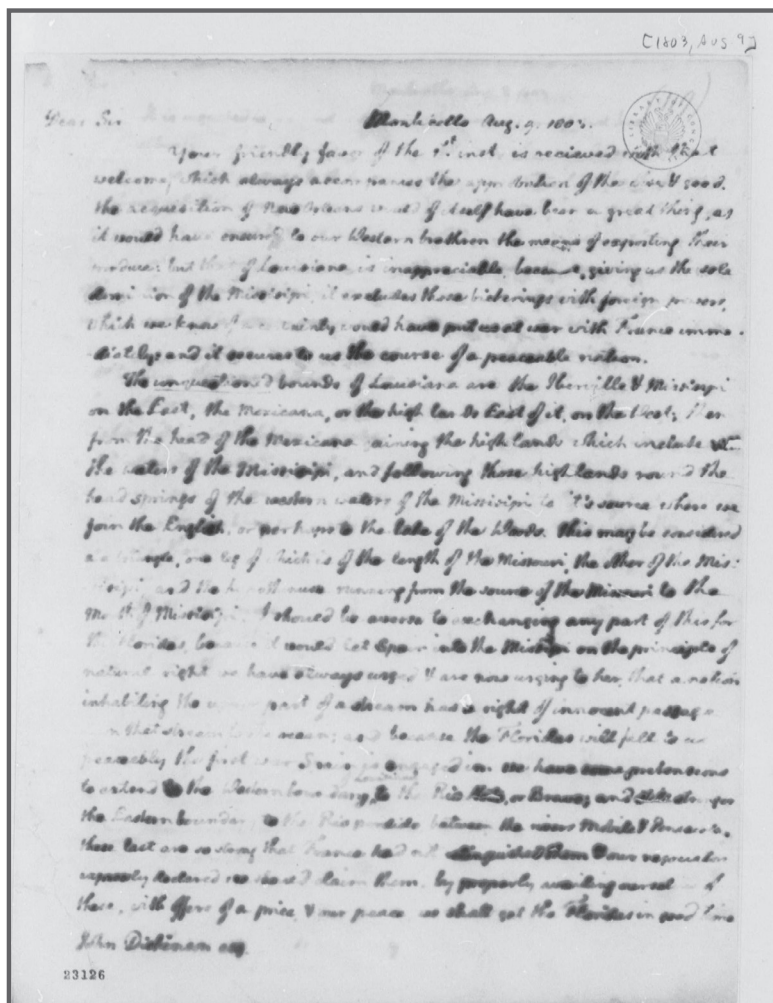
**Source C:** Letter from President Jefferson to John Dickinson (1803)<sup>3</sup>

The Louisiana Purchase was a deal between France and the United States for the purchase of approximately 827,000 square miles of territory west of the Mississippi River in exchange for \$15 million.

In 1803, President Thomas Jefferson sent his friend and political ally, James Monroe, to Paris, France to help arrange the deal. France, fearing war in the territory and not in position to defend it, agreed to sell the land to the United States.

Because the power to purchase territory was not expressly given to the president in the Constitution, President Jefferson and his cabinet deliberated the constitutionality of the purchase. President Jefferson suggested an amendment to the Constitution was needed. President Jefferson drafted an amendment that would authorize the purchase of Louisiana retroactively, but his cabinet tried to convince him otherwise. In the end, the president accepted his cabinet’s advice that an amendment was not necessary. He reasoned that “it is the case of a guardian, investing the money of his ward in purchasing an important adjacent territory; & saying to him when of age, I did this for your good.”<sup>4</sup>

Some historians have argued that President Jefferson acted hypocritically because the power to purchase the land was not explicitly written in the Constitution, which he usually believed was necessary for the government to act. They accuse him of using his inherent power to stretch the intent of the Constitution to justify his purchase.





**Transcript of Source C Excerpt:**

The general government has no powers but such as the constitution has given it; and it has not given it a power of holding foreign territory, & still less of incorporating it into the Union. An amendment of the Constitution seems necessary for this. In the meantime we must ratify & pay our money, as we have treated, for a thing beyond the constitution, and rely on the nation to sanction an act done for its great good, without its previous authority.

**Source C Information:** President Jefferson wrote this letter to John Dickinson on August 9, 1803. Dickinson was a member of the Continental Congress and served as president of both Delaware and Pennsylvania. In this letter to his friend, President Jefferson expressed his belief that a constitutional amendment granting the president the power to purchase territory was necessary. ([See source at Library of Congress.](#))

**Questions to Consider for Source C:**

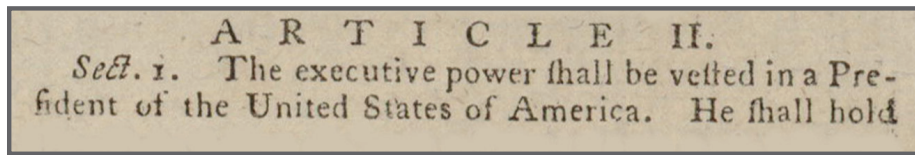
- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** Why do you think President Jefferson called the Louisiana Purchase “a thing beyond the Constitution”? Why did President Jefferson go ahead with the purchase if he felt the power was not written in the Constitution? Do you think the president has the inherent power to purchase new territory? Explain why or why not.
- 3. Question:** Write at least one question you have about this source.

## Executive Powers

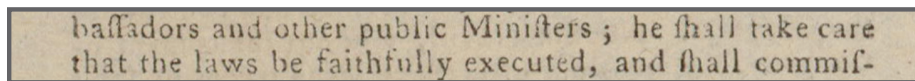
The president is also sometimes called the “executive.” Like a business executive who runs a company, the president is the head of the executive branch of the federal (national) government. The executive branch’s job is to enforce the laws and take care of the day-to-day business of running the country.

The Constitution does not go into much detail regarding what the executive duties of the president are. There are a few brief mentions in the Constitution, but from those many powers have been claimed by presidents over the years.

**Source D:** Excerpts from Article 2 of the U.S. Constitution<sup>5</sup>



Article II Sect. 1: “The executive power shall be vested in a President of the United States of America.”



Article II Sect 3: “...he shall take care that the laws be faithfully executed...”

**Source D Information:** This source shows Article 2 of the U.S. Constitution as ratified by the Constitutional Convention on September 17, 1787. The images above are excerpted from a broadside print of the Constitution printed by John Carter in Providence, RI. ([See source at Library of Congress.](#))

### Questions to Consider for Source D:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** Summarize Article 2, Section 1 (the Vesting Clause) in your own words. Summarize Article 2, Section 3 (the Take Care Clause) in your own words. Why do you think these two clauses have been used over time to significantly increase the powers of the presidency?
- 3. Question:** Write at least one question you have about this source.

**Source E:** Executive Order 10730 (September 23, 1957)<sup>6</sup>

In 1954, in *Brown v. Board of Education*, the Supreme Court found unanimously that segregated public schools violated the 14th Amendment's Equal Protection Clause which guarantees "equal protection of the laws." As a result of this decision, all public schools had to desegregate. However, in a show of resistance, several states did not immediately desegregate their public schools. In 1955, a second case, *Brown v. Board of Education of Topeka, Kansas II*, directed schools and states to desegregate public schools "with all deliberate speed."

Many states in the South participated in "massive resistance," refusing to comply with the *Brown* decisions. In response, President Dwight D. Eisenhower exercised his executive power to issue Executive Order 10730, deploying the National Guard (federal troops) to Little Rock, Arkansas, to enforce the *Brown* rulings by escorting Black students into Central High School.

"WHEREAS such obstruction of justice constitutes a denial of the equal protection of the laws secured by the Constitution of the United States and impedes the course of justice under those laws:

"NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, including Chapter 15 of Title 10 of the United States Code, particularly sections 332, 333 and 334 thereof, do command all persons engaged in such obstruction of justice to cease and desist therefrom, and to disperse forthwith;" and

**Source E Information:** Executive Order 10730, issued by President Eisenhower on September 23, 1957, enforced the *Brown v. Board of Education* Supreme Court decision by "providing assistance for the removal of an obstruction of justice within the state of Arkansas." ([See source at National Archives.](#))

**Questions to Consider for Source E:**

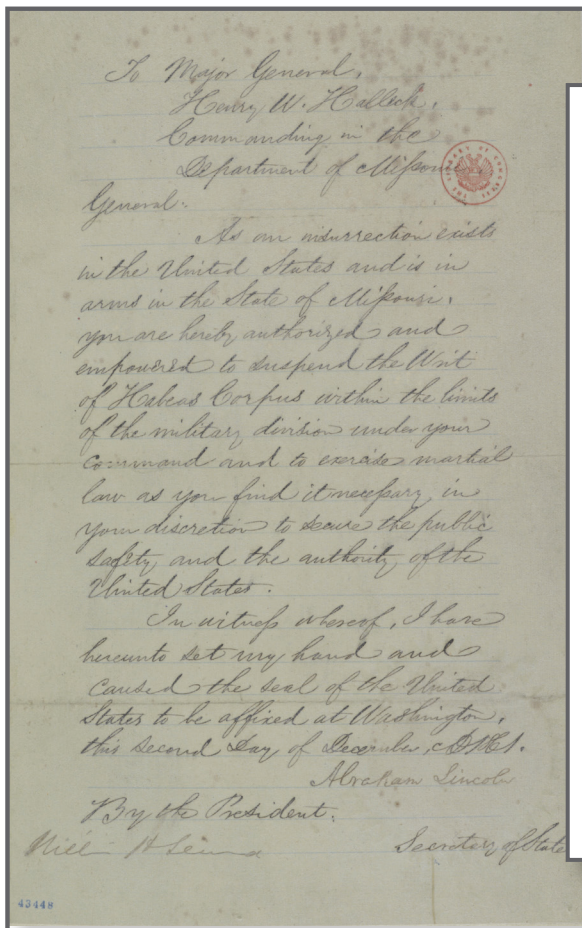
- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What do you think President Eisenhower is referring to when he states, "by virtue of the authority vested in me by the Constitution..."? Do you think the president has the authority to call out the National Guard to enforce Supreme Court decisions? Why or why not?
- 3. Question:** Write at least one question you have about this source.

## Emergency Powers

On April 27, 1861, during the Civil War and while Congress was in recess (not meeting), President Abraham Lincoln exercised his power as commander in chief of the armed forces to suspend the writ of *habeas corpus*. The writ of *habeas corpus* requires that a person under arrest be brought into court so the government can show that they were arrested lawfully. If they cannot bring the person under arrest into court to explain the evidence they have to hold that person in prison, they have to release them. By suspending the writ of *habeas corpus*, President Lincoln gave the Army the power to imprison people without explaining why.

The Constitution allows this to happen in cases of “rebellion or invasion” that threaten public safety. President Lincoln’s power to suspend habeas corpus was questioned. The clause in the Constitution that states, “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it,” is found in Article 1, which details the powers given and denied to Congress, not Article 2, which lays out the powers of the president. President Lincoln stated that it was necessary for him to order the suspension while Congress was in recess to maintain security. The constitutionality of President Lincoln’s actions was at issue in the case *Ex parte Merryman*, in which the Supreme Court decided that President Lincoln did not have power to suspend *habeas corpus*.

**Source F:** Letter from President Lincoln to Henry W. Halleck authorizing suspension of writ of *habeas corpus* (December 2, 1861)<sup>7</sup>



### Source F Transcript:

To Major General, Henry W. Halleck, Commander in the Department of Missouri

General:

As an insurrection exists in the United States and is in arms in the State of Missouri, you are hereby authorized and empowered to suspend the Writ of Habeas Corpus within the limits of the military division under your command and to exercise martial law as you find it necessary in your discretion to secure the public safety and the authority of the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed at Washington, this second day of December, A D 1861.

Abraham Lincoln

**Source F Information:** This letter was written and sent by President Lincoln to Henry W. Halleck, commanding general of the Union Army during the Civil War. It authorized the suspension of the writ of *habeas corpus* and was endorsed by Secretary of State William H. Seward. ([Link to source at Library of Congress.](#))

### Questions to Consider for Source F:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What is President Lincoln authorizing the general to do? Why might some consider this action as an overreach of presidential power? Why might President Lincoln have decided to take this action rather than waiting for Congress to act? Do you think President Lincoln should have had the power to suspend *habeas corpus*? Why or why not?
- 3. Question:** Write at least one question you have about this source.

## Informal Powers

In 1932, President Franklin D. Roosevelt was elected largely because he promised to help lead the country out of the Great Depression. To help the country recover, he developed programs collectively called the New Deal. While implementing the New Deal, President Roosevelt needed to calm the fears and restore the confidence of Americans and to gain their support for his programs.

On February 27, 1909, The Outlook magazine published the following quote by President Theodore Roosevelt, “I suppose my critics will call that preaching, but I have got such a bully pulpit!” President Theodore Roosevelt often used the word “bully” to mean wonderful or excellent. A “pulpit” is a place from which religious leaders preach. This term has come to mean a position of authority from which a person has the opportunity to speak out and be listened to on any matter. Presidents are able to attract a crowd or media attention whenever they wish to speak, giving them the important informal power of the bully pulpit.

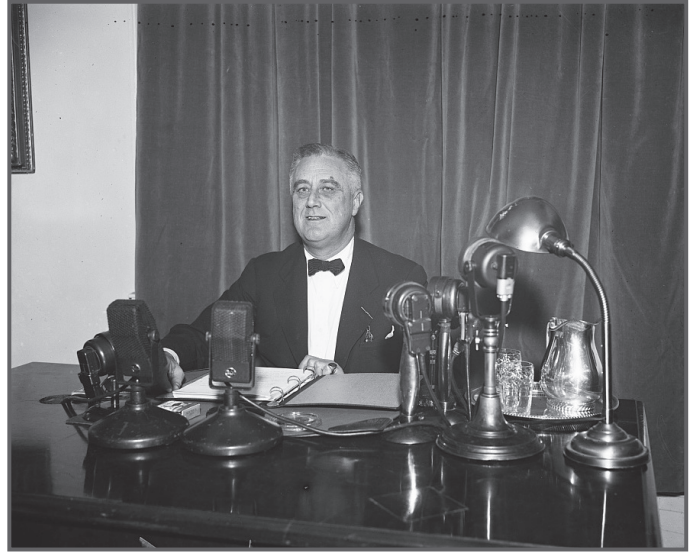


Image caption: FDR [Franklin Delano Roosevelt] FIRESIDE CHAT ON U.S. SUPREME COURT REFORM PLAN, <https://www.loc.gov/resource/hec.47304/>

One of the ways President Franklin D. Roosevelt chose to accomplish this was through “Fireside Chats,” radio addresses directly to the American people about issues of concern. The informal chats made Americans feel as if the president was talking directly to them. The fireside chats were President Roosevelt’s unique way to harness the power of the president’s bully pulpit.

The first fireside chat in 1933 addressed the issue of the banking crisis in which President Roosevelt tried to calm the fears over the closure of banks and outline his plan to restore confidence in the banking system.

**Source G:** Transcript from President Franklin D. Roosevelt’s first fireside chat (March 12, 1933)<sup>8</sup>

I want to talk for a few minutes with the people of the United States about banking--with the comparatively few who understand the mechanics of banking but more particularly with the overwhelming majority who use banks for the making of deposits and the drawing of checks. I want to tell you what has been done in the last few days, why it was done, and what the next steps are going to be. I recognize that the many proclamations from State Capitols and from Washington, the legislation, the Treasury regulations, etc., couched for the most part in banking and legal terms should be explained for the benefit of the average citizen. I owe this in particular because of the fortitude and good temper with which everybody has accepted the inconvenience and hardships of the banking holiday. I know that when you understand what we in Washington have been about I shall continue to have your cooperation as fully as I have had your sympathy and help during the past week.

**Source G Information:** By the time of President Franklin D. Roosevelt’s inauguration, nearly all of the banks in the nation had temporarily closed in response to mass withdrawals by a panicked public. On March 12, 1933, in his first fireside chat, President Roosevelt calmed the fears of the nation with a radio address that outlined his plan to restore confidence in the banking system. ([See source at FDR Library](#) and [hear the audio of the address.](#))

**Questions to Consider for Source G:**

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** Who is the target audience for President Roosevelt’s fireside chat? Why do you think it was important for President Roosevelt to reach this audience? How might winning this audience over increase President Roosevelt’s power?
- 3. Question:** Write at least one question you have about this source.

## **Inquiry Question**

Consider the events on the Presidential Powers timeline and the documents in this inquiry pack to answer the question:

**Under what circumstances should presidents be able to expand their powers from those granted to them in the Constitution?**



## Extension Inquiry Question

Consider the events on the Presidential Powers timeline, the documents in this inquiry pack, and outside research to answer the question:

**Are there powers the president currently has that Congress or the courts should curb? Why or why not?**

You may choose to consider these sources:

- [“Is expanding presidential power inherently bad for democracy?”](#) PBS News Hour
- [“Is the Presidency Too Powerful? \(Podcast\).”](#) National Constitution Center
- [“Article II, Constitution of the United States.”](#) Constitution Annotated
- [“Keeping the Balance: What a President Can Do and Cannot Do.”](#) National Archives, Harry S. Truman Library & Museum
- [“What are the limits of presidential power?”](#) Harvard Law Today
- [“The president was never intended to be the most powerful part of government.”](#) *The Washington Post*
- [“Six ways Congress can curb a runaway president.”](#) Politico

## Notes

- <sup>1</sup> “George Washington Papers, Series 4, General Correspondence: Constitution, Printed, with Marginal Notes by George Washington,” September 12, 1787. From Library of Congress Manuscript Division, <https://www.loc.gov/item/mgw435950/>.
- <sup>2</sup> George Washington, “George Washington Papers, Series 2, Letterbooks 1754-1799: Letterbook 26,” October 24, 1791–November 29, 1794. From Library of Congress Manuscript Division, <https://www.loc.gov/item/mgw2.026/>.
- <sup>3</sup> Thomas Jefferson, “Thomas Jefferson to John Dickinson, August 9, 1803, with Copy,” Letter. From Library of Congress Manuscript Division, <https://www.loc.gov/item/mtjbib012670/>.
- <sup>4</sup> Jefferson to John C. Breckinridge, August 12, 1803, in *PTJ*,41:186. [Transcription](#) available online in Ford, 8:244.
- <sup>5</sup> “We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America,” Broadside, 1787. From Library of Congress Rare Book and Special Collections Division, <https://www.loc.gov/item/90898138/>.
- <sup>6</sup> Dwight D. Eisenhower, “Executive Order 10730, Providing Assistance for the Removal of an Obstruction of Justice within the State of Arkansas,” September 23, 1957. From National Archives General Records of the United States Government, Record Group 11, <https://www.archives.gov/files/historical-docs/doc-content/images/eisenhower-little-rock-order.pdf>.
- <sup>7</sup> Abraham Lincoln, “Abraham Lincoln to Henry W. Halleck,” Letter, December 2, 1861. From Library of Congress Manuscript Division, <https://www.loc.gov/resource/mal.4344800/?st=text&r=-0.164,-0.239,1.496,1.768,0>.
- <sup>8</sup> Franklin D. Roosevelt, “Fireside Chat on the Banking Crisis,” March 12, 1933. From Franklin D. Roosevelt Presidential Library and Museum, [http://www.fdrlibrary.marist.edu/\\_resources/images/msf/msf00635](http://www.fdrlibrary.marist.edu/_resources/images/msf/msf00635)