

Topic 2.6: The Expansion of Presidential Power

Source Analysis

Before You Read

Remember that under the Articles of Confederation, there was no national executive. Anti-Federalists expressed concerns that a singular executive might threaten the rights of the people. The debate over the ratification of the then proposed Constitution provides context for the argument that Hamilton writes in *Federalist No. 70* as he seeks to persuade New Yorkers to ratify the document.

Over our history, the power of the presidency has grown. In the chart below, list how you think the power of the presidency has grown, some of the reasons why, and how you think this expansion affects the interaction among the three branches of government.

How the power of the presidency has grown	
Reasons for this expansion of power	
Effects of this expansion on the interaction among the three branches of government	

*Required Document:
Excerpts from The Federalist No. 70
by Alexander Hamilton*

Paired with: Excerpts from the Majority and Concurring Opinions from Youngstown Sheet & Tube Company v. Sawyer (1952)

Related Concepts:

- Debate over the Constitution
- Presidential Power
- Expressed Powers
- Implied Powers
- Inherent Powers
- Executive Order
- Separation of Powers
- Checks and Balances

Process

Explain the relevance or significance of processes and/or interactions.

Source Analysis

Explain how the implications of the author's argument or perspective may affect political principles, institutions, processes, policies, and behaviors.

The Federalist No. 70

While Hamilton argues at length against a committee council sharing executive powers, this essay has been excerpted here to narrow the focus on why investing power in the presidency will not threaten the liberty of Americans, but would actually provide a way to protect individual rights.

As you read, focus on Hamilton’s argument and the implications of that argument as reflected in the Constitution.

The Executive Department Further Considered

From the New York Packet

Tuesday, March 18, 1788.

Author: Alexander Hamilton

To the People of the State of New York:

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.

Academic Vocabulary

Use what you’ve already learned and context clues from the reading to define *republican government*.

Source Analysis

Highlight or underline why, according to Hamilton, a strong presidency is beneficial to the people.

Connect to Content

What are the responsibilities of the president that make “energy in the executive” necessary?

Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

Source Analysis

Underline where Hamilton argues that weakness in the executive results in a bad or weak government.

Check Your Understanding

What does Hamilton assume that all sensible men will conclude?

Source Analysis

Contrast the information in the last paragraph on this page with what Hamilton says about Rome in the first paragraph. What does he mean by “safety in the republican sense”? Use the space below the third paragraph to compose your answer.

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished. ...

Check Your Understanding

Rewrite the four “ingredients” of executive energy in your own words in the space below this passage.

Source Analysis

Paraphrase Hamilton’s argument explaining the implications of having a single person executive versus a committee.

Connect to Content

Underline ways in which Hamilton’s description of the executive matches the way presidents function in our government today. Use the space below the last paragraph to expand on and explain the implications of one of these actions or functions.

propriety: appropriateness or suitability

... In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable.

But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it.

They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and this without any counterbalancing good.

In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality.

Source Analysis

How does Hamilton view the processes and interactions of the legislature?

Check Your Understanding

How are decisiveness and quick action good qualities when exercised by the executive?

Source Analysis

Why is this energy especially important in the arena of national security?

salutary: positive or beneficial

palliate: to reduce or ease the effects of

atone: to make amends

After You Read

Thinking Like a Political Scientist

Reasoning Process: Process

Describe the characteristics or traits that Hamilton views as essential in the executive.

According to Hamilton, how is a president with power and energy not only important to good government but also critical to protecting the rights of the people?

Political Science Disciplinary Practices

Source Analysis

Using what you've learned about the American governmental system established in the Constitution, how did Hamilton's argument affect political institutions?

How did Hamilton's argument affect political behaviors?



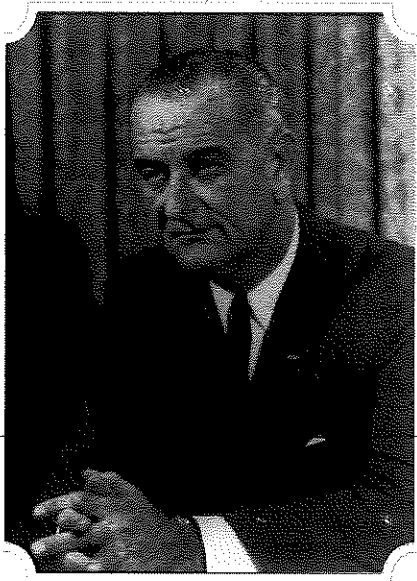
LYNDON JOHNSON, RICHARD NIXON, AND THE WAR POWERS RESOLUTION

The Founders wanted to improve on the Articles of Confederation. Under the Articles, the central government had practically no power to wage war. The Confederation Congress could declare war, but had no army or taxing power to fund one. But the Founders also wanted to prevent the central government from having too much power. Their experiences under the British King had proven to them that limits on executive power were essential.

THE CONSTITUTIONAL CONVENTION

The men who gathered to write the Constitution agreed that in a republic, the President alone should not be able to start wars. This power would have made the President too much like a King. At first, they gave the power to “make war” to Congress. But after some discussion, they agreed that the legislature was too large and too slow to do this effectively. They changed “make war” to “declare war.” This ensured that the President could not declare war on his own (but left him with the power, as Commander in Chief, to repel attacks without waiting for approval from Congress). In addition to having the power to declare war, Congress was also given the power to approve the military budget.

On the other hand, the President would be Commander in Chief of the military forces. This means that once war is declared, the President is in charge of it. All military officials are ultimately accountable to the President. The delegates at the Constitutional Convention made this decision because an individual is more suited to swift action and decision making than a large body like Congress.



KOREA AND VIETNAM

Congress declared war in the War of 1812, the Mexican-American War, Spanish-American War, World War I, and World War II. In 1947, President Harry Truman announced that the US would provide assistance to any nation in the world that was threatened by Communism. When communist North Korea invaded free South Korea in 1950, Truman sent US troops as part of a combined United Nations force defending South Korea. Truman did not ask for a declaration of war, and described the troops’ mission as a “police action.” The undeclared war ended in an armistice in 1953 with both sides claiming victory.

In 1961, President John F. Kennedy continued the Truman Doctrine of assisting countries threatened by Communism by sending supplies and military advisors to South Vietnam in their fight against Communist North Vietnam. US troops were in combat less than a year later, though there had been no declaration of war from Congress.

President Kennedy was assassinated in 1963 and President Lyndon Johnson took over the management of the war in Vietnam. Congress

passed the Gulf of Tonkin Resolution, affirming that the US was “prepared, as the President determines, to take all necessary steps, including the use of armed force” to assist South Vietnam. Though there was no declaration of war, Johnson understood the Gulf of Tonkin Resolution as empowering him to escalate the fighting.

The war became increasingly unpopular at home. Critics argued there was no clear objective, the

US did not seem to be winning, and casualties were mounting. Under a barrage of criticism, President Johnson announced he would not run for a second term.

After President Richard Nixon was inaugurated in 1969, he began secret bombings in Cambodia. These missions were kept secret from Congress and the American people for more than a year. News of the My Lai massacre (where US troops killed unarmed civilians and children) broke in 1969. Distrust of government intensified when the Pentagon Papers (stolen secret documents revealing the government had misled the people about the Vietnam War) were published in 1971.

THE WAR POWERS RESOLUTION

By 1973, all American troops had left Vietnam, and the Senate Armed Service Committee had begun hearings on the secret bombings in Cambodia. Congress ordered an immediate end to the bombing raids.

At this same time, Congress also drew up the War Powers Resolution. The Resolution required the President to consult Congress before the start of hostilities, and report regularly on the deployment of US troops. Further, the President would have to withdraw

forces within sixty days if Congress has not declared war or authorized the use of force. When it came to his desk, Nixon vetoed the War Powers Resolution. In his veto message, he wrote that the Resolution “would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. .. The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution...” He noted that Congress already had a constitutional check on the President’s power with its appropriations (funding) power.

Congress passed the law over President Nixon’s veto with the necessary two-thirds vote in both Houses.

Though Presidents have provided Congress with reports consistent with the War Powers Resolution since its passage, one former US Senator noted in 2008 that no President had ever submitted the precise kinds of reports to Congress required by the Act despite the US’s involvement in numerous armed conflicts since 1973. A bipartisan panel recommended the repeal of the War Powers Resolution in 2008, but debate over what kind of law should replace it, if any, continues.

CRITICAL THINKING QUESTIONS

1. How does the Constitution distribute war powers between the President and Congress, and why did the Founders decide on this arrangement?
2. What was the War Powers Resolution of 1973?
3. Why did President Nixon veto it?
4. Keeping in mind the constitutional war powers of Congress and the President, how would you assess the constitutionality of the War Powers Resolution?
5. Why do you think there has been no declared war since World War II, yet the US has been almost constantly engaged in military action? What is the difference between Congress “authorizing the President to use force” and declaring war? Who bears more responsibility in each case? Which, if any, seems to lead to better outcomes for the US?



WAR AND THE CONSTITUTIONAL CONVENTION

The following conversation is adapted from quotations from Madison's Notes of the Convention.

IN CONVENTION

August 17, 1787

“To make war.”

Mr. PINKNEY: I oppose the vesting of the power to make war in the Legislature. Its proceedings are too slow. ... The House of Representatives would be too numerous for such deliberations....

Mr. BUTLER: The objections against the Legislature can also be made against the Senate. I am for vesting the power in the President, who will have all the needed qualities, and will not make war but when the Nation will support it.

Mr. MADISON and Mr. GERRY: We move to insert “declare,” striking out “make” war; leaving to the Executive the power to repel sudden attacks.

Mr. SHERMAN: I think this stands very well. The Executive should be able to repel and not to commence [start] war....

THE US CONSTITUTION

ARTICLE I, SECTION 8 (EXCERPTS)

Congress shall have the power:...To declare war...To raise and support armies...To provide and maintain a navy... To 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.

ARTICLE II, SECTION 1

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

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States...