

## What do you know about the Executive Branch?

Read each of the following scenarios in the 1<sup>st</sup> column. Based on your current understanding of the Executive Branch, determine whether or not this situation is permissible and explain your reasoning. After completing the middle column, you will work with a partner to verify your answers in the third column.

Scenario	Do you think this would be constitutional? Yes or No? Why or Why not?	Reality Check: The Constitution says...
<p>#1. The results for the most recent Presidential Election were:</p> <ul style="list-style-type: none"> <li>50,456,002 for candidate 1</li> <li>50,999,897 for candidate 2</li> </ul> <p>Candidate 2 is the president because this candidate earned the most popular votes.</p>		
<p>#2. The President declares war on an enemy country, and commands the troops to enter the country, remove the leaders from power, and establish a democracy in that country.</p>		
<p>#3. A federal judge takes bribes during a court case. He is impeached and removed from the position by the Congress. The President pardons (forgives) the judge and gives him his job back.</p>		
<p>#4. Trade meetings between the United States and South Korea have resulted in a treaty. This treaty would end 85% of the tariffs (taxes) placed on each others goods. The U.S. President signs the treaty immediately and the removal of tariffs follows.</p>		

## What do you know about the Executive Branch?

(continued)

Scenario	Do you think this would be constitutional? Yes or No? Why or Why not?	Reality Check: The Constitution says...
#5. The President, on her first day in office, selects all of the Secretaries for her cabinet's various departments. All of the Secretaries arrive for work the next day, ready to serve the President.		
#6. Congress, just before their recess, approves a bill that gives citizenship to undocumented people/ illegal aliens living in the United States. The President refuses to sign the bill, and takes no other action with it. The bill does not become law.		
#7. Every January, the President calls both houses of Congress together so he or she may present the State of the Union. During this address, the President informs the Congress as to what issues must be addressed and commands them to pass legislation within the given year to deal with these issues.		
#8. The House of Representatives impeaches the President for obstructing justice during an investigation. The President is required to leave office immediately.		

## Teacher Reference Page

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Read each of the following scenarios in the 1<sup>st</sup> column. Based on your current understanding of the Executive Branch, determine whether or not this situation is permissible and explain your reasoning. After completing the middle column, you will work with a partner to verify your answers in the third column.

Scenario	Do you think this would be constitutional? Yes or No? Why or Why not?	Reality Check: The Constitution says...
<p><b><u>Presidential Election</u></b></p> <p>#1. The results for the most recent Presidential Election were:</p> <ul style="list-style-type: none"> <li>• 50,456,002 for candidate 1</li> <li>• 50,999,897 for candidate 2</li> </ul> <p>Candidate 2 is the president because this candidate earned the most popular votes.</p>	<p><i>Student most often select yes. The misconception is that the popular vote is the ultimate determiner of the election</i></p>	<p><u>Reality: Article II Sec 1:</u> The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows: Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.</p> <p><u>Amendment 12</u> The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate</p> <p><u>Explanation:</u> The Framers were wary of giving the people the power to directly elect the President so they designated a group of people as electors. This group is commonly referred to as the Electoral College. The Electoral College determines the outcome of the election. Each state will have electors equal to the whole number of senators and representatives in Congress. This group will vote for President and Vice-President.</p> <p>A majority of electoral votes is required to win. This was an issue in the Election of 1824, when there were more than two candidates. The scenario presented represents the popular vote outcome of the 2000 presidential election between George W. Bush and Albert Gore. Gore won the popular vote, but Bush received the necessary majority of electoral votes to win. **2000 election will be expanded upon in later lesson**</p>

Scenario	Do you think this would be constitutional? Yes or No? Why or Why not?	Reality Check: The Constitution says...
<p><b><u>Military Powers</u></b></p> <p>#2. The President declares war on an enemy country, and commands the troops to enter the country, remove the leaders from power, and establish a democracy in that country.</p>	<p><i>Students often believe that the President can declare war and command the troops as he or she sees fit.</i></p>	<p><u>Reality: Article 2 sec 2, clause 1:</u> 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;</p> <p><u>Explanation:</u> While the President has the authority to engage the troops and command them during a war (Commander-in-Chief), it is the Congress that has the authority to declare war. This authority is found in Article I Sec 8. Congress also holds the appropriation power over the President. They must approve the funding of the war.</p> <p>Students should also be made aware of the War Powers Resolution and its impact on troop deployment. The President must inform Congress within 48 hours of troop usage and must seek Congressional authorization by the 60<sup>th</sup> day of deployment or the troops must be removed from combat.</p>
<p><b><u>Executive Powers</u></b></p> <p>#3. A federal judge takes bribes during a court case. He is impeached and removed from the position by the Congress. The President pardons (forgives) the judge and gives him his job back.</p>	<p><i>Students are often unaware of the power to pardon. Students who are aware of this power may believe it is all-encompassing. However, there are limitations.</i></p>	<p><u>Reality: Article 2 sec 2, clause 1</u> [The President] shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.</p> <p><u>Explanation:</u> The executive's power to pardon is an example of the Framers' English heritage. In England, it was common for minor offenses to carry a sentence of death, with pardon by the King being the only way to avoid the punishment.</p> <p>The President has the power to completely overturn a criminal conviction. This is a full pardon. The conviction is wiped away as if it never happened. The President can commute a criminal sentence, turning a life sentence into a 10 year sentence or a death penalty into a life sentence. The President can make a pardon conditional, vacating a conviction but leaving paid fines in place, or even making the payment of a fine a prerequisite before a pardon takes effect.</p> <p>While the President has the power to pardon or reprieve various situations, <b>he or she does not have the power to forgive impeachment ruling.</b></p>
<p><b><u>Diplomatic Powers</u></b></p> <p>#4. Trade meetings between the United States and South Korea have resulted in a treaty. This treaty would end 85% of the tariffs (taxes) placed on each others goods. The U.S. President signs the treaty immediately and the removal of tariffs follows.</p>	<p><i>Students may believe that the President has complete foreign policy powers, with no checks of power by another branch. Students may also believe that the President does not make treaties at all.</i></p>	<p><u>Reality: Article 2 sec 2, clause 2:</u> [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;</p> <p><u>Explanation:</u> While the president <b>does</b> have the authority to make treaties, he or she <b>must have the advice and consent of the Senate</b>. 2/3 of the Senate must approve the treaty. Without this approval, the treaty is null and void. It will not be recognized or enforced.</p> <p>Between 1789 and 1969, 23 of 195 treaties submitted by the President were defeated by the Senate. The most famous was the Treaty of Versailles in 1919 which was created at the end of WWI. President Wilson signed the treaty, but the Senate defeated it soundly. Hence, the U.S. did not join the League of Nations. The US signed separate treaties with the warring nations of WWI.</p>

Scenario	Do you think this would be constitutional? Yes or No? Why or Why not?	Reality Check: The Constitution says...
<p><b><u>Executive Powers</u></b></p> <p>#5. The President, on her first day in office, selects all of the Secretaries for her cabinet's various departments. All of the Secretaries arrive for work the next day, ready to serve the President.</p>	<p><i>Students may believe the President has the sole authority to appoint individuals to various positions in the government. Students should be aware of the Cabinet from Citizen Game found in the Legislative Branch and Politics Unit (Unit 3).</i></p>	<p><u>Reality:</u> Article 2 sec 2, clause 2: [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States,</p> <p><u>Explanation:</u> The President has the authority to nominate judges, ambassadors, other public ministers and councils, and all other officers of the United States. However, Senate confirmation is required for these nominees. In recent years, these Senate confirmation hearings have been contentious and have resulted in Presidents submitting multiple nominees for a given position to be filled.</p> <p>20% of the Presidential nominations for the Supreme Court have been rejected or not acted on by the Senate. Ronald Reagan faced two Senate rejections of his nominees to the Supreme Court, with his third nominee finally being approved. The hearings for Justice Clarence Thomas were filled with allegations of sexual harassment. Despite this, he was approved for the position.</p>
<p><b><u>Legislative Powers</u></b></p> <p>#6. Congress, just before their recess, approves a bill that gives citizenship to undocumented people/ illegal aliens living in the United States. The President refuses to sign the bill, and takes no other action with it. The bill does not become law.</p>	<p><i>This statement is accurate. Students should be able to recognize the power to veto; specifically the pocket veto. This content was covered in the unit on the Legislative Branch (Unit 3).</i></p>	<p><u>Reality Check:</u> Article 1, sec 7: If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.</p> <p><u>Explanation:</u> The President has the legislative authority to sign the bill into law, veto the bill and return it to the house in which it originated, or to take no action on the bill whatsoever. This "no action" step can result in the bill becoming law, if Congress is in session. <b>However, if Congress is not in session, the bill will not become law.</b> This final step is the so called "pocket veto" which is presented in the scenario.</p> <p>If a President does veto a bill, Congress (both houses) can override the veto by a 2/3 majority vote and the bill will become law.</p>
<p><b><u>Legislative Powers</u></b></p> <p>#7. Every January, the President calls both houses of Congress together so he or she may present the State of the Union. During this address, the President informs the Congress as to what issues must be addressed and commands them to pass legislation within the given year to deal with these issues.</p>	<p><i>Students often believe that the President has the authority to dictate to the Congress what actions they must take.</i></p>	<p><u>Reality Check:</u> Article 2 sec 3: He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient</p> <p><u>Explanation:</u> The President must give information about the State of the Union to Congress each year. <b>The President can only recommend actions for the Legislative Branch. He or she cannot command them to pass laws.</b> The Congress may comply or may completely ignore the requests. Over the years, this presentation of information has varied from letters to prime-time televised events. Presidents now use this opportunity to gain public support for their initiatives.</p> <p>An example of this was the address given by George W. Bush in 2002, when he identified the "axis of evil" (North Korean, Iran and Iraq) in attempts to gain support for a pre-emptive invasion of Iraq. By March 2003, that invasion took place. Congress, through a joint resolution, gave their approval to the President.</p>

Scenario	Do you think this would be constitutional? Yes or No? Why or Why not?	Reality Check: The Constitution says...
<p><b><u>Removal Procedures</u></b></p> <p>#8. The House of Representatives impeaches the President for obstructing justice during an investigation. The President is required to leave office immediately.</p>	<p><i>Students often believe that the impeachment of a President,, or any government official, means their immediate removal. They do not include the removal portion of the process in their understanding.</i></p>	<p><u>Reality Check: Article 2 sec 4:</u> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.</p> <p><u>Article 1 sec 2, Clause 5:</u> The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.</p> <p><u>Article 1 sec 3, Clause 6:</u> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.</p> <p><u>Explanation:</u> President can be removed from office for treason, bribery and high crimes and misdemeanors. Obstructing justice would fall under the high crimes and misdemeanors category.</p> <p>The procedure for impeachment is the following:</p> <ul style="list-style-type: none"> <li>• A public official must be charged with improper conduct in office.</li> <li>• The House of Representatives has this charging power. During this time, the House gathers information and votes as to whether or not the evidence is strong enough to warrant the removal procedures. Upon voting, the procedure moves to the Senate if the House believes the charges are valid. A simple majority is all that is needed.</li> <li>• The Senate then holds a trial, with the Chief Justice of the Supreme Court presiding. The Senate hears the evidence and renders a vote. If 2/3 of the Senators agree that the evidence is sufficient, then the individual is removed from office.</li> </ul>

## Understanding the President's Constitutional Powers and Duties

Power	Description	Examples	Principle
Executive			
Appointment			
War			
Legislative			
Treaty			

**Which of these constitutional principles apply?**

- **Checks and Balances**
- **Enumerated Powers**
- **Popular Sovereignty**
- **Rule of Law**
- **Separation of Powers**

### President's Schedule for October 11, 2010 – October 15, 2010

Monday	Tuesday	Wednesday	Thursday	Friday
<p><b>9:40 AM</b> The President receives the Presidential Daily Briefing</p>	<p><b>10:00 AM</b> The President receives the Presidential Daily Briefing</p>	<p><b>10:30 AM</b> The President receives the Presidential Daily Briefing</p>	<p><b>10:15 AM</b> The President and the Vice President receive the Presidential Daily Briefing</p>	<p><b>9:30 AM</b> The President receives the Presidential Daily Briefing</p>
<p><b>10:15 AM</b> The President holds a meeting on infrastructure investment</p>	<p><b>10:30 AM</b> The President receives the Economic Daily Briefing</p>	<p><b>11:00 AM</b> The President receives the Economic Daily Briefing</p>	<p><b>11:15 AM</b> The President meets with senior advisors</p>	<p><b>11:30 AM</b> The President departs the White House en route Andrews Air Force Base</p>
<p><b>10:50 AM</b> The President delivers a statement to the press</p>	<p><b>11:00 AM</b> The President meets with senior advisors</p>	<p><b>11:45 AM</b> The President meets with senior advisors</p>	<p><b>12:15 PM</b> The President and the Vice President have lunch</p>	<p><b>11:45 AM</b> The President departs Andrews Air Force Base en route Philadelphia, Pennsylvania</p>
<p><b>11:10 AM</b> The President meets with senior advisors</p>	<p><b>2:45 PM</b> The President meets with student finalists of the NFTE National Youth Entrepreneurship Challenge</p>	<p><b>1:45 PM</b> The President meets with college students and their families on the impact of the American Opportunity Tax Credit</p>	<p><b>3:00 PM</b> The President meets with Secretary of the Treasury Geithner</p>	<p><b>12:30 PM</b> The President arrives in Philadelphia, Pennsylvania</p>
<p><b>1:30 PM</b> The President meets with the students from Waiting for Superman</p>	<p><b>7:00 PM</b> The President hosts a "Moving America Forward" town hall meeting</p>	<p><b>1:50 PM</b> The President delivers a statement to the press</p>	<p><b>4:00 PM</b> The President participates in a youth Town Hall live on Viacom's BET, CMT and MTV networks</p>	<p><b>1:30 PM</b> The President and the Vice President deliver remarks at an event for Senate candidate Chris Coons and the DSCC</p>
<p><b>1:55 PM</b> The President departs the White House en route Andrews Air Force Base</p>				
<p><b>2:10 PM</b> The President departs Andrews Air Force Base en route Miami, Florida</p>				
<p><b>4:30 PM</b> The President arrives in Miami, Florida</p>				
<p><b>5:45 PM</b> The President delivers remarks at a DCCC reception</p>				
<p><b>6:00 PM</b> The President delivers remarks at a DCCC dinner</p>				
<p><b>7:00 PM</b> The President departs Miami, Florida en route Andrews Air Force Base</p>				
<p><b>9:10 PM</b> The President arrives at Andrews Air Force Base</p>				
<p><b>9:25 PM</b> The President arrives at the White House</p>				
				<p><b>3:25 PM</b> The President arrives at Andrews Air Force Base</p>
				<p><b>3:40 PM</b> The President arrives at the White House</p>
				<p><b>3:45 PM</b> The President meets with Condoleezza Rice</p>



## **Executive Prerogative Notes Page**

**1. Defined:**

**2. Inherent Powers based on Constitutional Language:**

**3. Historical Basis:**

**4. Examples of Executive Prerogative:**

# Articles I and II of the U.S. Constitution

## From Article I, Section 1

All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a Senate and House of Representatives.

## From Article II, Section 1.1

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows: . . . .

### Timed Reading (ACT Prep)

- 1    Sec. 159. WHERE the legislative and executive power are in distinct hands, . . .there the good of  
the society requires, that several things should be left to the discretion of him that has the  
executive power: for the legislators not being able to foresee, and provide by laws, for all that  
may be useful to the community, the executor of the laws having the power in his hands, has by  
the common law of nature a right to make use of it for the good of the society, in many cases,  
5    where the municipal law has given no direction, till the legislative can conveniently be  
assembled to provide for it. . . .

- Sec. 160. This power to act according to discretion, for the public good, without the prescription  
of the law, and sometimes even against it, is that which is called prerogative: for since in some  
governments the lawmaking power . . . is usually too numerous, and so too slow, for the  
10    dispatch requisite to execution; and because also it is impossible to foresee, and so by laws to  
provide for, all accidents and necessities that may concern the public, or to make such laws as  
will do no harm, if they are executed with an inflexible rigour, on all occasions, and upon all  
persons that may come in their way; therefore there is a latitude left to the executive power, to  
do many things of choice which the laws do not prescribe.

- 15    Sec. 163. And therefore they have a very wrong notion of government, who say, that the  
people have encroached upon the prerogative, when they have got any part of it to be defined  
by positive laws: for in so doing they have not pulled from the prince any thing that of right  
belonged to him, but only declared, that that power which they indefinitely left in his or his  
ancestors hands, to be exercised for their good, was not a thing which they intended him when  
20    he used it otherwise: for the end of government being the good of the community, whatsoever  
alterations are made in it, tending to that end, cannot be an encroachment upon any body,  
since no body in government can have a right tending to any other end: and those only are  
encroachments which prejudice or hinder the public good. Those who say otherwise, speak as if  
the prince had a distinct and separate interest from the good of the community, and was not  
25    made for it; the root and source from which spring almost all those evils and disorders which  
happen in kingly governments. And indeed, if that be so, the people under his government are  
not a society of rational creatures, entered into a community for their mutual good; they are  
not such as have set rulers over themselves, to guard, and promote that good; but are to be  
looked on as an herd of inferior creatures under the dominion of a master, who keeps them  
30    and works them for his own pleasure or profit. If men were so void of reason, and brutish, as to  
enter into society upon such terms, prerogative might indeed be, what some men would have  
it, an arbitrary power to do things hurtful to the people.

- Sec. 164. . . prerogative can be nothing but the people's permitting their rulers to do several  
things, of their own free choice, where the law was silent, and sometimes too against the direct  
35    letter of the law, for the public good; and their acquiescing in it when so done: for as a good  
prince, who is mindful of the trust put into his hands, and careful of the good of his people,  
cannot have too much prerogative, that is, power to do good; so a weak and ill prince, who

40 would claim that power which his predecessors exercised without the direction of the law, as a prerogative belonging to him by right of his office, which he may exercise at his pleasure, to make or promote an interest distinct from that of the public, gives the people an occasion to claim their right, and limit that power, which, whilst it was exercised for their good, they were content should be tacitly allowed.

45 Sec. 165. And therefore he that will look into the history of England, will find, that prerogative was always largest in the hands of our wisest and best princes; . . . The people therefore, finding reason to be satisfied with these princes, whenever they acted without, or contrary to the letter of the law, acquiesced in what they did, and, without the least complaint, let them [e]nlarge their prerogative as they pleased, judging rightly, that they did nothing herein to the prejudice of their laws, since they acted conformable to the foundation and end of all laws, the public good.

Source: John Locke's Second Treatise on Government, Chapter 14, Section 159. 26 Oct. 2010  
<[www.constitution.org/jl/2ndtr14.htm](http://www.constitution.org/jl/2ndtr14.htm)>.

## Questions for Timed Reading

1. In Sec. 159 (lines 1-6), the idea which is most important for justifying governmental action is:
  - A. the good of society
  - B. the need for efficiency
  - C. respect for the law
  - D. democratic ideals
2. In Sec. 159 and 160 (lines 1-14) the word “discretion” most nearly means:
  - F. The ability to act covertly.
  - G. The ability to make responsible decisions.
  - H. The ability to compromise effectively.
  - J. The ability to remain steadfast.
3. The main idea addressed in Sec. 160 (lines 7-14) is:
  - A. the power of the executive
  - B. the need for a societal ethic
  - C. the power of public opinion
  - D. the inherent limitations of the law
4. In Sec. 160 (lines 7-14), Locke argues for latitude in executive power because the legislative branch
  - F. is limited in its capacity to promote the good of society
  - G. is able to guarantee that the laws will not hurt people
  - H. works faster than the other branches of government.
  - J. tends to favor the judicial branch of government
5. In Sec. 160 (line 7-14) Locke defines “prerogative” as the right to act on behalf of:
  - A. The public good even when compromising the law
  - B. The executive as he is the essence of government
  - C. Democratic ideals over individual rights
  - D. The maintenance of law and order
6. In Sec. 163 (lines 15 - 32), the terms “encroached or encroachment” most nearly mean:
  - F. to crowd upon
  - G. to unreasonably obscure
  - H. to render vulnerable or ineffective
  - J. to advance beyond proper limits
7. In Sec. 164 (lines 33 - 42) the term “acquiescing” most nearly means:
  - A. To obtain without effort
  - B. To silently or passively accept
  - C. To support vigorously
  - D. To anticipate with enthusiasm

8. Which of the following statements most nearly represents Locke's argument in Sec. 164 (lines 33 - 42)?
- F. "The people are narrowly self serving."
  - G. "The ends justify the means."
  - H. "Might makes right."
  - I. "Man is the measure of all things."
9. In Sec. 165 (lines 43 - 49), Locke argues that the:
- A. Rulers need to study English history
  - B. Better rulers had greater prerogative
  - C. People carefully observed government action
  - D. Law was always supreme
10. The best title for the sections in combination would be:
- F. Democracy: The Best Form of Government
  - G. Monarchy: How to Preserve It
  - H. An Examination of Divided Government
  - J. The Political Limitations of Humanity

## ACT Reading Prep Answer Guide

1. A
2. G
3. D
4. F
5. A
6. J
7. B
8. G
9. B
10. H

## **Three Views of Presidential Power**

<http://classes.maxwell.syr.edu/hst341/prezpower.htm>

### **Abraham Lincoln (1864).**

I have never understood that the presidency conferred upon me an unrestricted right to act.... I did understand, however, that my oath to preserve the Constitution to the best of my ability imposed upon me the duty of preserving, by every indispensable means, that government—that nation, of which the Constitution was the organic law. Was it possible to lose the nation and yet preserve the Constitution?... I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation. Right or wrong, I assume this ground, and now avow it. I could not feel that, to the best of my ability, I had even tried to preserve the Constitution if... I should permit the wreck of the government, country and Constitution altogether.... I claim not to have controlled events, but confess plainly that events have controlled me. [Source: letter from Lincoln to A. G. Hodges, 4 April 1864.]

### **Theodore Roosevelt (1913).**

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 for 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.... I did not usurp power, but I did greatly broaden the use of executive power.... I acted... whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition.... The course I followed [was] of regarding the Executive as subject only to the people, and, under the Constitution, bound to serve the people affirmatively in cases where the Constitution does not explicitly forbid him to render the service. [Source: *The Autobiography of Theodore Roosevelt* (NY: Scribner's, 1913).]



## Three Views of Presidential Power

<http://classes.maxwell.syr.edu/hst341/prezpower.htm>

### **William Howard Taft (1916).**

The true view of the Executive functions is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power.... The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist. [Source: *Our Chief Magistrate and His Powers* (NY: Columbia University Press, 1916).]

## **Exploring Executive Power**

- 1. President George Washington and the Whiskey Rebellion**
- 2. President Thomas Jefferson and the Louisiana Purchase**
- 3. President Andrew Jackson and Indian Removal**
- 4. President Lincoln's Suspension of the Writ of Habeas Corpus**
- 5. President Theodore Roosevelt and Trust Busting**
- 6. President Franklin Delano Roosevelt and New Deal Programs**
- 7. President Kennedy and the Bay of Pigs**
- 8. President Bush and the War on Terror**

## Teachers Reference Guide: Exploring Executive Power

### 1. President George Washington and the Whiskey Rebellion:

The Whiskey Rebellion was a tax protest in Pennsylvania in the 1790s, during George Washington's presidency. It was rooted in western dissatisfaction with a 1791 excise tax on whiskey. The tax was passed by Congress and was a part of treasury secretary's program to centralize and fund the national debt. The whiskey excise was unpopular among small farmers who could get their corn to market only by distilling it into whiskey, which was easy to ship by water. They used violence and intimidation to stop federal officials from collecting the tax. Resistance came to a climax in July 1794, when a US marshal arrived in to serve writs to distillers who had not paid the excise. More than 500 armed men attacked the fortified home of the tax inspector. The Washington administration responded by sending peace commissioners to negotiate with the rebels, while at the same time calling on state governors to provide militia forces if needed. President Washington himself led the army but the protest collapsed before it arrived.

Interpretation: This was not seen as an expansion of presidential power. A law enacted in 1792 provided that whenever the laws of the United States were violated and their execution obstructed by any states, the president would have to be first notified of that fact by an associate justice of the Supreme Court or by a federal district judge. Only after such notice could the president call forth the militia of the state to suppress the insurrection.  
(The Unitary Executive and the Modern Presidency by Christopher Kelly, page 20-21)

### 2. President Thomas Jefferson and the Louisiana Purchase

Jefferson, through his minister to France, Robert Livingston, offered Napoleon \$2 million for a small tract of land on the lower Mississippi. There Americans could build their own seaport. Impatient at the lack of news, Jefferson sent James Monroe to Paris to offer \$10 million for New Orleans and West Florida. Almost at the same time and unbeknownst to Jefferson, France had offered all of Louisiana to Livingston for \$15 million.

Interpretation: This is seen as an expansion of power. In order to buy Louisiana, Jefferson had to change his vision of the Constitution. Initially, Jefferson had believed the Constitution did not permit the acquisition of new territory or its incorporation into the Union as new States. Even before he had sent Monroe to France, Jefferson had raised doubts before his cabinet about the constitutionality of adding territory to the Union. Surprisingly, the Constitution has no express provision providing for the addition of territory. Article IV, section 3 gives Congress the power to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Some argue that this clause assumes the addition of new property in the future, but as Gary Lawson and Guy Seidman point out, this interpretation runs counter to the text of the clause and its placement in the Constitution. It describes the power to make rules and dispose of property, but it does not empower the government to add new territory in the first place. It could be read to apply only to the territory of the United States as it existed in 1789, such as the Northwest Territory.

### 3. President Andrew Jackson and Indian Removal

A renowned Indian fighter during his military years, Jackson continued to persecute Native Americans during his presidency. In 1830, the Indian Removal Act authorized the army to relocate, by force, any Native Americans living east of the Mississippi River. The act violated an earlier Supreme Court decision that recognized Indian lands, but Jackson didn't care. More than 100,000 Native Americans were moved to present-day Oklahoma and Nebraska, and thousands died on the difficult journey that became known as the Trail of Tears.

Interpretation: Expansion of presidential power.

#### 4. President Lincoln Suspension of the Writ of Habeas Corpus

Lincoln suspended the writ of habeas corpus, a procedural method by which one who is imprisoned can be immediately released if his imprisonment is found not to conform to law. With suspension of the writ, this immediate judicial review of detention becomes unavailable. This suspension triggered the most heated and serious constitutional disputes of the Lincoln Administration.

Interpretation: Under his wartime powers, the suspension of habeas corpus was deemed permissible by the Supreme Court. The Constitution permits the suspension of the writ in "cases of rebellion and when the public safety" requires it. But it is unclear who has the power, Congress or the President.

#### 5. President Theodore Roosevelt and Trust Busting

While in office, Roosevelt became a "trust buster" by forcing the great railroad combination in the Northwest to break apart. As President, Roosevelt saw himself a representative of all the people, including farmers, laborers, white collar workers, and businessmen. Roosevelt therefore was focused on bringing big business under stronger regulation so that he could effectively serve all the people he represented. He sought to regulate, rather than dissolve, most trusts. Efforts continued over the next several years, to reduce the control of "big business" over the U.S. economy and workers. Earlier Congress passed the Sherman Antitrust Act in 1890 to maintain economic liberty, and to eliminate restraints on trade and competition. This act came into play during Roosevelt's trust busting activities.

Interpretation: Roosevelt's actions were seen as an expansion of the use of presidential power. However, since Roosevelt was merely enforcing the Sherman Antitrust Act (a law), his actions were constitutional and not overreaching.

#### 6. President Franklin Delano Roosevelt and New Deal Programs

In the first hundred days of his presidency, Roosevelt signed 15 major pieces of legislation designed to relieve the suffering of millions and extricate America from the Great Depression. But by 1936, the New Deal had begun to falter. Conservative businessmen, who found themselves heavily taxed and regulated by the new legislation, pushed a string of challenges to Roosevelt's programs through the courts. On January 6, the Supreme Court invalidated FDR's Agricultural Adjustment Act. The Court ruled that the states, not the federal government, had the power to regulate agriculture. The Supreme Court scheduled to rule on challenges to the Wagner Act, the Tennessee Valley Authority, and the Social Security Act, FDR knew the New Deal was in danger. On February 5, 1937, with little or no warning, FDR announced what would become known as his "court packing" plan. He proposed judicial reforms, including the addition of one justice to the Supreme Court for every one who did not retire by age 70-1/2, with a maximum five justices added. His plan to influence the Court provoked outrage nationwide. Many perceived it as an attempt to rig the American judiciary system and give the executive branch almost dictatorial power.

Interpretation: Some of the New Deal legislation was successfully challenged in court. FDR's attempt to pack the court was seen as an extension of executive power, but his plan was never implemented.

## 7. President Kennedy and the Bay of Pigs

The Bay of Pigs Invasion was an unsuccessful attempt by a CIA-trained force of Cuban exiles to invade Communist Cuba, with support from US government. The goal was to overthrow the Cuban government of Fidel Castro. President Dwight D. Eisenhower's administration had planned the invasion, which would be handled by the CIA. By the time of Kennedy's inauguration, the order to invade was the only remaining piece of the plan to put into place.

On April 15, the invasion began. The Cuban armed forces, trained and equipped by Eastern Bloc nations, defeated the exile combatants in three days.

Interpretation: This was seen as an overreach of executive power. The Kennedy administration acknowledged as much by its initial denial of involvement.

## 8. President Bush and the War on Terror

As part of the Global War on Terror, Congress passed the USA Patriot Act. The Act allows federal officials greater authority in tracking and intercepting communications. Some of the provisions are:

- allows third-party holders of your financial, library, travel, video rental, phone, medical, church, synagogue, and mosque records to be searched without your knowledge or consent, providing the government says it's trying to protect against terrorism.
- authorizes searches so long as the government can allege a foreign intelligence basis for the search.
- creates a category of crime called "domestic terrorism," penalizing activities that "involve acts dangerous to human life that are a violation of the criminal laws of the United States," if the actor's intent is to "influence the policy of a government by intimidation or coercion."
- makes even unknowing association with terrorists a deportable offense.

Interpretation: The Patriot Act expanded the powers of the executive branch. The Act has also come under constitutional scrutiny. In 2007 a federal court ruled that two provisions of the Patriot Act dealing with searches and intelligence gathering were unconstitutional. They were found to violate the Fourth Amendment protection against unreasonable searches and seizures with regard to criminal prosecutions. The Patriot Act and the War on Terror has been seen as the biggest expansion of executive power since the New Deal.

## Roles of the President

Role	Definition	Examples
<b>Chief of State</b>		
<b>Chief Executive</b>		
<b>Chief Diplomat</b>		
<b>Commander-In-Chief</b>		
<b>Chief Legislator</b>		
<b>Chief of Party</b>		
<b>Chief Guardian of the Economy</b>		

## **Roles of the President – Teacher Reference Guide**

### **1. Chief of State**

**Definition:** This role requires a president to be an inspiring example for the American people. In some nations, the chief of state is a king or a queen who wears a crown on special occasions, celebrates national holidays, and stands for the highest values and ideals of the country. As the American Chief of State, the president is a living symbol of the nation. It is considered a great honor for any citizen to shake the president's hand.

**Examples:**

- Awarding medals to the winners of college scholarships.
- Congratulating astronauts on their journey into space.
- Greeting visitors to the White House.
- Making a patriotic speech on the Fourth of July.

### **2. Chief Executive**

**Definition:** The president is "boss" for millions of government workers in the Executive Branch, deciding how the laws of the United States are to be enforced and choosing officials and advisers to help run the Executive Branch.

**Examples:**

- Appointing someone to serve as head of the Central Intelligence Agency (CIA).
- Holding a Cabinet meeting to discuss government business.
- Reading reports about problems of the Federal Bureau of Investigation (FBI).
- Power to grant reprieves and pardons

### **3. Chief Diplomat**

**Roles:** The president decides what American diplomats and ambassadors shall say to foreign governments. With the help of advisers, the president makes the foreign policy of the United States. The president has the ability and authority to negotiate with other countries and their representatives. He is given power in the Constitution to make treaties and to receive Ambassadors and other public Ministers.

**Examples:**

- Traveling to London to meet with British leaders.
- Entertaining Japanese diplomats in the White House.
- Writing a message or a letter to the leaders of the Soviet Union.

### **4. Commander-In-Chief**

**Roles:** The president is in charge of the U.S. armed forces: the Army, Navy, Air Force, and Marines. The president decides where troops shall be stationed, where ships shall be sent, and how weapons shall be used. All military generals and admirals take their orders from the President.

**Examples:**

- Inspecting a Navy yard.
- Deciding, in wartime, whether to bomb foreign cities.
- Calling out troops to stop a riot.

### **5. Chief Legislator**

**Roles:** Only Congress has the actual power to make laws. But the Constitution gives the president power to influence Congress in its lawmaking. Presidents may urge Congress to pass new laws or veto bills that they do not favor.

**Examples:**

- Inviting members of Congress to lunch in the White House.
- Signs or Vetoes laws
- Gives State of the Union and makes legislative recommendations
- Convenes special sessions of Congress
- Gives speeches to Congress

### **6. Chief of Party**

**Roles:** In this role, the president helps members of his political party get elected or appointed to office. The president campaigns for those members who have supported his policies. The president may campaign and raise money for other members of his party. At the end of a term the president may campaign for reelection.

**Examples:**

- Choosing leading party members to serve in the Cabinet.
- Traveling to California to speak at a rally for a party nominee to the U.S. Senate.

### **7. Chief Guardian of the Economy**

**Roles:** In this role, the president is concerned with such things as unemployment, high prices, taxes, business profits, and the general prosperity of the country. The president does not control the economy, but is expected to help it run smoothly.

**Examples:**

- Meeting with economic advisers to discuss ways to reduce unemployment.
- Meeting with business and labor leaders to discuss their needs and problems.

Adapted from: *Seven Roles for One President*. Scholastic. Teachers. 11 January 2011  
<<http://www2.scholastic.com/browse/article.jsp?id=4683>>.



# **U.S. Constitution**

## **Article II, Section II, Clause I**

**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; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Office, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.**

## **Executive Branch - Divisions Of The Executive Branch**

The lack of specific, detailed language in the Constitution describing the power and responsibilities of the executive branch has given presidents a great deal of flexibility to increase its size and scope over the years, in terms of both the range of its authority and the number of people, offices, and agencies employed to carry out its responsibilities. Today, the executive branch consists of well over 3 million people who work in one of three general areas:

- the Executive Office of the President (EOP);
- the Cabinet and 15 executive departments;
- an extensive collection of federal agencies and corporations responsible for specific areas of the government, such as the Environmental Protection Agency and the U.S. Postal Service.

**Executive Office of the President:** The Executive Office of the President (EOP) is not a single office or department, but a collection of agencies that are all directly responsible for helping the president to interact with Congress and to manage the larger executive branch. Currently, the EOP consists of nine separate divisions: the White House Office, the Office of Management and Budget (OMB), the Council of Economic Advisers, the National Security Council (NSC), the Office of Policy Development, the Office of the U.S. Trade Representative (USTR), the Council on Environmental Quality, the Office of Science and Technology Policy, and the Office of Administration.

**The Cabinet and Executive Departments** The cabinet consists of the president, the vice president, the heads of the 15 executive departments, and any other government officials the president wishes to include, such as the head of the OMB or the head of the NSC. In theory, cabinet members serve as expert advisers to the president, but in practice they more often operate as advocates for their departments and are seldom involved in actual presidential decision making.

The Constitution makes no specific reference to a president's cabinet; rather, the cabinet is an institution that has evolved over the years. The largest organizational units within the executive branch are the 15 executive departments: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs. These departments, which vary greatly in size and function, are responsible for administering the great majority of the federal government's activities and programs.

**Agencies and Corporations** The executive branch includes a large number of agencies for which the president is responsible. Some of these agencies function independently; others are connected to an executive department but still may function as largely autonomous units. These agencies manage specific areas of government operations and have little in common except that they lie outside of the traditional management structure of the executive departments. In general, they come in three types:

- ✓ regulatory agencies and commissions
- ✓ independent executive agencies
- ✓ government corporations

Regulatory agencies and commissions control certain economic activities and consumer affairs. They include the Securities and Exchange Commission (SEC), which oversees Wall Street and the

Federal Reserve Board (FRB), which regulates the Federal Reserve. The Federal Communications Commission (FCC) is also an independent regulatory agency, which regulates forms of communication such as TV and radio broadcasting. Other agencies, such as the Food and Drug Administration (FDA), regulate the food that goes to grocery stores for people to eat. Regulation is an important role of the bureaucracy and, as can be seen by these few examples, independent regulatory agencies affect nearly every aspect of one's life.

Regulatory agencies and commissions are created by Congress when members believe that certain economic or commercial activities need to be regulated. They accomplish the task of regulation in various ways, depending on their mandate from Congress. Typical methods of regulation include requiring licensing for specific professions and requiring products to be labeled accurately. Some regulatory agencies operate independently, some are governed by bipartisan commissions, and some report to an executive department.

Independent executive agencies are not part of any executive department. These agencies report directly to the president. These agencies include the National Aeronautics and Space Administration (NASA) and the General Services Administration. Frequently, Congress makes such agencies independent so that they can operate without the burden of bureaucratic regulations or the influence of particular executive departments. For example, NASA was made an independent agency so that it could be created more quickly, function more freely, and avoid the demands and influence of the Department of Defense.

Government corporations are a unique type of agency in that they function like businesses, providing necessary public services that would be too expensive or unprofitable for private companies to provide. They include the U.S. Postal Service (USPS); Amtrak; the Federal Deposit Insurance Corporation (FDIC); and the Tennessee Valley Authority (TVA), which was created to develop electric power in the Tennessee Valley region. Corporations have more independence than do agencies of any other type. They can buy and sell real estate, and they can sue and be sued. They are not dependent on annual appropriations from Congress, and they retain their own earnings. Congress does provide long-term funding for government corporations, however, so it retains a certain amount of control over their operations.

Sources:

Adapted from Executive Branch - Divisions off The Executive Branch. Law Library, American Law and Legal Information. 11 January 2011 <<http://law.jrank.org/pages/6653/Executive-Branch-Divisions-Executive-Branch.html>>. Independent Agencies and Government Corporations. USA.gov. 11 January 2011 <<http://www.usa.gov/Agencies/Federal/Independent.shtml>>.

## **Power and Tension among the Branches**

**The Constitution does not separate power  
so much as create "a government of  
separated institutions sharing power."**

-- Richard Neustadt, Political Scientist

**Think of these constitutional powers**

- **Appointments**
- **Removals**
- **Legislative**
- **Budgetary**
- **Diplomatic**
- **War**

## Separate Institutions-Checking Power

**Directions:** Complete the first two columns of this chart using the U.S. Constitution. Then, place the examples presented by classmates in the appropriate category.

Constitutional Powers	Legislative Power	Executive Power	Example of Tensions
<b>Appointments</b> (selection of a person by an official to perform a duty)			
<b>Removals</b> (The dismissal of an executive branch official from office)			
<b>Legislative</b> (law-making)			
<b>Budgetary</b> (amount of money that is available for, required for, or assigned to a particular purpose)			
<b>Diplomatic</b> (relating to or involving foreign entities)			
<b>War</b> (period of armed conflict between nations)			

## Separate Institutions-Checking Power Teacher Reference

**Directions:** Complete the first two columns of this chart using the U.S. Constitution. Then, place the examples presented by classmates in the appropriate category.

Constitutional Powers	Legislative Power	Executive Power	Examples of Tension
<b>Appointments</b> (selection of a person by an official to perform a duty)	<ul style="list-style-type: none"> <li>Advise and Consent must be given by the Senate (Article II, Section 2)</li> </ul>	<ul style="list-style-type: none"> <li>Power to Nominate (Article II, Section 2)</li> <li>Power to nominate during recess of the Senate (recess appointments)</li> <li>Power to nominate for temporary positions (granted by statute)</li> </ul>	<p>Robert Bork appointment to the Supreme Court by President Reagan</p> <p>Lewis L. Strauss Cabinet appointment as the Secretary of Commerce by President Eisenhower</p>
<b>Removals</b> (The dismissal of an executive branch official from office)	<ul style="list-style-type: none"> <li>Advise and Consent of Congress via statutes</li> <li>Impeachment &amp; removal (Article I, Section 2 clause 5 &amp; Article I, Section 3, clauses 6-7)</li> </ul>	<ul style="list-style-type: none"> <li>Power to fire officials through implied powers (via court interpretations) and statutes (via Congress)</li> </ul>	<p>Impeachment of Andrew Johnson</p> <p>Impeachment of President Clinton</p>
<b>Legislative</b> (law-making)	<ul style="list-style-type: none"> <li>All legislative powers are vested in Congress (Article I, Section 1)</li> <li>Override a Presidential veto by 2/3 vote (Art. I, Section 7, clause 3)</li> <li>Rewrite the law and resubmit</li> </ul>	<ul style="list-style-type: none"> <li>Sign a law (Art. I, Section 7, clause 3) <ul style="list-style-type: none"> <li>Signing Statements</li> </ul> </li> <li>Veto a law (pocket veto also)</li> <li>Do nothing with the law</li> </ul>	<p>Water Resources Development Act (2007)</p> <p>Family Medical Leave Act (1990)</p>
<b>Budgetary</b> (amount of money that is available for, required for, or assigned to a particular purpose)	<ul style="list-style-type: none"> <li>Appropriation bills (Article I, Section 7, clause 1)</li> </ul>	<ul style="list-style-type: none"> <li>Budget proposals</li> <li>Regulatory and executive agencies need funding to work</li> </ul>	<p>Partial Government Shutdown in 1995</p>
<b>Diplomatic</b> (relating to or involving foreign entities)	<ul style="list-style-type: none"> <li>Treaty approval (Article II, Section 2, clause 2)</li> <li>Advise and Consent to appointing Ambassadors (Article II, Section 2, clause 2)</li> </ul>	<ul style="list-style-type: none"> <li>Make Treaties (Article II, Section 2, clause 2)</li> <li>Make Executive Agreements</li> <li>Appoint Ambassadors</li> </ul>	<p>Kyoto Treaty</p> <p>League of Nations</p>
<b>War</b> (period of armed conflict between nations)	<ul style="list-style-type: none"> <li>Power to declare war and issue Letters of Marque and Reprisal (Article I, Section 8, clause 11)</li> <li>Appropriations for war</li> <li>War Powers Resolution</li> </ul>	<ul style="list-style-type: none"> <li>Commander in Chief (Article II, Section 2)</li> </ul>	<p>War Powers Act</p> <p>U.S. involvement in Vietnam</p>

## Tensions among the Branches

**Directions:** As a team, research a historical example of tension between the Legislative and Executive branches resulting from a shared constitutional power. Follow these instructions during your research.

### I. Assigned Example:

- Robert Bork appointment to the Supreme Court by President Reagan
- Kyoto Treaty
- League of Nations
- Impeachment of Andrew Johnson
- Family Medical Leave Act (1990)
- Water Resources Development Act (2007)
- Partial Government Shutdown in 1995
- War Powers Act
- U.S. involvement in Vietnam
- Impeachment of President Clinton
- Lewis L. Strauss Cabinet appointment as the Secretary of Commerce by President Eisenhower
- United States v. Nixon (1974)

### II. Research Parameters: Answer the following three questions during your investigative research.

#### 1. What are the 5 Ws?

- Who? Who (people) were involved?
- What? What happened (what's the story)?
- Where? Where did it take place?
- When? When did it take place?
- Why? Why did it happen?

#### 2. What actions were taken by each branch?

- Executive Actions/Powers and what was the branch's rationale for action
- Legislative Actions/Powers and what was the branch's rationale for action

#### 3. How was the situation resolved?

- Include the specifics of the how the conflict was resolved
- Include which branch's power was predominated

### III. Individually write a news report that answers the questions above.

### IV. Presentation Parameters: A presentation of findings to the class

Using the research parameters above, create a news report no longer than 3 minutes in length that explains the example assigned.

**Directions:** Read the portion of your text that deals with the Electoral College and fill in as much information as you can. Be prepared to explain your answers and information in class.

1. What is the Electoral College?
2. Why do we have an Electoral College? What was the thinking of the founding fathers?
3. Who are the electors and how are they chosen?
4. How do the states distribute the votes of the electors to the candidates?
5. There are 538 Electoral College votes. How is that number determined?
6. A candidate needs 270 Electoral College votes to win. If no one candidate gets that magic number, how is the presidency decided?



## Electoral College – Teacher Guide

**Directions:** Read the portion of your text that deals with the Electoral College and fill in as much information as you can. Be prepared to explain your answers and information in class.

1. *What is the Electoral College?*

A procedure to choose the President of the United States in which the voters do not directly choose him/her. The voters in each state actually vote for a slate of electors chosen by the state political parties. When a candidate wins the popular vote in a state, the electors of his/her party are “activated” to vote for that candidate. Although the United States Constitution does not require the electors to follow the decision of the voters in their state, many states (such as Michigan) have their own laws requiring the electors to follow the popular vote.

2. *Why do we have an Electoral College? What was the thinking of the founding fathers?*

Hamilton and the other founders believed that the electors would be able to insure that only a qualified person becomes President. They believed that with the Electoral College no one would be able to manipulate the citizenry. It would act as check on an electorate that might be duped. Hamilton and the other founders did not trust the population to make the right choice. The founders also believed that the Electoral College had the advantage of being a group that met only once and thus could not be manipulated over time by foreign governments or internal interests. Note that it was not unusual at the time for executives to be selected by legislatures rather than by popular vote (British prime ministers, state governors). It is somewhat overstated that the Framers didn’t trust the *people* when they created the Electoral College. They really didn’t trust the new legislature. The Virginia Plan called for the election of the President by the Legislature. That got dumped in favor of the Electoral College.

The Electoral College is also part of compromises made at the convention to satisfy the small states. Under the system of the Electoral College each state had the same number of electoral votes as they have representative in Congress, thus no state could have less than 3.

3. *Who are the electors and how are they chosen?*

Electors are members of the state political parties, usually chosen for their dedication to the party and its philosophies. In Michigan, each presidential candidate submits a list of 16 qualified electors to the Secretary of State’s Office. The 16 electors whose candidate wins Michigan’s popular vote then participate in the Electoral College.

4. *How do the states distribute the votes of the electors to the candidates?*

How each state distributes the votes of the electors is a state by state decision. 48 of the 50 states (the exceptions being Maine and Nebraska) have a “winner takes all” policy. Under this system, whichever candidate wins the state’s popular vote, ALL of the electoral votes are given to him/her. A candidate can win a state by just one vote over the opponent and get all of the electoral votes.

This winner takes all system means that there can be (and have been) times in which the candidate who won the national popular vote did not win the Presidency.

- In 1876, Samuel Tilden won the popular vote but lost the Electoral College vote.
- In 1888, Grover Cleveland won the popular vote but lost the Electoral College vote.
- In 2000, Al Gore won the popular vote but lost the Electoral College vote

There are other elections where no candidate won a majority in the popular vote due to there being more than two candidates: Andrew Jackson had more votes than John Q. Adams in 1824 (but not a majority), and Lincoln had the most votes in 1860, but only about 40% of the total.

5. *There are 538 Electoral College votes. How is that number determined?*

Each state has the same number of Electoral College votes as it has senators (2) and members of the House of Representatives (determined by census every 10 years – reapportionment/redistricting). The 23<sup>rd</sup> Amendment to the Constitution gives the residents of Washington DC 3 Electoral College votes as if it were a small state. (Each state has 2 senators and has a guarantee of at least 1 member of the House of Representatives). There are 100 Senators + 435 members of the House of Representatives + 3 for DC = 538

6. *A candidate needs 270 Electoral College votes (currently) to win. If no one candidate gets that magic number, how is the presidency decided?*

This has happened twice in the history of the United States. In the election of 1824, no candidate received a majority of electoral ballots for President. The House of Representatives voted (as the 12<sup>th</sup> Amendment requires) to choose the President. The House of Representatives chose John Quincy Adams over Andrew Jackson. Each state has only one vote in such a situation. So if the Electoral College can not choose a President, the decision goes the House of Representatives.

# The Electoral College

## Original Constitutional Language:

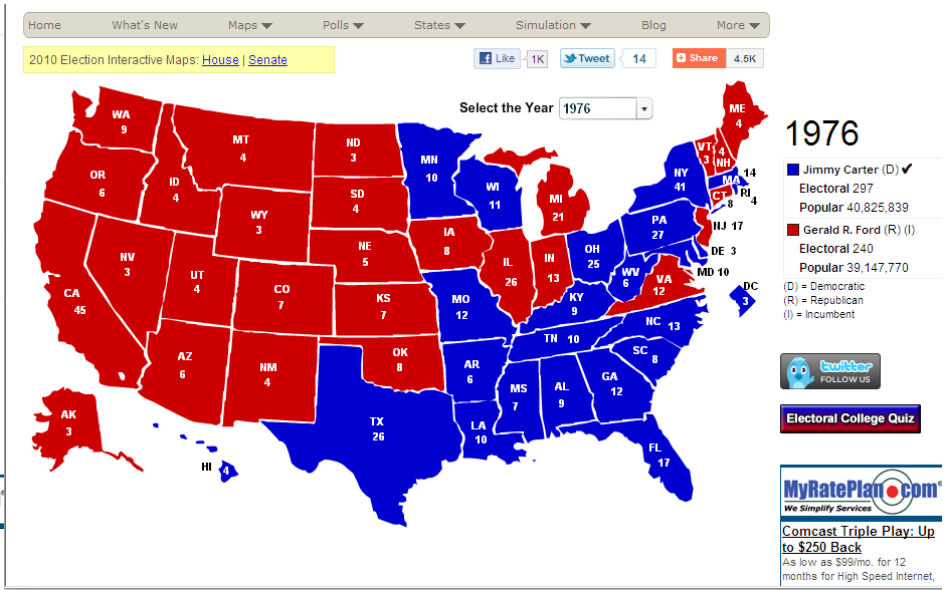
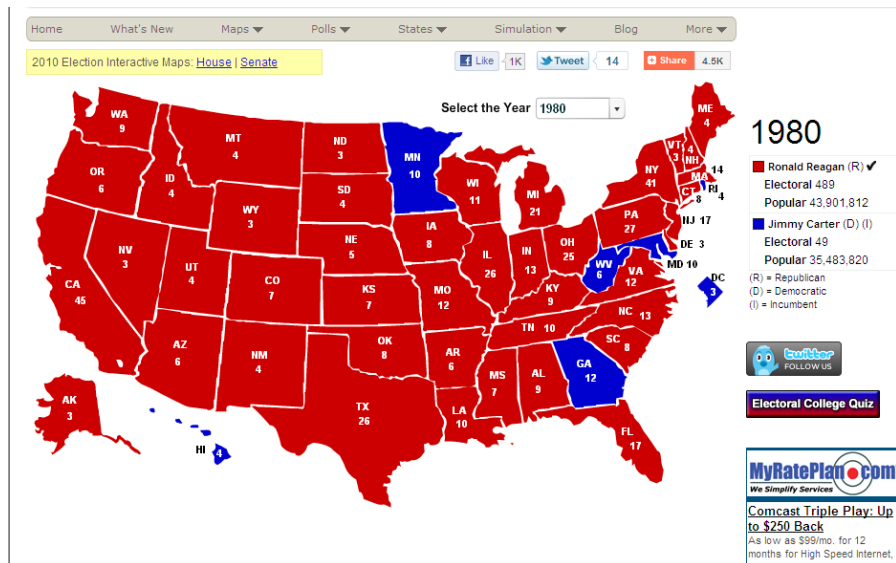
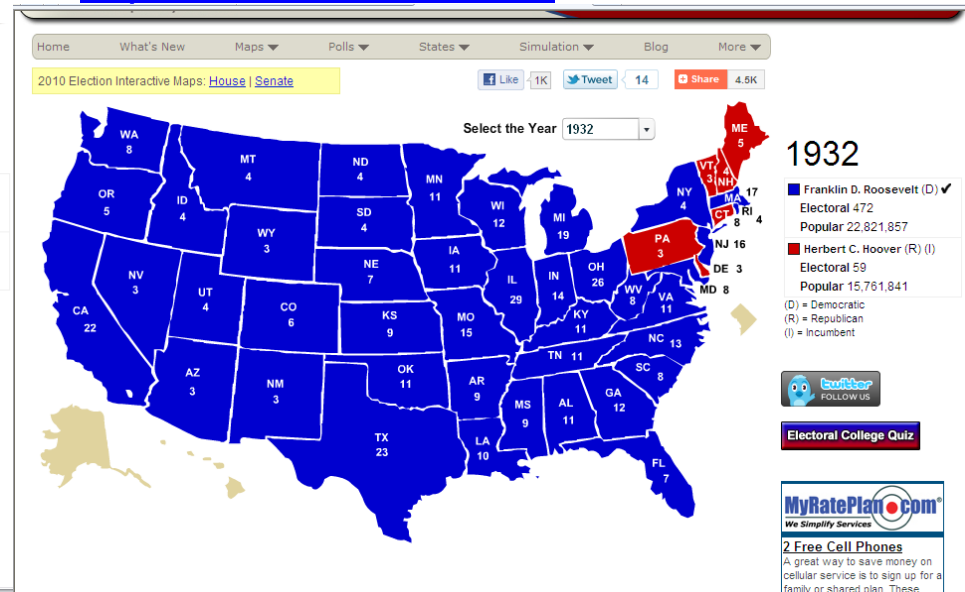
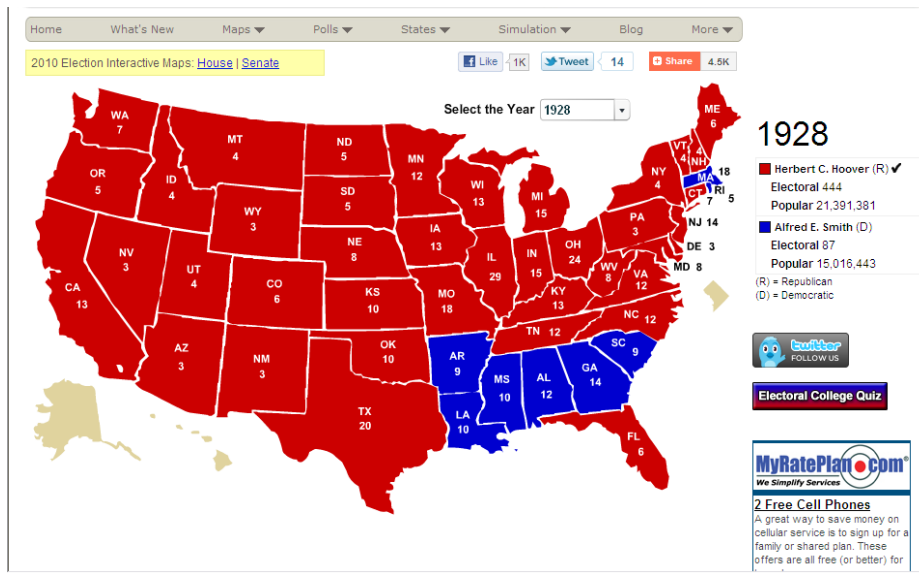
*The Electors shall... vote by Ballot for two persons... The Person having the greatest Number of Votes shall be the President, after the Choice of the President; the Person having the greatest Number of Votes of the Electors shall be the Vice President.*

What problems might happen with this system?

## **The 12<sup>th</sup> Amendment**

The Electors shall ... vote by ballot for  
President and Vice-President...they shall  
name in their ballots the person voted for as  
President, and in distinct ballots the person  
voted for as Vice-President.

## Exploring Electoral Maps from <http://www.270towin.com>



## Exploring Electoral Maps

Observations	Prior knowledge

## Line of Succession

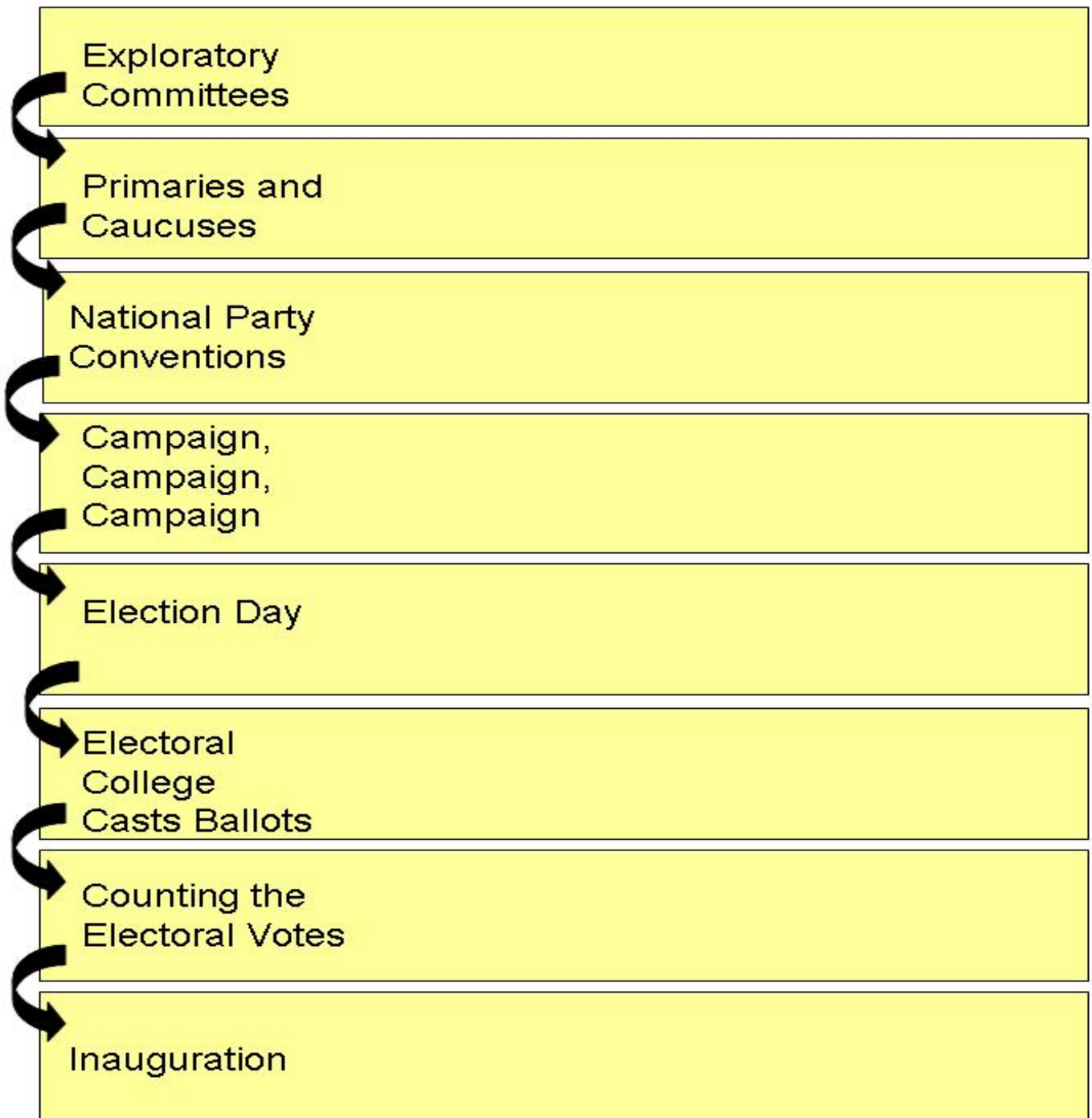
Office	Name of Office Holder Today
President of the United States	

Provide two historical examples of when the line of succession was used. Identify the initial office holder (president), the officer that ended up becoming president and their title, and the date.

a.

b.

## Path to the Presidency





## Campaign Strategy for the Electoral College

**Step 1:** Using the Electoral College vote for the last 4 Presidential Elections, determine the tendency of each state (last column), by identifying it as Red (generally Republican), Blue (generally Democrat), or Battleground (tends to swing based on the year, candidate, and issues).

**Step 2:** Campaign Strategy

- You have \$100 million to spend on campaigning. Fill in the chart as to how much you would spend in each state.
- You have 200 campaign stops you can schedule. How would you schedule them to best help your Electoral College numbers? In other words, fill in the chart as to how many for each state.

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you’ll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Alabama	9	R/R/R/R			
Alaska	3	R/R/R/R			
Arizona	10	D/R/R/R			
Arkansas	6	D/R/R/R			
California	55	D/D/D/D			
Colorado	9	R/R/R/D			
Connecticut	7	D/D/D/D			
Delaware	3	D/D/D/D			
Florida	27	D/R/R/D			
Georgia	15	R/R/R/R			
Hawaii	4	D/D/D/D			

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Idaho	4	R/R/R/R			
Illinois	21	D/D/D/D			
Indiana	11	R/R/R/D			
Iowa	7	D/D/R/D			
Kansas	6	R/R/R/R			
Kentucky	8	D/R/R/R			
Louisiana	9	D/R/R/R			
Maine	4	D/D/D/D			
Maryland	10	D/D/D/D			
Massachusetts	12	D/D/D/D			
Michigan	17	D/D/D/D			
Minnesota	10	D/D/D/D			
Mississippi	6	R/R/R/R			
Missouri	11	D/R/R/D			
Montana	3	R/R/R/R			

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Nebraska	5	R/R/R/R			
Nevada	5	D/R/R/D			
New Hampshire	4	D/R/D/D			
New Jersey	15	D/D/D/D			
New Mexico	5	D/D/R/D			–
New York	31	D/D/D/D			
North Carolina	15	R/R/R/D			
North Dakota	3	R/R/R/R			
Ohio	20	D/R/R/D			
Oklahoma	7	R/R/R/R			
Oregon	7	D/D/D/D			
Pennsylvania	21	D/D/D/D			
Rhode Island	4	D/D/D/D			
South Carolina	8	R/R/R/R			
South Dakota	3	R/R/R/R			

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Tennessee	11	D/R/R/R			
Texas	34	R/R/R/R			
Utah	5	R/R/R/R			
Vermont	3	D/D/D/D			
Virginia	13	R/R/R/D			
Washington	11	D/D/D/D			
West Virginia	5	D/R/R/R			
Wisconsin	10	D/D/D/D			
Wyoming	3	R/R/R/R			
District of Columbia	3	D/D/D/D			

**Step 3:** Now that you have completed the chart, highlight the states you have focused on and their Electoral College votes to reach 270.

**Step 4:** How might information on voter demographics such as race, gender, and religious group affiliation affect your campaign strategy? Which group(s) would you target? Why?

## Teacher Reference Guide: Campaign Strategy for the Electoral College

**Step 1:** Using the Electoral College vote for the last 4 Presidential Elections, determine the tendency of each state (last column), by identifying it as Red (generally Republican), Blue (generally Democrat), or Battleground (tends to swing based on the year, candidate, and issues).

**Step 2:** Campaign Strategy

- You have \$100 million to spend on campaigning. Fill in the chart as to how much you would spend in each state.
- You have 200 campaign stops you can schedule. How would you schedule them to best help your Electoral College numbers? In other words, fill in the chart as to how many for each state.

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Alabama	9	R/R/R/R			Red
Alaska	3	R/R/R/R			Red
Arizona	10	D/R/R/R			Red
Arkansas	6	D/R/R/R			Red
California	55	D/D/D/D			Blue
Colorado	9	R/R/R/D			Red**
Connecticut	7	D/D/D/D			Blue
Delaware	3	D/D/D/D			Blue
Florida	27	D/R/R/D			Battleground
Georgia	15	R/R/R/R			Red
Hawaii	4	D/D/D/D			Blue

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Idaho	4	R/R/R/R			Red
Illinois	21	D/D/D/D			Blue
Indiana	11	R/R/R/D			Red
Iowa	7	D/D/R/D			Blue
Kansas	6	R/R/R/R			Red
Kentucky	8	D/R/R/R			Red
Louisiana	9	D/R/R/R			Red
Maine	4	D/D/D/D			Blue
Maryland	10	D/D/D/D			Blue
Massachusetts	12	D/D/D/D			Blue
Michigan	17	D/D/D/D			Blue
Minnesota	10	D/D/D/D			Blue
Mississippi	6	R/R/R/R			Red
Missouri	11	D/R/R/D			Battleground
Montana	3	R/R/R/R			Red

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Nebraska	5	R/R/R/R			Red
Nevada	5	D/R/R/D			Battleground
New Hampshire	4	D/R/D/D			Blue
New Jersey	15	D/D/D/D			Blue
New Mexico	5	D/D/R/D			Blue** _
New York	31	D/D/D/D			Blue
North Carolina	15	R/R/R/D			Red
North Dakota	3	R/R/R/R			Red
Ohio	20	D/R/R/D			Battleground
Oklahoma	7	R/R/R/R			Red
Oregon	7	D/D/D/D			Blue
Pennsylvania	21	D/D/D/D			Blue
Rhode Island	4	D/D/D/D			Blue
South Carolina	8	R/R/R/R			Red
South Dakota	3	R/R/R/R			Red

State	#of electoral college votes*	Last 4 elections – 1996/2000/ 2004/2008	How much you'll spend	# of campaign visits	Tendency – Red/ Blue/ Battleground
Tennessee	11	D/R/R/R			Red
Texas	34	R/R/R/R			Red
Utah	5	R/R/R/R			Red
Vermont	3	D/D/D/D			Blue
Virginia	13	R/R/R/D			Red**
Washington	11	D/D/D/D			Blue
West Virginia	5	D/R/R/R			Red
Wisconsin	10	D/D/D/D			Blue
Wyoming	3	R/R/R/R			Red
District of Columbia	3	D/D/D/D			Blue

**Step 3:** Now that you have completed the chart, highlight the states you have focused on and their Electoral College votes to reach 270.

**Step 4:** How might information on voter demographics such as race, gender, and religious group affiliation affect your campaign strategy? Which group(s) would you target? Why?

**Teacher Notes:**

\*Number of Electoral College votes is based on 2000 census and will change by the 2012 election.

\*\* These states have been closely observed as possibly ready to shift and are seen as future battleground states.



## Money and Campaigns

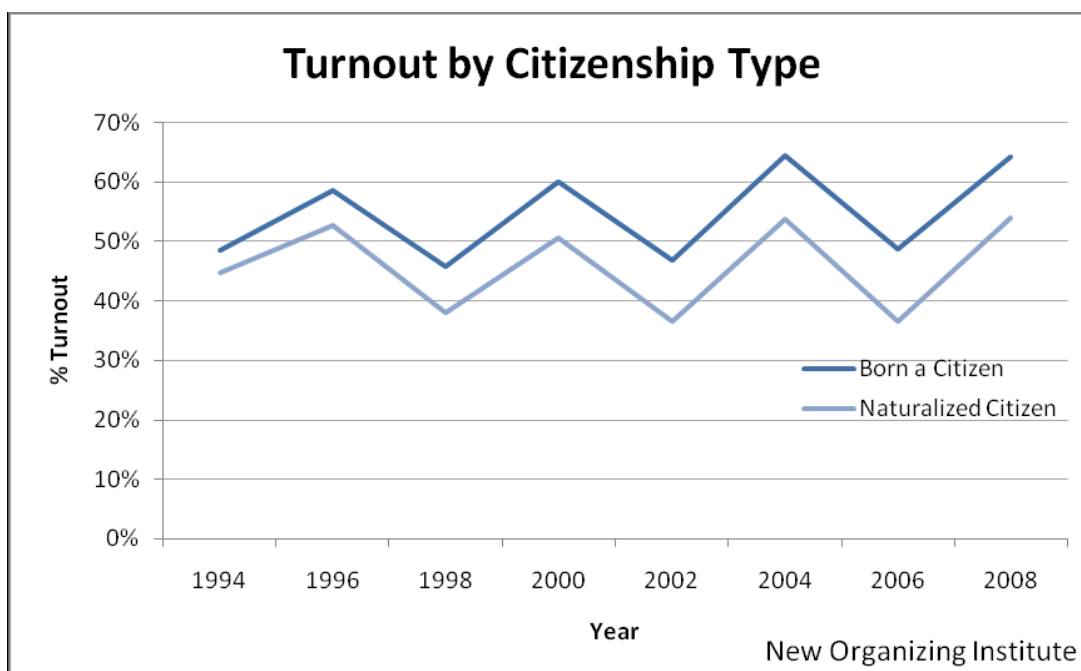
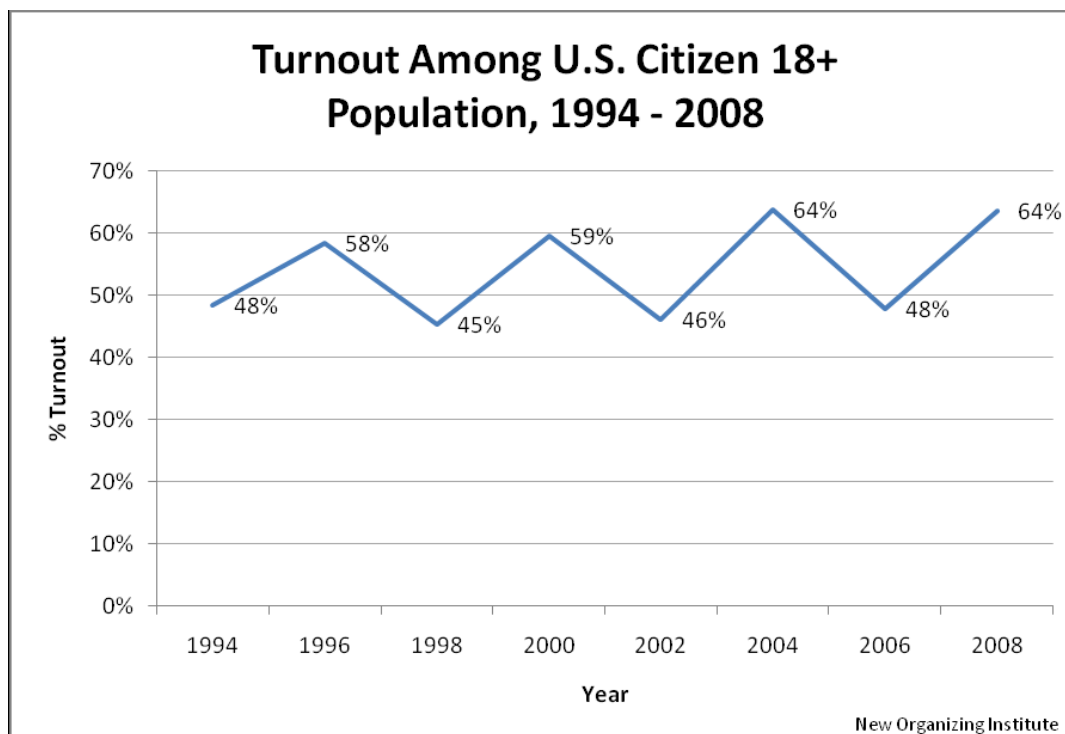
### Questions to Think About

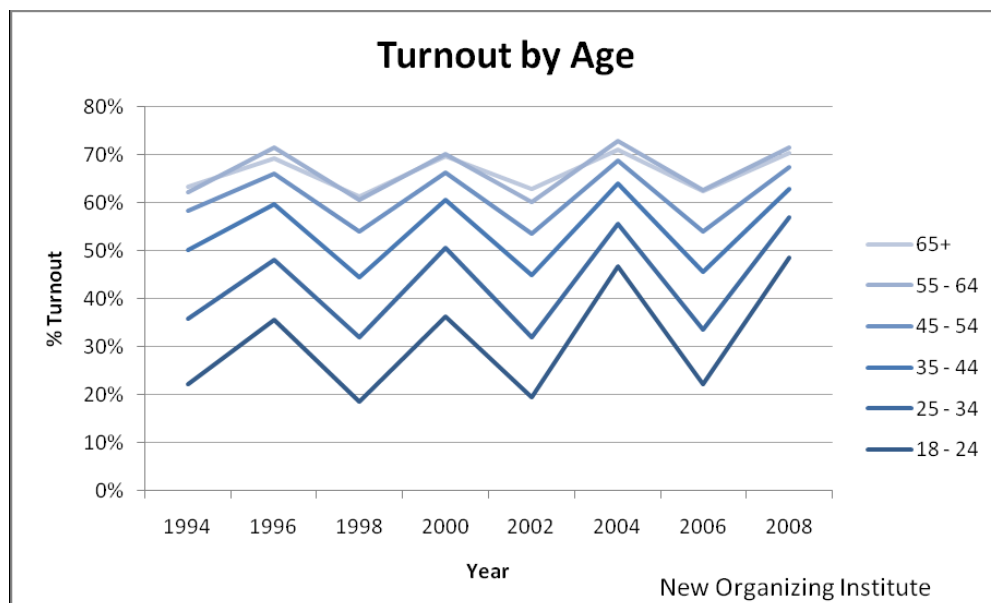
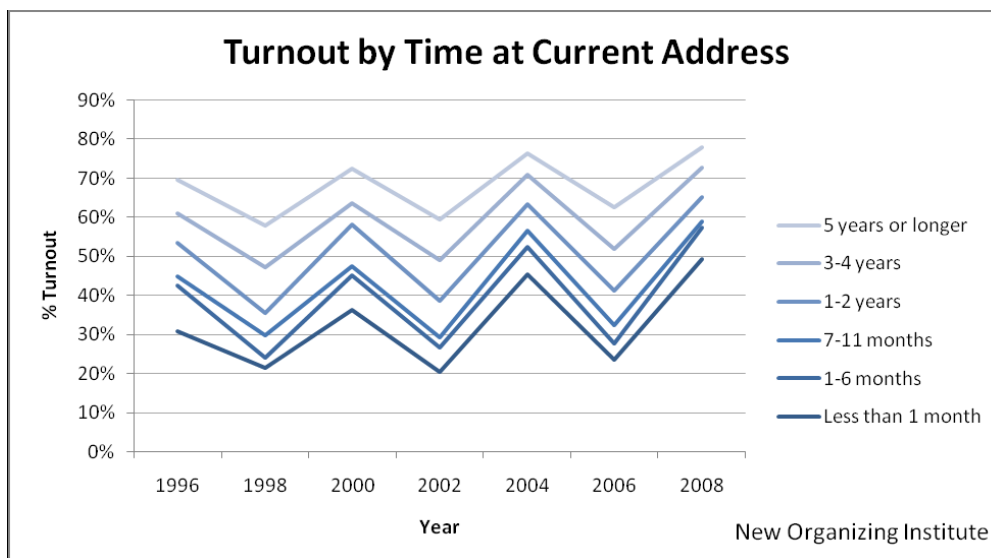
- If they had more money to conduct their campaign, what would they do?
- How might the money factor affect who runs for office?
- Should anybody be allowed to donate whatever they want to campaigns? Would it matter if they were a citizen, a corporation, a foreigner, a foreign corporation?
- Should there be any rules about contributions?
- What recommendations, if any, would you make to the current system?

## What Do You Think??

1. Which type of election traditionally has a greater turnout, presidential or midterm?
2. How might mobility (how long a person lives at a particular address) affect voter turnout?
3. What age group is most likely to vote?
4. Which factor do you think has a greater impact on who is most likely to vote – age or mobility?
5. Which is most likely to vote: high school drop out; high school graduate; some college; bachelor's degree?
6. Which of the following is least likely to vote: high school drop out; high school graduate; some college; bachelor's degree?
7. Who is more likely to vote – men or women?
8. Who is more likely to vote – people who were born a citizen or those that were naturalized?
9. Do you think Hispanics are more or less likely to vote compared to the general population?
10. Do you think African Americans are more or less likely to vote compared to the general population?
11. Do you think single women are more or less likely to vote compared to the general population?
12. How might union membership be related to voter turnout?
13. Which do you think are most likely to vote -- employed, unemployed or those not in the labor force (those who do not have a job and are not looking for a job)?
14. Which do you think are least likely to vote -- employed, unemployed or those not in the labor force (those who do not have a job and are not looking for a job)?
15. Who do you think would be more likely to vote – poor people, middle class, or upper class?

## Demographic Data for Presidential and Midterm Elections (1994 – 2008)

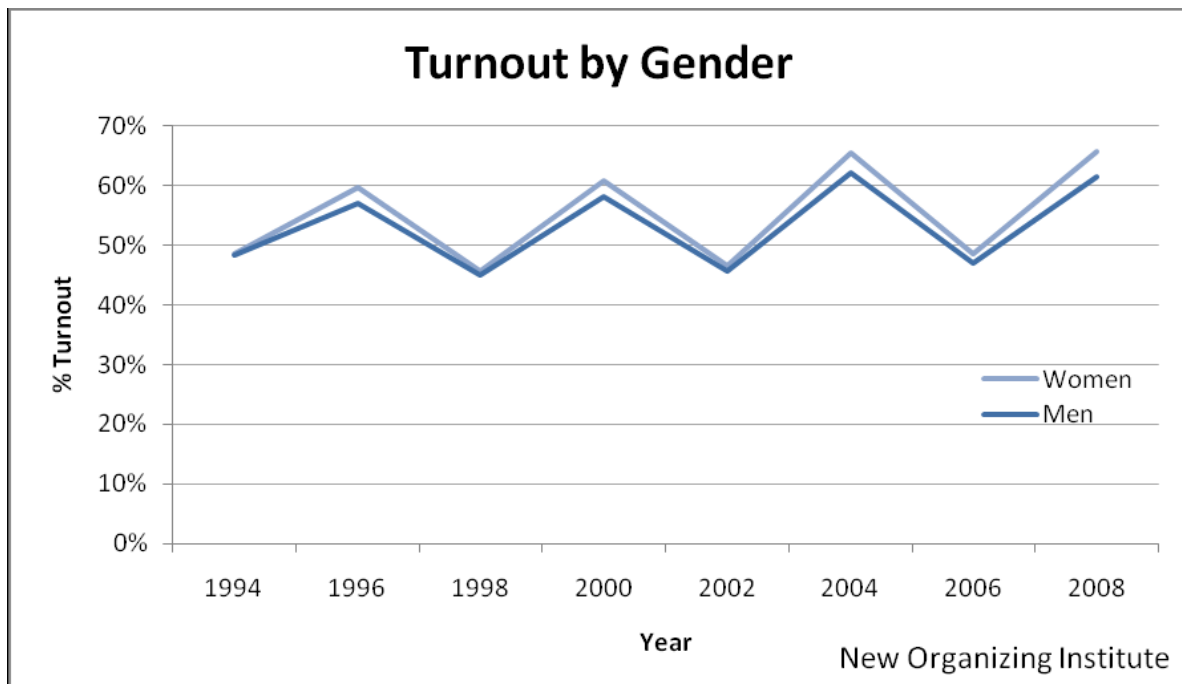
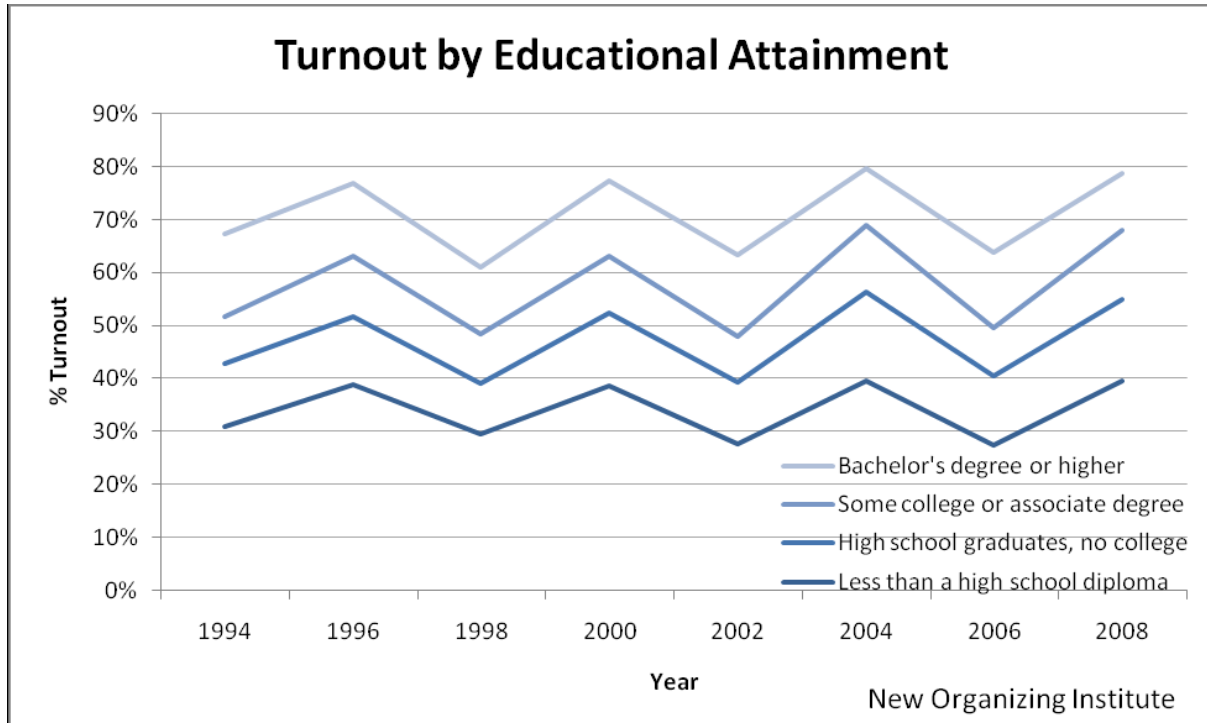


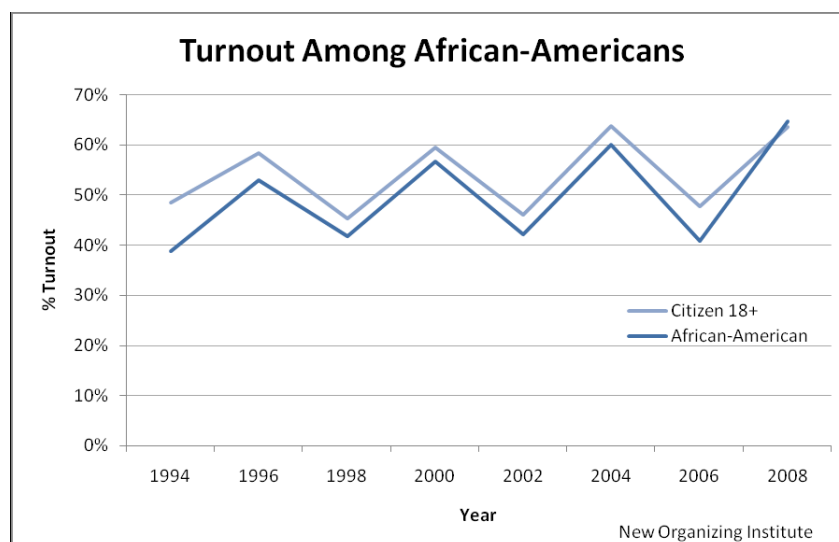
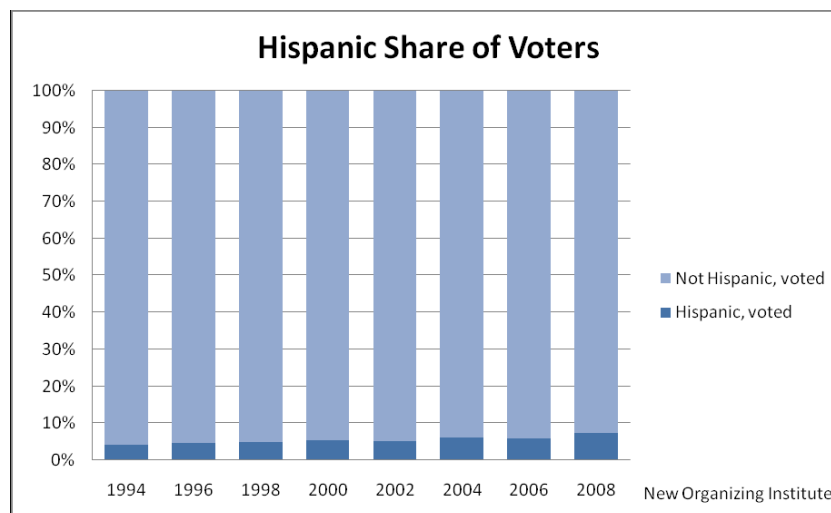
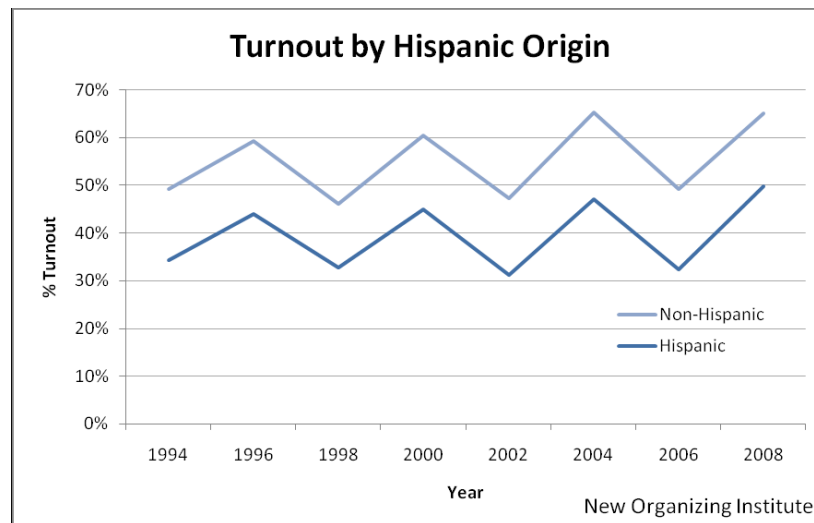


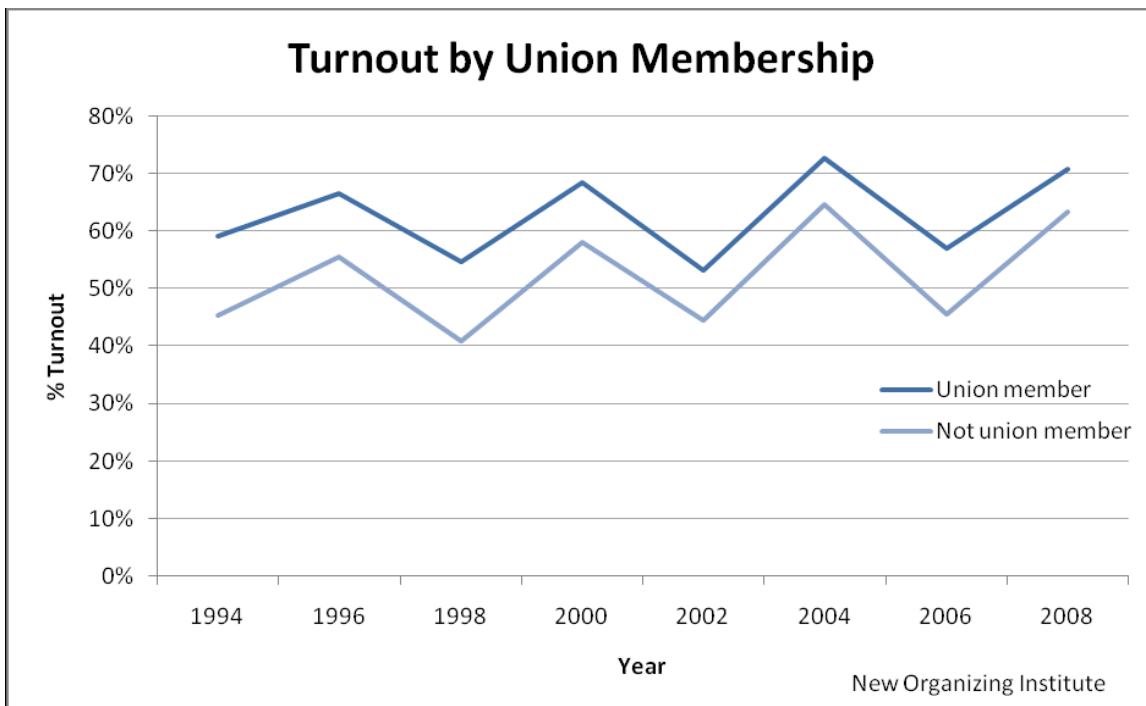
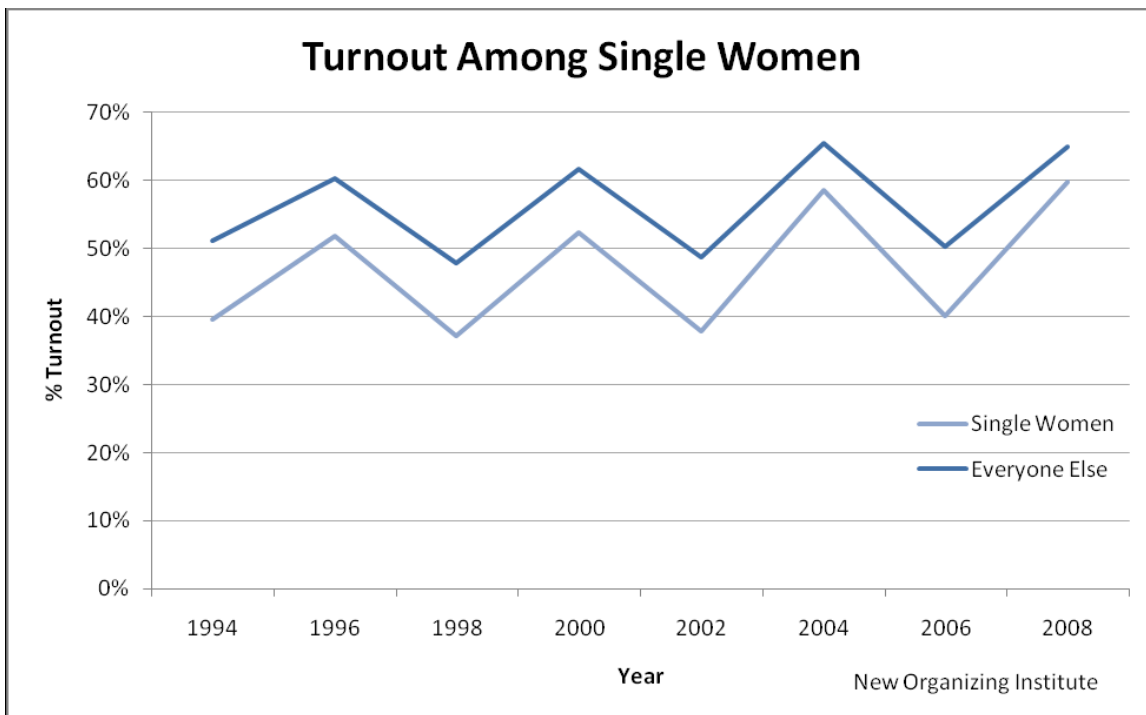
**Average Turnout by Age and Length of Residence, 1996 - 2008<sup>4</sup>**

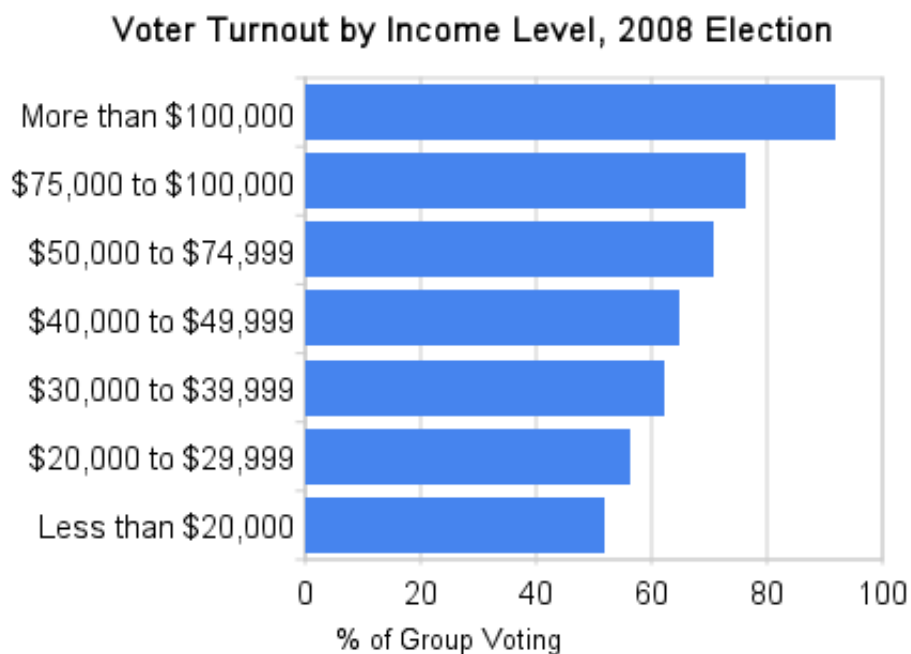
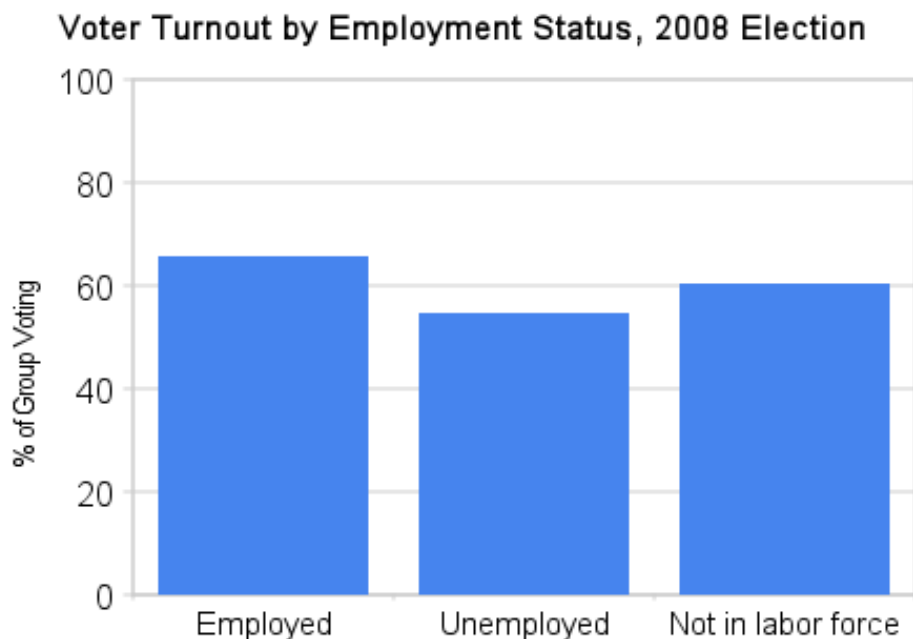
	1-6 months	7-11 months	1-2 years	3-4 years	5 years or longer
<b>18 - 24</b>	30%	30%	35%	37%	41%
<b>25 - 34</b>	39%	41%	49%	54%	54%
<b>35 - 44</b>	43%	47%	53%	61%	66%
<b>45 - 54</b>	46%	52%	56%	64%	72%
<b>55 - 64</b>	52%	56%	64%	70%	76%
<b>65+</b>	53%	53%	61%	70%	74%

Figure 1.13: Average turnout by age and length of residence for U.S. Citizen 18+ population. Source: New Organizing Institute analysis of Census CPS Voting and Registration Supplement data.









All above from: Mankani, Nirmal and Ethan Roeder, *2010 TURNOUT: QUANTIFYING THE QUANDARY How Voting in 2010 will be Unlike any Previous Midterm in Recent History and How it will be Exactly the Same*. New Organizing Institute. September 2010. 11 January 2011 <<http://neworganizing.com/resources-tools/2010-turnout-quantifying-the-quandry/>>.



## ADVERTISING TECHNIQUES

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### 1. FACTS AND FIGURES

Statistics and objective factual information is used to prove the superiority of a candidate or policy. Examples may include the unemployment rate, deficit numbers, cost of a war, number of troops, cost of a government program, etc.

### 2. PATRIOTISM

The suggestion that voting for a candidate or favoring a particular policy shows your love of your country.

### 3. PLAIN FOLKS

The suggestion that a candidate understands the problems of ordinary people. *E.g. elderly people sitting down to figure out how to pay their bills on a fixed income.*

### 4. TESTIMONIAL

A famous personality is used to endorse the candidate. *E.g. a famous actor/actress appears with the candidate in a commercial, or speaks on their behalf.*

### 5. SIMPLE SOLUTIONS

Avoid complexities, and attack many problems with one solution. *E.g. Get America back on track.*

### 6. REPETITION

The idea is repeated at least four times.

### 7. EMOTION

Words and/or images that will make you feel strongly about someone or something. *E.g., mushroom cloud raising fears of nuclear attack; murderers being set free raising fears of safety; images of daybreak showing a new day in America.*

### 8. GLITTERING GENERALITIES

The glittering generalities technique uses appealing words and images to sell the candidate or policy. The message this commercial gives, indirectly, is that if you vote for the candidate or support the policy, you will be happier and it will change your life. It can also be used to frame the opposition in a negative light.

### 9. BANDWAGON

*Bandwagon* is a form of propaganda that exploits the desire of most people to join the crowd or be on the winning side, and avoid winding up on the losing side. Few of us would want to wear nerdy cloths, smell differently from everyone else, be unpopular, or vote for a losing candidate.

## **Script from Ronald Reagan's 1984 re-election campaign commercial**

ANNOUNCER:

Here's the difference between the two ways of dealing with the nation's economy.

With Reaganomics, you cut taxes. With Mondale-nomics, you raise taxes.

Reaganomics: You cut deficits through growth and less government. Mondale-nomics: You raise taxes.

With Reaganomics, you create incentives that move us all forward. With Mondale-nomics, you raise taxes.

They both work. The difference is Reaganomics works for you. Mondale-nomics works against you.

*Questions for discussion:*

1. What words and phrases were repeated?
2. What other words or ideas are associated with "Reaganomics" and "Mondale-nomics"?
3. What effect does repetition have on the ad's message?

## Short and Sweet or Long and Lovely?

### Source #1: Transcript of Bill Clinton ad, 1996, "Accomplishment"

ANNOUNCER:

Ten million new jobs. Family income up \$1600. President Clinton cut the deficit 60 percent. Signed welfare reform-requiring work, time limits. Taxes cut for 15 million families. Balancing the budget. America's moving forward with an economic plan that works. Bob Dole: \$900 billion in higher taxes. Republicans call him a tax collector for the welfare state. His risky tax scheme would raise taxes on 9 million families. Bob Dole. Wrong in the past. Wrong for our future.

1. Describe the effect of the short sentences used in this commercial.
  2. What is the overall message of the ad? Is the choice of language an effective way to convey this meaning? Why or why not?
  3. With whom are positive words associated? Negative words?
- 

### Source #2: "Religion" ad from the 1960 election campaign of the first Catholic president, John F. Kennedy

WOMAN: You would be divided between two loyalties, between your church and your state, if you were to be elected president?

JFK: The question is whether I think that if I were elected president, I would be divided between two loyalties, my church and my state. Let me just say that I would not. I have sworn to uphold the Constitution, in the fourteen years I have been in Congress, in the years I was in the service. The Constitution provides in the First Amendment that Congress shall make no laws abridging the freedom of religion. I must say I believe in it; I think it's the only way that this country can go ahead. Many countries do not believe in it; many countries have unity between church and state. I would be completely opposed to it. And I say that whether I'm elected president, or whether I continue as a Senator, or whether I'm a citizen. That is my view based on long experience. So in answer to your question, I would fulfill my oath of office, as I have done for fourteen years in the Congress. There is no article of my faith that would in any way inhibit-I think it encourages-the meeting of my oath in office. And whether you vote for me or not because of my competence to be president, I am sure that no one believes that I'd be a candidate for the presidency if I didn't think I could meet my oath of office. Secondly, Article Six of the Constitution says there shall be no religious test for office. That's what was written in the Constitution: Jefferson, Washington, all the rest. They said that every American will have an opportunity. Now you cannot tell me that the day I was born it was said I could never run for president because I wouldn't meet my oath of office. I would not have come here if I didn't feel that I was going to get complete opportunity to run for office as a fellow American in this state. I would not run for it if in any way I didn't feel I could do the job. I come here today saying that I think this is an issue. . . [crowd cheering and clapping]

4. What is the main idea that Kennedy is trying to express? What support does he give for his answer?
5. Kennedy gives a long, detailed answer to a short question. Why do you think this is so? Would the ad's message have been more or less effective if he had just given a brief answer? Explain.
6. Compare the Clinton ad to the Kennedy ad. Which is more effective in its use of language to put forth a message? Why?

## Individual Investigation

1. Go to the website [www.livingroomcandidate.org](http://www.livingroomcandidate.org).
2. Choose one ad from the period between 1952 – 1972 and one ad from 1980 – 2008.
3. Watch the ads and then read the transcripts.
4. Compare the use of language (both spoken and written) in the ads from different eras. What similarities do you notice? What differences?
5. Compare how each ad uses people to make their points. What similarities do you notice? What differences?
6. Identify the advertising techniques used in the ads and provide evidence of how they were used in the ad.
7. Investigate the accuracy of each ad using either [www.factcheck.org](http://www.factcheck.org) or [www.politifact.com](http://www.politifact.com). Describe your findings.

## **An Argument on Foreign Policy to Consider for Teachers**

Adopted from AN UNDERSTANDING OF THE CONSTITUTION'S FOREIGN AFFAIRS POWER by Thomas J. Campbell. Thomas J. Campbell is Professor of Law at Stanford University. He spoke at The Heritage Foundation on October 6, 1986.

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On April 14, 1986, elements of the United States Naval and Air Forces carried out military action against five targets within the sovereignty of Libya. The action was taken upon the order of President Ronald Reagan, having consulted with leaders of both parties and both Houses of Congress, pursuant to the requirements of the War Powers Resolution. Substantial damage was inflicted upon the Libyan targets, and two American servicemen lost their lives.

On October 22, 1983, 6,000 United States troops, joined by 300 troops of Barbados and Jamaica, invaded the sovereign nation of Grenada and engaged over 600 Cuban troops and armed airport workers. The fighting was completed in two days; all but 300 United States troops were withdrawn in one month after loss of American, Cuban, and Grenadian lives.

In the spring of 1980, President Carter ordered United States military forces into Iran in an unsuccessful attempt to rescue the American hostages. Substantial loss of life among the American servicemen resulted.

These three recent incidents raise a fundamental question for U.S. constitutional law in a modern world of terrorism and nuclear weapons. Terrorists operate with the support of individual nations, yet under a hypocritical cloak of denial. The acts of terrorists in form, if not in substance, are thus deprived of the character of acts of war. And the actions taken by the President in response thus do not easily fit within the constitutional category of declaration of war, yet they are certainly warlike. What justification is there for such use of force, and how does the explanation fit within our constitutional structure?

The concept of total war, imminently creatable and, through nuclear weapons, universally destructive, tugs at another premise of our constitutional allocation of powers. The formal involvement of Congress in a declaration of war seems oddly out of place in a world where the war, and the world, could be over in less time than it takes to convene a joint session.

The focus of this paper is the proper allocation of functions between the executive and the legislative branches. This should illuminate why the actions of President Reagan in Grenada and Libya and of President Carter in Iran were each constitutional and in accordance with international law as that term has meaning in the U.S. Constitution.

### **I. TWO SOURCES OF FOREIGN AFFAIRS AUTHORITY**

The Constitution has certain explicit passages dealing with the foreign affairs power. Specifically, the President is given authority to make treaties, to which the Senate is given the authority to advise and consent (Article II, Section 2). The President is made Commander-in-Chief of the Army and Navy (Article II, Section 2); but the Congress is given the authority to raise and support armies, and to provide and maintain a Navy (Article I, Section 8, Clauses 12 and 13). The Congress alone is given the power to

declare war. Congress is also given authority to define offenses against the law of nations and to set punishments for them (Article I, Section 8, Clause 10).

In addition to these explicit provisions, there are also certain powers that flow merely from the fact that the United States is a sovereign nation.

This claim actually has much more ancient roots, going back for its clearest exposition to a famous debate between Alexander Hamilton and James Madison in 1793. England and France had gone to war in that year, and President George Washington had announced the United States neutrality. At once, the Proclamation was challenged, in that nowhere in the Constitution is the President given the explicit authority to proclaim neutrality.

As you might suspect, Alexander Hamilton was first to the rescue. In a series of articles, he developed the theory that the executive power, vested in the President under Article II, inherently included the full array of rights in foreign affairs on behalf of the American colonists by the British Crown. Contrast this view with Hamilton's earlier position, taken in Federalist 69, that the authority of Commander-in-Chief devolved upon the President substantially less power than -was enjoyed by the-British Monarch.

James Madison responded that the Congress more rightfully inherited these powers. Most important for our purposes, both men conceded that there were indeed powers inherent in the idea of sovereignty that were not spelled out in the Constitution. The only disagreement was which branch could exercise them, the President or Congress.

As to the allocation of these unspecified powers between the Congress and the Executive, the Executive has won out over the subsequent years. In large part, this outcome was foretold by John Jay, in Federalist 64, that the executive branch had inherent advantages over the legislative in the conduct of foreign affairs, drawing from its ability to act quickly and, if need be, in secret. Much of this development, over the subsequent two hundred years, owes its force as well to [the] maxim, "the tools belong to the man who can use them" (Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)). The President could use the inherent powers of sovereignty in foreign affairs, and so they became his.

## II. THE MODERN FOREIGN AFFAIRS POWERS

### A. The Power to Declare War

Congress has the power to declare war, but the President, as the Commander of the Armed Forces can send troops into conflict. In 1973, the War Powers Act was adopted. It requires the President to consult with the Congress "in every possible instance ... before introducing United States armed forces into hostilities." No later than 48 hours following any such introduction, and regularly thereafter, consultation with the Congress is required. Sixty days from the initial involvement of U.S. troops, the President must withdraw them unless the Congress has explicitly authorized their continuance. This legislation is a modern day variety of the declaration of war. It has several advantages over the traditional declaration of war that are evident in consideration of the Grenada invasion and the Libyan action of described above.

Bear in mind that declarations of war have often been much contested in the U.S. Congress with substantial time elapsing after the President's request. Pearl Harbor and the immediately following declaration of war were exceptions rather than the rule. The Mexican War was debated for months, the First World War, for weeks. It can safely be assumed that, in the examples at hand, a request for a declaration of war against Libya or against the regime of General Austin in Grenada would have engendered substantial delay and debate. All promise of surprise, so essential to each incident, would have been lost.

Even more dangerously, such delay would have created the opportunity for U.S. adversaries to ally themselves with Grenada or Libya. It can scarcely be doubted that, long before Congress had finished debating the issue, Cuba would have allied itself with Grenada, and the Soviet Union with Cuba, to stand by the General Austin regime in the event of an armed attack. And during the lengthy debate on a declaration of war against Libya, Syria and Iran, if not the Soviet Union, would have affirmed their solidarity with Colonel Qadhafi.

Remember one of the cause of World War I -- alliances. By contrast, both the Grenadian and Libyan incidents were commenced and virtually completed by the time the rest of the world knew of them. There was no time to build alliances. Of course, Cuba and the Soviet Union protested. But it is quite a different matter to protest a fait accompli than to add one's prestige to a game of mutual bluff with nuclear stakes.

But what of the Constitution? In the War Powers Act, we have a modernization of the declaration of war. Here, it is Congress that declares war, and it is Congress that established the consultation, notification, and duration requirements of the War Powers Act. Congress has recognized that, in the modern context, force must often be used without an overt declaration of war. Once hostilities commence, of course, there is no further need to exclude debate, and Congress has established a 60-day period as a rough cut for how long such debate might run.

## **B. The Treaty Making Power**

Executive agreements in the realm of foreign policy present an interesting problem. Consider two examples. The fundamental charter dealing with commercial trade between eighty-one nations, including all the free economic powers, the so-called GATT (General Agreement on Tariffs and Trade) has force in American by dint of executive agreement. Does GATT have teeth as domestic law? It certainly does. GATT has been used to strike down the "Buy American" laws of several states. Yet GATT was never submitted to the Congress, never approved by anyone other than the President. Is the GATT a treaty?

In this example, is it adequate to use an executive agreement rather than a treaty? The executive agreement cuts out a crucial constitutional step: ratification by the Senate. Compared to the War Powers Act, the executive agreement changes the governmental authority in a way that is not consistent with the Constitution's separation of powers and checks and balances structures. Thus, the executive agreement it is a modern device at fundamental odds with the allocation of constitutional authority.

Consider a nation's right to respond to aggression, whether from another state or from an international criminal. This right exists in the absence of any explicit constitutional provision; it would be hard to



conceive nationhood without this right. President Wilson recognized the need to arm U.S. merchant ships against submarine attacks prior to America's entry into World War I. A bill to this precise effect had been introduced in Congress, but had failed. Woodrow Wilson went ahead under his own authority. Had this been a matter of domestic action, Congress' decision would have made the president's action unconstitutional. But, unlike domestic authority, in the international arena, not only is congressional authorization unnecessary, congressional prohibition is unconstitutional.

An even earlier example, and one with eerie modern day implications, is provided by President Jefferson's treatment of attacks upon American naval vessels by the Sultan of Tripoli. Pirates operating out of Tripoli were pursued and hanged, under President Jefferson's order. But Tripolitania naval vessels themselves were not pursued, unless they had attacked first. The power asserted by President Jefferson was the right to respond to attack from a foreign power, and the right to pursue international criminals such as pirates, even into foreign territory, if in hot pursuit.

In the modern context, the parallels are all too obvious. The power to deploy counterterrorist forces anywhere in the world is the modern day equivalent of commissioning naval vessels to seize and hang pirates. The President should exercise that authority without the hesitation imposed by the War Powers Act.

Lastly, the President has the implied right to carry on diplomacy, including the accreditation of foreign ministers and thus the recognition of foreign governments. President Washington took no consultation with the Congress in his handling of the Citizen Genet affair, and the power has been exercised unilaterally by the President ever since.

From the earliest times, Presidents have used the recognition power as a way of choosing sides in civil wars or wars to emerge from colonialism. Often, aid has gone beyond mere recognition and has included the provision of arms to one side. Here, the unilateral power ends.

Should the President choose to recognize the government of Arturo Cruz in Nicaragua, Jonas Savimbi in Angola, or the Mujahideen in Afghanistan, it would be entirely within his prerogative to do so. The provision of money and support, however, would require appropriation power. In that case we run into an explicit constitutional grant of power to the Congress. Therefore, it would be constitutional for the Congress to cut off funds to support these regimes. However, once Congress appropriates funding for general diplomatic functions which are carried out by the executive branch, Congress cannot dictate specific policies after the fact.

\* The author refers the reader to the treatise, "The President: Office and Powers 1787-1948, History and Analysis of Practice and Opinion" by Professor Edward S. Corwin (1948), for corroboration of several of the historical events described in the text.



## Constitutional Grants of Power in Foreign Affairs

Branch/Level	Powers	Restrictions
Legislative		
Executive		
Judicial		
Role of States		

**Teacher Resource Guide**  
**Constitutional Grants of Power in Foreign Affairs**

<b>Branch / Level</b>	<b>Powers</b>	<b>Restrictions</b>
<b>Legislative</b>	Provide for common defense, regulate commerce with foreign nations, deal with crime on the high seas and crimes against the laws of nations, to declare war, grant letters of Marque and Reprisal, to raise and support armies and maintain a navy and to make rules governing regulation of land and naval forces, to appropriate funds.	Cannot make treaties. Cannot appoint cabinet members or ambassadors.
<b>Executive</b>	Commander in Chief of armed forces and militia, power to make treaties, can appoint cabinet officials to deal with foreign affairs. Can appoint and receive ambassadors.	Two-thirds of Senate must concur with President to make Treaties valid. Cabinet officials subject to Senate approval. Ambassadors subject to Senate approval.
<b>Judicial/States</b>	Judicial has jurisdiction in all cases affecting ambassadors and public officials.	No foreign policy making powers. Court has generally functioned in the area of foreign affairs to resolve disputes between the executive and legislative branches.
<b>Role of States</b>	None	States have no direct power in the area of foreign affairs.

## Executive Prerogative and Foreign Affairs

Article by Trimble, Phillip R. located at [http://www.novelguide.com/a/discover/eamc\\_02/eamc\\_02\\_00897.html](http://www.novelguide.com/a/discover/eamc_02/eamc_02_00897.html) (1992)

Executive prerogative refers to the President's constitutionally based authority to declare policy, take action, and make law without congressional support or in the face of inconsistent congressional legislation. This authority may be seen as part of the separation of powers doctrine under which the President has exclusive executive power that Congress may not invade because Congress's authority is limited to legislative powers. Executive prerogative may also refer to certain emergency powers under which the President may act contrary to the Constitution, such as spending funds without an appropriation or contrary to an act of Congress that would properly be classified as a legislative act.

Executive prerogative mostly relates to foreign affairs but may also include domestic acts, such as actions during war or national emergency, dismissal of cabinet officers appointed with Senate participation, and assertion of executive privilege to protect communications of executive branch officials from congressional or judicial inquiry. The Constitution does not expressly delegate a "foreign affairs" power to the President or to any single branch of the government. Indeed, the Constitution gives most specific foreign relations powers to the Congress. Congressional powers include the powers to declare war, to regulate foreign commerce, and to define and punish offenses against the law of nations, piracy, and felonies committed on the high seas, as well as the powers to authorize an army, navy, and militia and to make rules for the regulation of land and naval forces.

Notwithstanding this authority, the President dominates foreign affairs. Yet the Constitution delegates relatively few foreign relations powers to the President, and several of these powers are shared with the Senate or Congress. The President has the power to make treaties and appoint ambassadors, but only with the participation of the Senate. His power as Commander-in-Chief is subject to limitation by the congressional war, legislative, and appropriations powers. The President has the power to receive ambassadors, the duty (and implicitly the power) to take care that laws (including treaties and customary international law) be faithfully executed, and a general executive power. But executive prerogative rests more on historical practice and functional necessity than on constitutional text.

Much of the President's dominance of foreign affairs is not based on Constitutional powers but rather on his access to the media and his political party status. Most presidential foreign affairs authority derives from congressional support. For example, Congress has delegated to the President plenary authority over foreign commerce. It has also authorized and funded a standing armed force, a vast intelligence bureaucracy, and dozens of agencies with thousands of officials participating in all facets of international organization and activities. Having created the bureaucracies, Congress has generally been content to let the executive run them. Executive prerogative has historically sanctioned the President's right to recognize foreign states and governments, establish diplomatic relations, initiate negotiations, determine the content of communications with foreign governments, conduct intelligence operations, conclude presidential executive agreements and initiate military action.

Executive prerogative has been controversial since the first administration of George Washington. After Washington declared neutrality in 1793 in the war between France and Great Britain, Alexander Hamilton and James Madison debated his authority under the pseudonyms Pacificus and Helvidius. The structure of the debate and the arguments advanced back then, have been used repeatedly in foreign policy clashes between the President and Congress. Washington's declaration amounted to a decision not to declare war.

Madison rejected Washington's authority to issue the declaration because in his view neutrality pertained to declaration of war, a congressional power. Madison viewed constitutional powers as strictly separated so that any activity within the scope of a legislative power was precluded to the President. He also advocated a narrow construction of the executive power and other presidential authorities specified in the constitutional text. In Madison's view, the President could only execute laws and policies established by Congress.

Hamilton took a broad view of the executive power, arguing that its scope was limited only by explicit exceptions such as Senate participation in treaty making and congressional power to declare war. Thus, the President could preserve peace until Congress declared war. As the "organ of intercourse" between the United States and foreign nations, the President could make, interpret, suspend, and terminate treaties; recognize foreign governments; and execute the laws of nations (including the law of neutrality). In Hamilton's view, the President shared power with the legislature in war and treaty making.

Washington established other important precedents supporting presidential foreign affairs power. He authorized military actions against American Indians without congressional authorization and dispatched an envoy without Senate approval. He also asserted executive privilege against both the Senate and Congress to protect treaty-negotiating instructions, and he effectively eliminated the Senate's "advice" function in treaty making. Other early Presidents also established major precedents justifying presidential foreign affairs power. John Adams initiated presidential executive agreements. Thomas Jefferson committed funds to purchase military supplies without an appropriation and dispatched the navy to protect U.S. vessels against pirates off Africa.

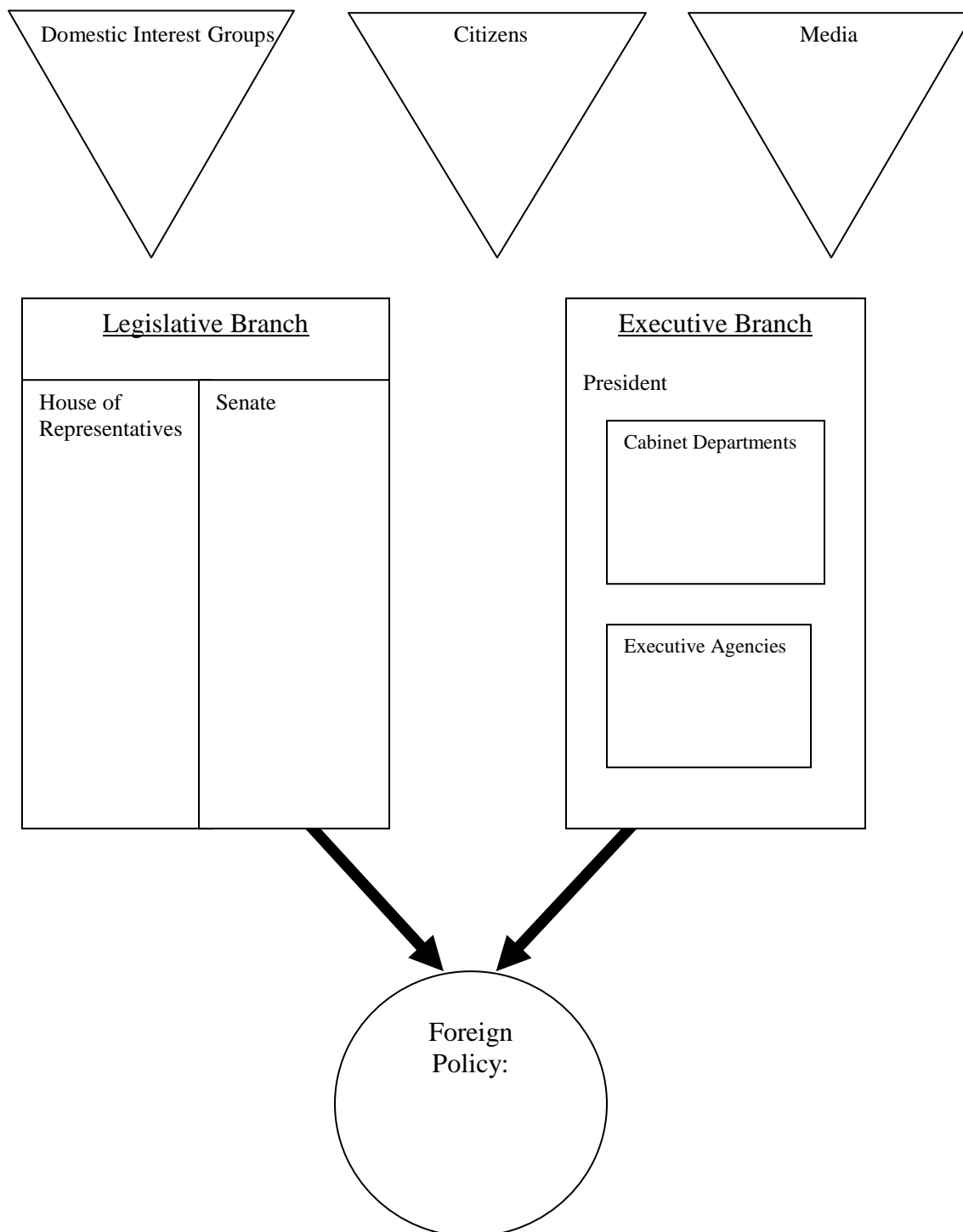
Since then, presidential authority has fluctuated with the strength of particular Presidents and the exigencies of the moment, depending on what the President has claimed and what the Congress has tolerated. The courts generally have declined to adjudicate these controversies. On the few occasions when the Supreme Court has addressed questions of presidential power, it has almost always sided with the President.

In a much-quoted passage, Justice George Sutherland, in *United States v. Curtiss-Wright Export Corp.* (1936), referred to "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations." Sutherland explained that "[t]he President alone has the power to speak or listen as a representative of the nation. He *makes* treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." Sutherland offered a functional explanation: "if, in the maintenance of our international relations, embarrassment ... is to be avoided and success for our aims achieved, congressional legislation ... must often accord to the President a degree of discretion and freedom.... [H]e, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries.... He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results...."

Executive prerogative builds on the negotiation function of the president. Everyone agrees that the President has exclusive authority to recognize foreign states and governments, establish diplomatic relations, and control official communications with foreign governments. The President declares foreign policy, although important declarations like the Monroe Doctrine or support for the African National Congress typically require congressional action to be effective.

The most controversial aspect of executive prerogative concerns the presidential war power. This authority rests in part on the commander-in-chief clause and in part on congressional authorization of military forces and acquiescence in their use. Since World War II, the President has frequently initiated military activities without a congressional declaration of war. Examples include military actions in Korea, the Dominican Republic, Lebanon, Grenada, the Persian Gulf, and Panama. During the Vietnam War, Congress challenged the President, passing the War Powers Resolution over the President's veto. Subsequent presidents disregarded its major limitation, sending troops to the Middle East, Asia, Africa, and Latin America. Some members of Congress complained, but Congress acquiesced to presidential military action, at least for limited purposes. Executive branch officials have also claimed constitutionally based authority to initiate covert intelligence operations.

## Roles in Foreign Policy



## **U.S. Foreign Policy Decisions**

1. The North Atlantic Free Trade Agreement (NAFTA)
2. The Antarctic Treaty (1961)
3. Aerial Bombardment of North Vietnam (Operation Rolling Thunder) (1965)
4. The Kyoto Protocol (1997)
5. Aid to Haiti (2010)
6. Response to Iraqi Invasion of Kuwait (Operation Desert Storm) (1990)
7. Involvement in Bosnian War (1995)
8. The General Agreement on Tariffs and Trade (GATT; now known as the World Trade Organization).
9. US Involvement in Korean War (1950)

### International Organizations Chart

Organization	What is it? Purpose	Events
<b>United Nations</b>	The UN is currently a 192 member group of nations from around the world which came into existence in Oct. of 1945. Its purpose is to bring all the nations of the world together to work for peace and justice and to promote human dignity and the well-being of all people. It provides nations with an opportunity to balance international needs and demands with national interest.	
<b>North Atlantic Treaty Organization (NATO)</b>	Founded in 1949, NATO is an alliance of 28 nations from North America and Europe dedicated to protecting the freedom and security of its members. NATO also plays a role in crisis management and peacekeeping and employs mainly political and military means.	
<b>World Court</b>	The World Court began operations in 1921. It grew out of the League of Nations and was to exercise a judicial role in international affairs. After WWII the Court was reorganized. The Court helped to develop international law by its actions.	
<b>Organization of American States</b>	The OAS traces its roots back to the 19 <sup>th</sup> century but was officially launched in 1948. It is a group of American nations dedicated to promoting peace and justice and maintaining the security of the hemisphere.	
<b>Amnesty International</b>	Amnesty International is a global movement of activists and supporters who work to eliminate abuses of human rights. The movement is independent of any government, religion, political ideology or economic interest. Its purpose is to protect and promote human rights.	
<b>International Red Cross</b>	The International Red Cross is an organization which was created in the 19 <sup>th</sup> century. It is non-governmental agency and was established to provide humanitarian aid to those afflicted during the course of conflicts or other crises.	

### International Organizations Chart

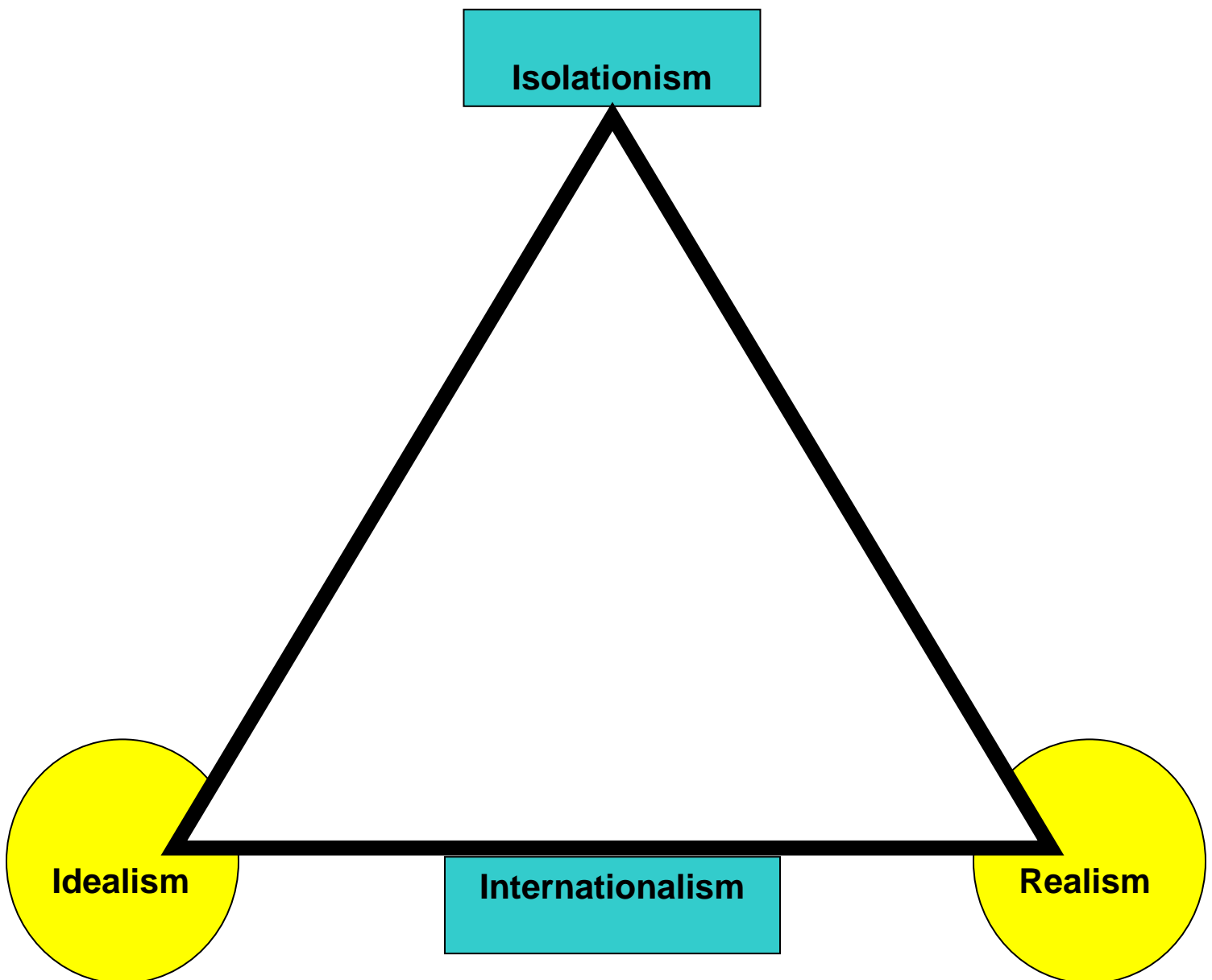
Organization	What is it? Purpose	Events/ Websites
<b>United Nations</b> - Facilitated the Kyoto Protocol - Assisted victims in Haiti - Iraqi Invasion of Kuwait - Bosnian War - General Agreement on Trade and Tariffs (GATT) - US Involvement in Korean War	The UN is currently a 192 member group of nations from around the world which came into existence in Oct. of 1945. Its purpose is to bring all the nations of the world together to work for peace and justice and to promote human dignity and the well-being of all people. It provides nations with an opportunity to balance international needs and demands with national interest.	The United Nations has been involved in numerous actions since its inception. The UN was engaged in the Korean War, the Suez crisis of 1956 and many others including Rwanda and Bosnia. The UN is also active in promoting health and education in many nations.  • <a href="http://www.un.org/cyberschoolbus/unintro/unintro.asp">http://www.un.org/cyberschoolbus/unintro/unintro.asp</a>
<b>North Atlantic Treaty Organization (NATO)</b> - Bosnian War	Founded in 1949, NATO is an alliance of 28 nations from North America and Europe dedicated to protecting the freedom and security of its members. NATO also plays a role in crisis management and peacekeeping and employs mainly political and military means.	NATO was primarily a counterweight to the Warsaw Pact nations for most of its history. NATO was active in Yugoslavia 1993-96, Kosovo in 1999 and has troops in Afghanistan and advisors or trainers in Iraq.  • <a href="http://www.nato.int/cps/en/natolive/faq.htm">http://www.nato.int/cps/en/natolive/faq.htm</a>
<b>World Court</b> - Bosnian War	The World Court began operations in 1921. It grew out of the League of Nations and was to exercise a judicial role in international affairs. After WWII the Court was reorganized. The Court helped to develop international law by its actions.	• The Court has heard many cases over the years. A partial list follows: UK vs. Iran 1951, US vs. USSR 1955, Ethiopia vs. South Africa 1960, New Zealand vs. France 1973, US vs. Iran 1979. • <a href="http://www.nps.gov/archive/elro/glossary/world-court.htm">http://www.nps.gov/archive/elro/glossary/world-court.htm</a>
<b>Organization of American States</b> - Assisted victims in Haiti	The OAS traces its roots back to the 19 <sup>th</sup> century but was officially launched in 1948. It is a group of American nations dedicated to promoting peace and justice and maintaining the security of the hemisphere.	Inter-American Commission on Human Rights created. Alliance for Progress launched in 1961 and Cuba suspended in 1962. Inter-American Court of Human Rights created in 1979 and Cuban suspension revoked in 2009.  • <a href="http://www.oas.org/en/about/who_we_are.asp">http://www.oas.org/en/about/who_we_are.asp</a>
<b>Amnesty International</b> - Bosnian War (1995)	Amnesty International is a global movement of activists and supporters who work to eliminate abuses of human rights. The movement is independent of any government, religion, political ideology or economic interest. Its purpose is to protect and promote human rights.	Amnesty has been active in combating the death penalty and any other perceived denial or compromise of human rights. It has been active during the crises in Rwanda and Bosnia and continually assesses governmental performance in regard to human rights.  • <a href="http://www.amnesty.org/en/who-we-are">http://www.amnesty.org/en/who-we-are</a>
<b>International Red Cross</b> - Vietnam - Assisted victims in Haiti - Bosnian War - US Involvement in Korean War	The International Red Cross is an organization which was created in the 19 <sup>th</sup> century. It is non-governmental agency and was established to provide humanitarian aid to those afflicted during the course of conflicts or other crises.	The Red Cross has been involved in providing aid to the victims of conflicts in all areas of the world. Rwanda, Bosnia, the Middle East and the Americas have all witnessed Red Cross assistance.  • <a href="http://www.icrc.org/eng/who-we-are/index.jsp">http://www.icrc.org/eng/who-we-are/index.jsp</a>



## Trends in Foreign Policy

**Directions:** Use the triangle below to plot the following periods in the development of US foreign policy:

- |  |  |
|--|--|
| A. Early Republic (1783-1800)                                | E. Capitalism, Great Depression, and World War II (1920 -1945) |
| B. Expansion and Reform (1800 - 1860)                        | F. Cold War (1945 – 1990)                                      |
| C. Civil War and Reconstruction (1860 -1877)                 | G. Post Cold War and Post 9/11 World (1990 – Present)          |
| D. Emergence of United States as a World Power (1890 – 1920) |  |



### **Short Answer Assessment**

**Directions:** Describe how these foreign policy statements reflect the conceptual framework presented in the lesson.

I will never hesitate to defend this nation, but I will only send our troops into harm's way with a clear mission...I will rebuild our military to meet future conflicts. But I will also renew the tough, direct diplomacy that can prevent Iran from obtaining nuclear weapons and curb Russian aggression. I will build new partnerships to defeat the threats of the 21st century: terrorism and nuclear proliferation; poverty and genocide; climate change and disease. And I will restore our moral standing, so that America is once again that last, best hope for all who are called to the cause of freedom..."

--- Barack Obama August 27, 2008

It is clear that the future of freedom and peace depend on the actions of America. This nation is freedom's home, and freedom's defender. We welcome this charge of history, and we are keeping it. The war on terror continues. The enemies of freedom are not idle, and neither are we. This country will not rest, we will not stop, we will not tire, until this danger to civilization is removed."

-- Bush December 2, 2003

## Foreign Policy Scenarios

1. A major earthquake, one of the worst on record, rocks Country A, a poor country and longtime ally of the United States. The death toll is over 200,000 and property destruction is extensive.
2. Drug violence in neighboring Country B has resulted in many American tourists being kidnapped and killed. Violence among rival drug gangs has extended over the U.S. border. The American public is outraged.
3. A civil war erupts in Country C. The U.S. has no military or economic interests in the region. One side in the conflict is engaging in ethnic cleansing and genocide.
4. Country D, an American ally for many years suffers an unprovoked rocket attack by Country E, a long-time U.S. adversary. Over 100 civilians are killed. Country D relies on its allies for military support. Neither country has nuclear weapons.
5. Country F, a former adversary, currently on good terms with the United States, is undergoing internal political battles for control. A terrorist group is attempting to obtain nuclear weapons from Country F.
6. A terrorist group launches a series of attacks on the United States in several sporting venues around the country. The terrorists are believed to be hiding out and operating from a base in Country G, a known ally of the United States.
7. Country H produces children's products that are found to contain lead. They also produce pet products that contain dangerous chemicals for dogs and cats.
8. Country I, a longtime ally and neighbor of the United States, is undergoing financial hardships. These difficulties are threatening the stability of the country and Americans fear that the financial crisis will spread to the United States.

## Case Study: The Korean Conflict

While the end of World War II brought peace and prosperity to most Americans, it also created a heightened state of tension between the Soviet Union and the United States. Fearing that the Soviet Union intended to "export" communism to other nations, America centered its foreign policy on the "containment" of communism, both at home and abroad. Although formulation of the Truman Doctrine, Marshall Plan, and the Berlin Airlift suggested that the United States had a particular concern with the spread of communism in Europe, America's policy of containment extended to Asia as well. Indeed, Asia proved to be the site of the first major battle waged in the name of containment: the Korean War.

In 1950 the Korea Peninsula was divided between a Soviet-backed government in the north and an American-backed government in the south. The division of Korea into two halves had come at the end of World War II. In August of 1945 the Soviet Union invaded Korea, which had been under Japan's control since 1910. Fearing that the Soviets intended to seize the entire peninsula from their position in the north, the United States quickly moved its own troops into southern Korea. Japanese troops surrendered to the Russians in the north and to the Americans in the south. In an effort to avoid a long-term decision regarding Korea's future, the United States and the Soviet Union agreed to divide Korea temporarily along the 38th parallel, a latitudinal line that bisected the country. This line became more rigid after 1946, when Kim Il Sung organized a communist government in the north---the Democratic People's Republic. Shortly after, nationalist exile Syngman Rhee returned to Korea and set up a rival government in the south---the Republic of Korea (ROK). Each government hoped to reunify the country under its own rule.

War broke out along the 38th parallel on June 25, 1950. On that day, North Korean troops coordinated an attack at several strategic points along the parallel and headed south toward Seoul. The United Nations Security Council responded to the attack by adopting (by a 9-0 vote) a resolution that condemned the invasion as a "breach of the peace." The Council did not have a Soviet delegate, since 6 months prior, the Soviet Union had left to protest the United Nation's refusal to seat a delegate from China. **President Harry S. Truman quickly committed American forces to a combined United Nations military effort and named Gen. Douglas MacArthur Commander of the U.N. forces.** Fifteen other nations also sent troops under the U.N. command. Truman did not seek a formal declaration of war from Congress; officially, America's presence in Korea amounted to no more than a "police action."

However, the entry of the United States into the conflict signaled a reversal of policy toward Korea. Although it backed the government of Syngman Rhee, the United States had begun withdrawing its troops from South Korea in 1948. As late as January of 1950, Secretary of State Dean Acheson had implied that the Korea Peninsula lay outside the all-important "defense perimeter" of the United States, a statement that some took to mean that the United States would not defend the ROK from communist attack.

So why did the United States become involved in the Korean conflict?

The decision to intervene in Korea grew out of the tense atmosphere that characterized Cold War politics. On the eve of the North Korean invasion, a number of events had made Truman anxious. The Soviet Union exploded an atomic bomb in 1949, ending the United States' monopoly on the weapon. In Europe, Soviet intervention in Greece and Turkey had given rise to the Truman Doctrine and the Marshall Plan, which funneled aid to war-torn Europe in the hopes of warding off communist political victories. In early 1950, President Truman directed the National Security Council (NSC) to conduct an analysis of Soviet and American military capabilities. In its report, known as "NSC 68," the Council recommended heavy increases in military funding to help contain the Soviets.

Events in Asia also contributed to an increased sense of insecurity. In 1949 China underwent a revolution that brought Mao Zedong and his Communist party into power. The nationalists, led by Chiang Kai-Shek, had retreated to the island of Formosa (Taiwan) while they continued their war with mainland China. Mao quickly moved to ally himself with the Soviet Union, and signed a treaty with the Soviets in 1950. The Truman administration faced criticism from Republicans who claimed he had "lost" China. They criticized him for not providing enough aid to the Chinese nationalists.

The Truman administration also faced internal criticism regarding its commitment to anticommunism at home. Republican Senator Joseph McCarthy of Wisconsin had recently begun his infamous hunt for communists within the U. S. Government. Although McCarthy was just warming up, the recent trials of Alger Hiss and others for espionage left the Truman administration apprehensive about its anticommunist credentials. Truman and his advisors found themselves under increased domestic pressure not to appear "soft" on communism abroad.

Thus, when North Korean troops invaded the South, the Truman administration seized upon the opportunity to defend a noncommunist government from invasion by communist troops. Determined not to "lose" another country to communism, and interested in shoring up its anticommunist credentials, the Truman administration found itself defending a nation a world away from U.S. soil. Yet Truman's response was not merely a response to internal pressure. The invasion of South Korea made Truman genuinely fearful that the Soviet Union and China intended to expand the sphere of communism throughout Asia.

Truman's statement of June 27 illustrates his concern with communist aggression and expansion. In it, Truman argues that "communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war." Truman's statement suggests that he believed the attack by North Korea had been part of a larger plan by communist China and, by extension, the Soviet Union. He informed his advisors that he believed the invasion was "very obviously inspired by the Soviet Union." This gave America a moral imperative to act. "If we don't put up a fight now," Truman observed to his staff, there was "no telling what they'll do." His concern over the future of anticommunist governments in Asia showed in his public statement. Truman pledged to defend Formosa (Taiwan) from attack and to support French forces in Indochina, a conflict that would eventually escalate into the Vietnam War. Yet Truman had no wish to provoke a full-scale war with the Soviets. By blaming "communism" in the statement, as opposed to the Soviet Union, Dean Acheson later explained, the administration sought to give the Soviets a "graceful exit" and not provoke open confrontation with Russia.

Truman's statement also reflected a new military order. Although the United States took the lead in the Korean action, it did so under the rubric of the United Nations. Truman made it clear that his actions fell within the measures recommended by the United Nations, and reminded "all members of the United Nations" to "consider carefully the consequences of this latest aggression in Korea" and that America "will continue to uphold the rule of law."

Truman met with his advisors on the morning of the 27th to draft and revise the public statement--his second on the Korean conflict. At 11:30 a.m. the President met with members of the foreign affairs and foreign relations committees of Congress and, shortly after, the statement was released to newspaper reporters. That afternoon, Truman attended another meeting of the United Nations to propose a resolution urging all members of the United Nations to give assistance to South Korea. The meeting had been originally planned for the morning but was postponed to accommodate one of its members. Secretary of State Dean Acheson later reflected that the Soviets liked to point out that since the U.N. meeting occurred after the President's statement, Truman could not truthfully claim that his decision to commit forces was influenced by the wishes of the United Nations. When it did meet later that day, the United Nations passed his resolution, although a handful of dissenting countries abstained.

## Examining the Case: The Korean Conflict Discussion Guide

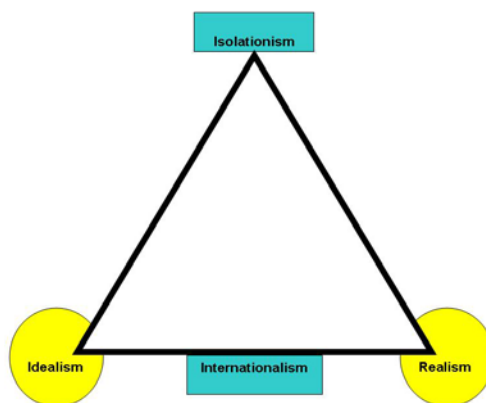
**President Harry S. Truman committed American forces to a combined United Nations military effort and named Gen. Douglas MacArthur Commander of the U.N. forces.**

### The Questions:

- *How did economic, political, national security, and cultural issues influence United States' foreign policy decision?*
- *How does the Korean Conflict demonstrate the process by which foreign policy is made in the United States?*

### Address the following in your discussion:

1. How does this case demonstrate the use of constitutional powers? Use of executive prerogative?
2. What role, if any, did federal agencies play in the conflict?
3. What role, if any, did international organizations play in the conflict?
4. What other factors may have influenced the president to act as he did? Explain.
5. What foreign policy tools were used in the Korean conflict and by whom?
6. What American values played a role in this conflict?
7. How did the historical context of the Cold War play a role?
8. Conceptual Framework: Where does this foreign policy decision fit on the conceptual framework below? Explain.



## **Writing Assignment for Lesson 11**

### **Expository Writing – Foreign Policy**

Your assignment is to write an informative text about a U.S. foreign policy decision concerning your assigned topic. You began researching this topic in Lesson 9 when you completed a graphic organizer that addressed this foreign policy. Your paper must:

1. Introduce the foreign policy issue, including an objective description of the issue.
2. Describe at least two potential American positions on the issue and the reasoning of each.
3. Describe the decisions by and/or concerns raised by the different branches of government.
4. Explain how other actors and organizations attempted to influence the policy process (interest groups, citizens, media, governmental and non-governmental organizations).
5. Describe what role, if any, that any executive agencies and cabinet departments played in forming and/or executive the policy.
6. Explain what foreign policy tools were considered and which foreign policy tools were used.
7. Explain how this foreign policy decision reflects the conceptual framework of isolationism – internationalism; realism – idealism.

#### **Research Requirement:**

- You must use a minimum of three sources.
- Proper APA citation format is required.
- Sources should be listed as endnotes after the conclusion of your paper.

### Rubric for Writing Assignment

WHST.9-10.2. Write informative/ explanatory texts, including the narration of historical events, scientific procedures/experiments, or technical processes.	3 MEETS THE STANDARD	2 Partially Meets the Standard	1 Minimally Meets the Standard
<b>a.</b> Introduce a topic and organize ideas, concepts, and information to make important connections and distinctions; including formatting, graphics, and multimedia when useful to aiding comprehension.	The response <b>introduces</b> the foreign policy decision clearly and objectively, previewing what is to follow; <b>organizes</b> ideas, concepts, and information into broader categories; includes formatting (e.g., headings), graphics (e.g., charts, tables), and multimedia when useful to aiding comprehension.	The response <b>introduces</b> the foreign policy decision but is missing at least one critical component or does not objectively describe the foreign policy issue, previews what is to follow; <b>organizes</b> most ideas, concepts, and information into broader categories; includes formatting (e.g., headings), graphics (e.g., charts, tables), and multimedia when useful to aiding comprehension.	The response does not clearly nor objectively <b>introduce</b> the foreign policy decision and is missing critical components or does not objectively describe the foreign policy issue, previews what is to follow; <b>organizes</b> few ideas, concepts, and information into broader categories; includes some formatting (e.g., headings), graphics (e.g., charts, tables), and multimedia when useful to aiding comprehension.
<b>b.</b> The response <b>develops</b> the topic with relevant, well-chosen facts, definitions, concrete details, quotations, or other information and examples.	The response: <ul style="list-style-type: none"> <li>describes at least two American positions and the reasoning of each;</li> <li>identify and describe relevant decisions and/or concerns raised by the different branches of government;</li> <li>clearly addresses whether other actors and/or organizations attempted to influence the policy process;</li> <li>clearly addresses whether any executive agencies and/or cabinet departments played a role in forming and/or executing the policy and accurately identifies and describes those roles;</li> <li>clearly explains which foreign policy tools were considered and which ones were ultimately used;</li> </ul>	The response: <ul style="list-style-type: none"> <li>partially describes two American positions or describes only one American position with its reasoning;</li> <li>identifies but only partially describes decisions and/or concerns raised by the different branches of government;</li> <li>incompletely addresses whether other actors and/or organizations attempted to influence the policy process;</li> <li>clearly identifies the executive agencies and/or cabinet departments that played a role in forming and/or executing the policy but does not accurately describe all of those roles;</li> <li>explains only some of the foreign policy tools that were considered and used;</li> </ul>	The response: <ul style="list-style-type: none"> <li>superficially describes only one American position;</li> <li>identify but does not describe relevant decisions and/or concerns raised by the different branches of government;</li> <li>identifies actors and/or organizations involved in the policy process but does not explain their roles;</li> <li>clearly identifies the executive agencies and/or cabinet departments that played a role in forming and/or executing the policy but does not accurately describe any of those roles;</li> <li>incorrectly identifies the foreign policy tools considered and used.</li> </ul>



c. The response uses appropriate and varied <b>transitions</b> to create cohesion and clarify the relationships among ideas and concepts.	c. The response uses appropriate and varied <b>transitions</b> to create cohesion and clarify the relationships among ideas and concepts.	c. The response uses some <b>transitions</b> to create cohesion and clarify the relationships among ideas and concepts.	c. The response uses few <b>transitions</b> to create cohesion and clarify the relationships among ideas and concepts.
d. The response uses precise language and domain-specific vocabulary to inform about or explain the topic. ( <b>word choice</b> )	d. The response uses precise language and domain-specific vocabulary to inform about or explain the topic. ( <b>word choice</b> )	d. The response shows an attempt to use precise language and domain-specific vocabulary to inform about or explain the topic. ( <b>word choice</b> )	d. The response shows little attempt to use precise language and domain-specific vocabulary to inform about or explain the topic. ( <b>word choice</b> )
e. The response establishes and maintains a formal <b>style</b> .	e. The response establishes and maintains a formal <b>style</b> .	e. The response shows an attempt to establish and maintain a formal <b>style</b> .	e. The response shows little attempt to establish and maintain a formal <b>style</b> .
f. The response provides a <b>concluding</b> statement or section that follows from and supports the information or explanation presented.	f. The response provides a <b>concluding</b> statement or section that follows from and supports the information or explanation presented.	f. The response shows attempts to provide a <b>concluding</b> statement or section that follows from and supports the information or explanation presented	f. The response shows little attempt to provide a <b>concluding</b> statement or section that follows from and supports the information or explanation presented.
<b>8. Gather relevant information from multiple authoritative print and digital sources, using advanced searches effectively; assess the usefulness of each source in answering the question; integrate information into the text selectively to maintain the flow of ideas, avoiding plagiarism and following a standard for citation.</b>	Uses three or more relevant sources to support the information contained in their essay; seamlessly integrates the information into the text, and cites the sources in APA format in the endnotes.	Uses less than three relevant sources to support the information contained in their essay; the information is not smoothly into the text, and attempts to cite the sources in APA format in the endnotes with minor errors.	Use sources to support the information contained in their essay but the relevancy of the sources is questionable; integration of information interferes with readability; no attempt to cite the sources in APA format in the endnotes.

