

# **The Constitution and the Authority of the President**



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# Overview

- Discussion on power
- Power and the founding of the United States
- Historical growth in presidential power (military and civilian)
- Controlling presidential power today

# Power and the American Founding

- Power has always been central to American governance
- The challenge: creating a strong yet limited government
- Madison: 'You must first enable the government to control the governed; and in the next place oblige it to control itself.'

# America 1.0: The Articles of Confederation

- Articles of Confederation preceded the Constitution
- Had power in theory (declare war, raise army, foreign affairs)
- But lacked power to tax, regulate commerce, or act directly on the citizenry
- Economic instability and weak national cohesion (Shay's Rebellion)

# America 2.0: The Constitutional System

- Need for a more powerful national government recognized
- Founders sought to create an effective government while avoiding tyranny
- A Congress with enumerated powers
- A single executive with limited powers
- Checks and balances

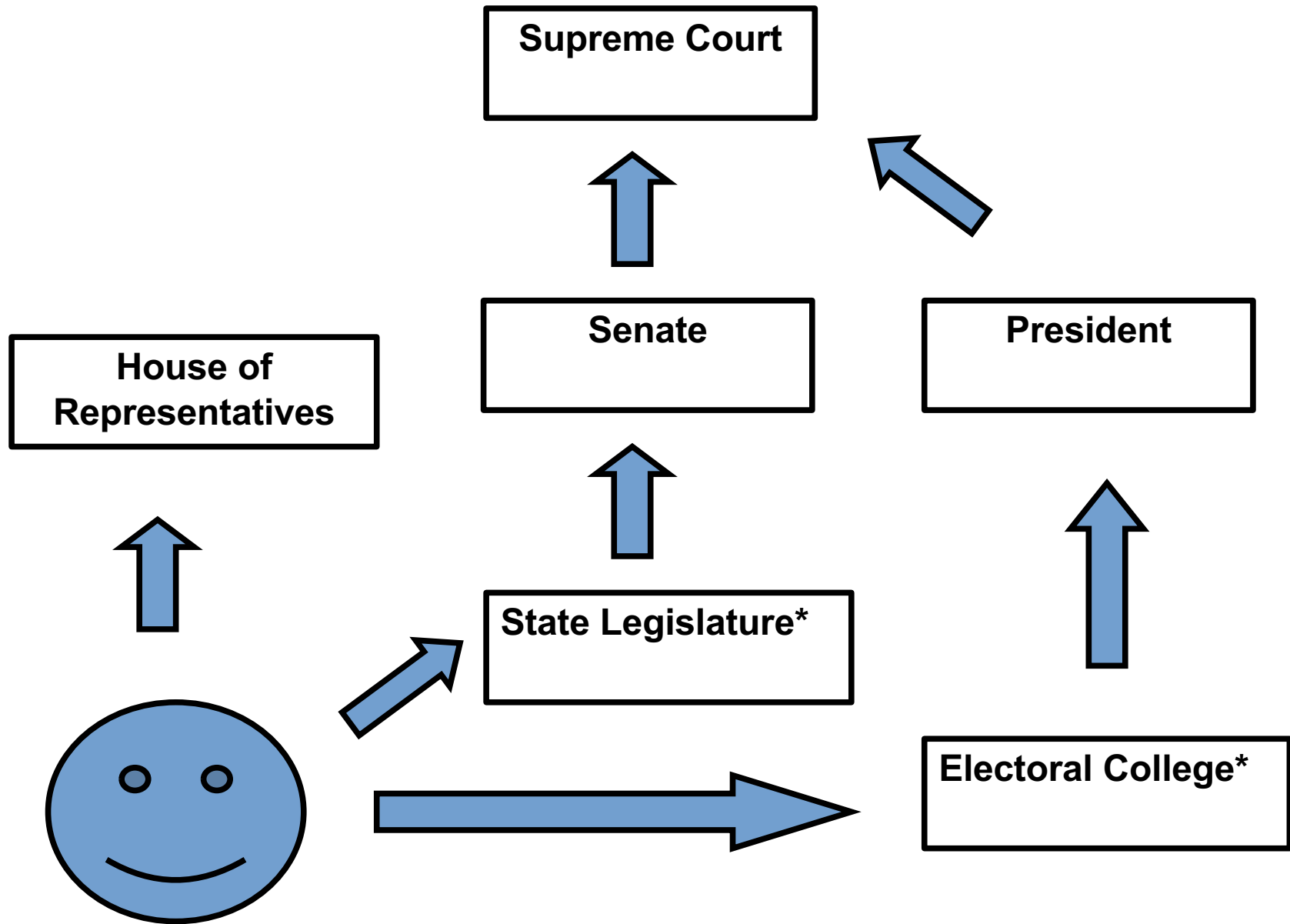
- The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
- To borrow money on the credit of the United States;
- To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
- To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
- To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
- To establish Post Offices and Post Road
- To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
- To constitute Tribunals inferior to the Supreme Court;
- To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;
- To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
- To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;
- To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
- To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;
- To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And
- To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof

**Article 2, Section 1:**

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

**Article 2, Section 2:**

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.





# The Presidency

- Article II: concise yet flexible
- The flexibility (vagueness?) of office provides for expansion of power
- President is commander-in-chief
- President is chief executive

# Strict Constructionist Theory

“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* which he can exercise because it seems to him to be in the public interest...” – William Howard Taft

# Stewardship Theory

*"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."*

- Theodore Roosevelt

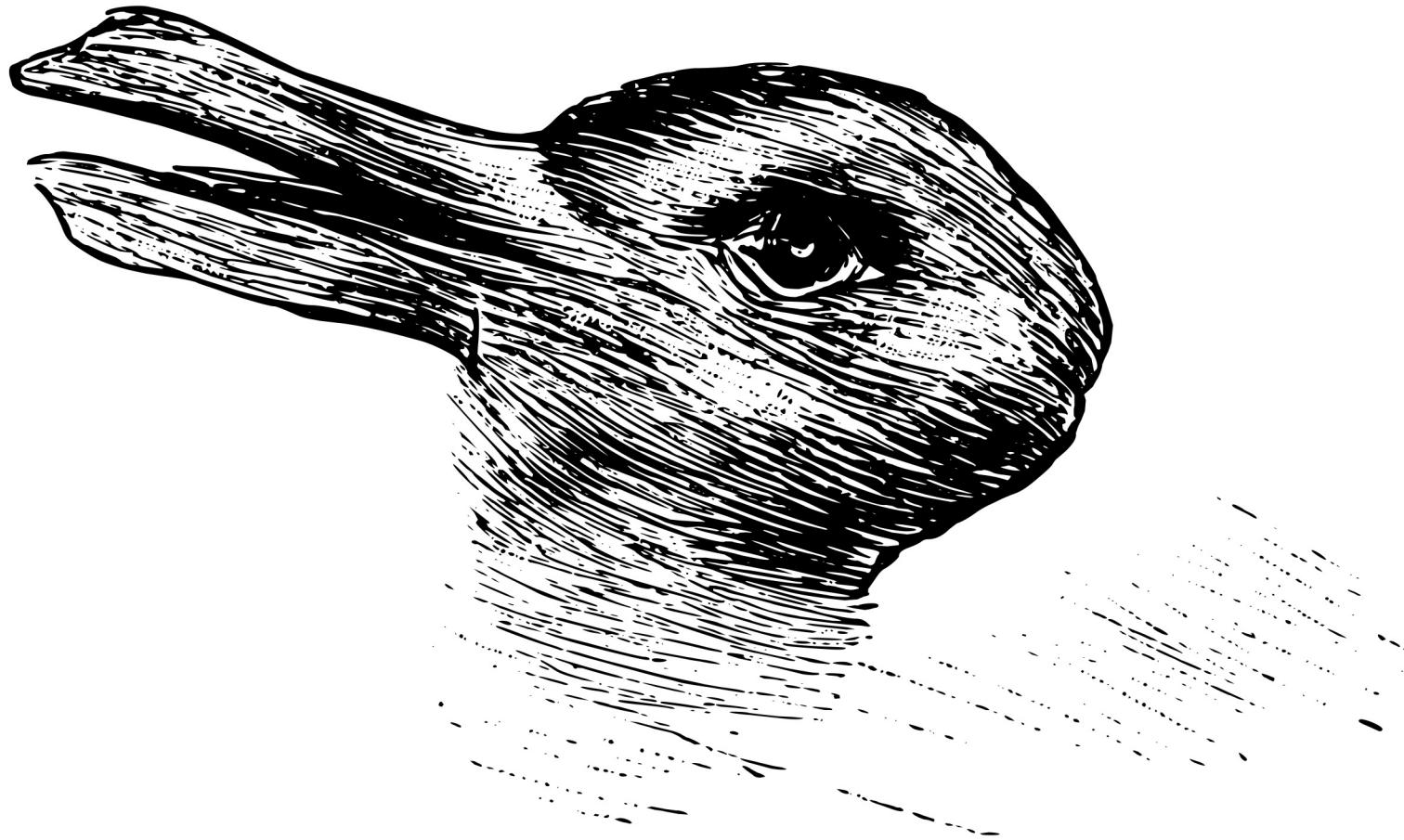
# The Federalist Papers : No. 70

“THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles...

*Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy...*

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

Welche Thiere gleichen ein-  
ander am meisten?



Kaninchen und Ente.

# Precedents Expanding Power

- Washington set tone of restraint
- Jefferson expanded power via Louisiana Purchase
- Lincoln's wartime measures
- Vietnam War
- These actions have expanded the powers of the office

# Precedents Expanding Power

## Declared Wars

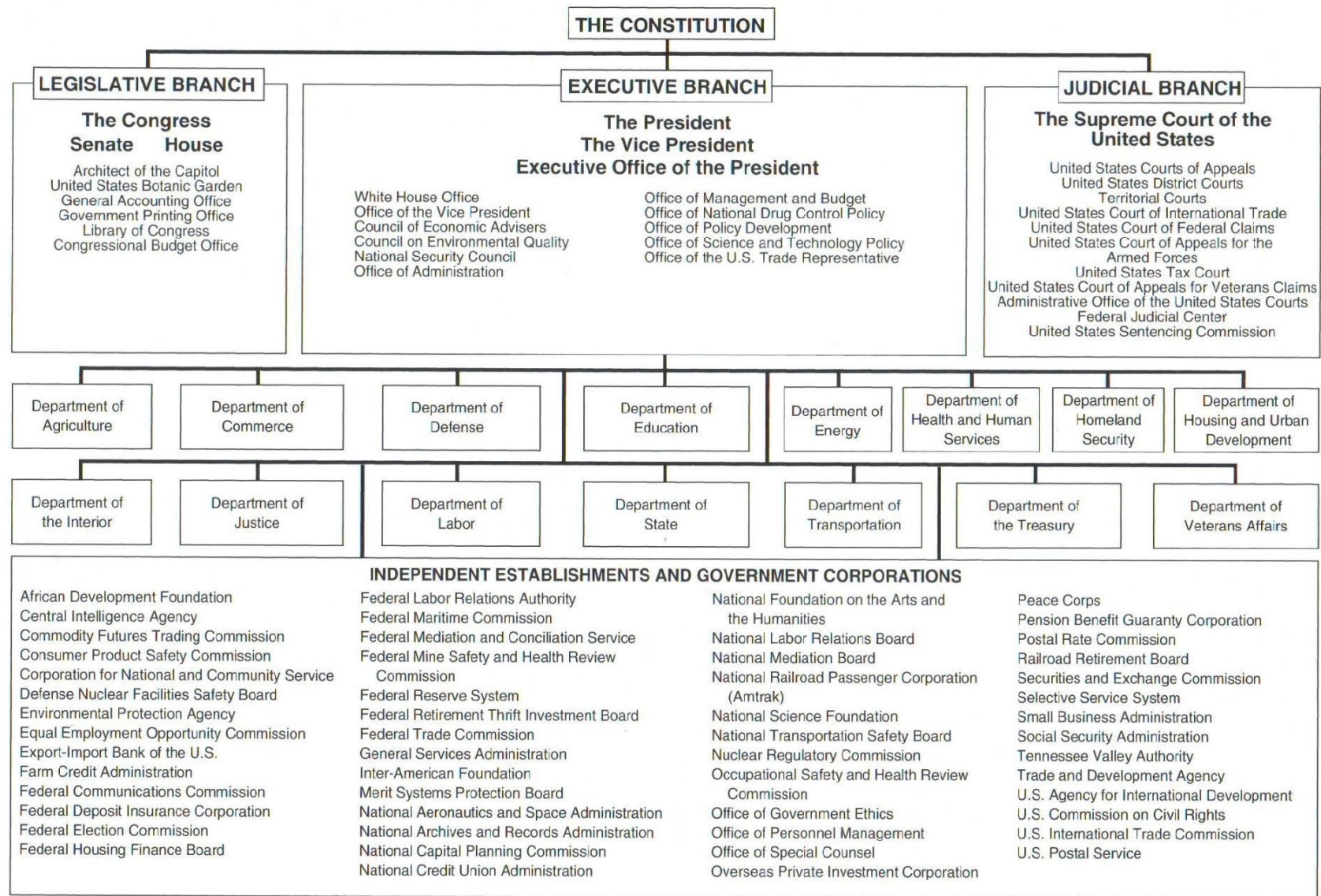
- War of 1812
- Mexican-American War (1846)
- Spanish American War (1898)
- World War 1 (1917)
- World War 2 (1941)

Over 200 Undeclared Wars

# The 20th Century: Modern Presidency Emerges

- Roosevelt's New Deal expanded federal power (Constitutional Revolution of 1937)
- President now has extensive powers over civilian affairs
- Federal grants further the president's influence over civilian life





**Figure 3.1** The Government of the United States SOURCE: U.S. Government Manual 2003/2004.

# The 21st Century: Executive Power in Practice

- Post-9/11: expanded surveillance, war powers
- Trump & Biden: broad use of executive orders
- Example: National Guard in domestic law enforcement

# Constitutional Tensions Today

- Limits of presidential authority
- Role of judicial review
- But critical questions are often considered “political questions”
- There are limits to the judicial branch’s ability to check presidential powers in these situations (e.g. War Powers Resolution)

# Conclusion

- The paradox of power endures
- The Constitutional System's strength lies in ongoing debate, actions of the legislative and judicial branches
- State power
- Voting
- 'Eternal vigilance is the price of liberty.'