

Is the prerogative power evident in the American executive? If so, what are the historical and modern uses?

Jasminne Grimm

Submitted to partially fulfill the requirements of the Ashbrook Scholar Program
at Ashland University

Introduction

In this thesis we will investigate the question of whether or not the President of the United States has the prerogative power. Some would say the president does not have this power because it is not clearly stated in the Constitution. Others would argue that the prerogative power is implied in the text of the Constitution. I am taking the side of those who believe the prerogative is an implied power, though it is highly qualified. Throughout this thesis I will show where this power came from, how was it originally used, and how is it used in the modern era.

The prerogative power came from the King of England. In fact it is a direct power of his. The framers knew the prerogative was necessary but it would cause too much frustration and anxiety among the nation to use those words. This is why the vesting clause is so important. The vesting clause “the executive power shall be vested in the President of the United States of America,” gives the entire executive power to the president. However the framers knew that having the prerogative power is an immense responsibility. Since men are neither angels nor beasts they put checks on the president’s use of the prerogative.

Most of the Presidents, starting with George Washington (and only excluding William Henry Harrison) have used something like the prerogative power. But there were no clear defined avenues for the prerogative to be used before Theodore Roosevelt came into office. President Roosevelt gained a great amount of power for the executive during his term. The presidency became about looking out for the best interests of the people of the nation. The avenues the prerogative power can take now include executive orders, secret orders, and emergency powers. These powers along with examples will be discussed in Chapter 3.

It is necessary to fully understand where the prerogative originates and how it became something that is feared by most people. It is my goal to point out the prerogative is not the same as the King's prerogative and it is not, therefore, something that should be feared by Americans.

Chapter 1 – Is there prerogative?

The question of whether or not the president possesses the prerogative power is greatly debated due to the United States loathing the King of Great Britain's prerogative power. The prerogative is best explained by David Gray Adler, professor of American Political Thought and Public Law at Idaho State University. Adler described the prerogative power of the king as "the king claimed to possess an unchallengeable right to carry out whatever action he believed was necessary for the country's welfare."ⁱ The King would use this power to issue decrees, which had to be carried out whether or not they were in accordance with laws (or even against them). The difference between a decree and a law is a decree can be issued by the executive power while the legislative is the only power by which a law can be made. There were no legal checks on the King if the decree was contrary to the best interest of his public. If a decree was considered unjust by the people of Great Britain, they could rebel by overthrowing the monarchy. When a monarchy is overthrown, history has shown that the ruling family is murdered. The threat of rebelling and/or being murdered are the only ways a King could be punished for going against the best interest of his subjects. But the fact that such rebellions happen so rarely, and are so rarely successful, means that the kingly prerogative power is virtually unlimited, because the King faces virtually no real political reprimands. The only way he could be reprimanded was a slight chance of being murdered. There is a small chance this

could happen and that is why the King did not take the threat of being murdered very seriously. Instead he is able to keep making decrees that are not best for his subjects.

What if the president had the prerogative power of the king? What would that mean to the safety, liberty and rights of the people of this nation? Clearly, there is no one that wants a figure in power in this country to have the kind of unlimited power that kings had. The framers thought of this and gave a terrific answer, one that needs to be carefully looked at it. Nowhere in the Preamble, the Constitution, or the Oath of Office does it use the words the prerogative or prerogative power. This is due to the fact that the President does not have the “prerogative” power, simply speaking. There are quotations around the word prerogative for a reason. The president does not have the same power as the king. The president cannot make a decision on his own contrary to law simply because he claims it is in the best interest of the public, without fear of real political consequences if he is wrong or acting contrary to the public interest. The framers of the Constitution agreed that would be too much power for one single man to have.

However, the president does have a power that is something like the prerogative, though not exactly like the prerogative power of the king. There are ways the president can make unilateral decisions constitutionally, even if the other branches of government disagree. This is similar to the king of Britain but in an extremely general sense. This resembles the British monarchy, yet there are more consequences to the president if the public does not agree with the laws. The consequences of the president are political. If the president were to make a unilateral decision that is contrary to the Constitution, he could be impeached by Congress and/or not voted back into office for another term. This is why I say the president has a power something like the prerogative, but not quite. The word prerogative will be used to describe the power the president has as we explore it more in-depth. This is only because there is not a more suitable name. A

term that could possibly be used to describe the president's prerogative power is a discretionary power. For example, the president must practice discretion when he decides to veto or pass a bill into law. He must decide if the bill is constitutional or not, a form of discretion. Exercising the prerogative power needs some discretion but cannot simply be called a discretionary power. The prerogative power of the President of the United States involves discretionary power but is something more than mere "discretion."

There are other ways to approach the question of "is there a prerogative in the executive power?" We can explore three different avenues. The first is look at whether or not the prerogative power is granted in Article II of the Constitution. The vesting clause states "the executive power shall be vested in the President of the United States of America." What is executive power? Does it include something like prerogative? The executive power is not clearly defined in the Constitution. Instead it is only granted to the President of the United States. As mentioned earlier, the reason the prerogative power is greatly debated is because the words "the president will have the prerogative power" are not expressly stated in the Constitution. Article II is strange because it does not have an exhaustive list of executive powers. I make this claim based on Article I of the Constitution regarding the legislative branch of government. It lays out what the legislative body can and cannot do. For example in Article I Section VIII there is a list of enumerated powers. The enumerated powers are the powers granted to Congress. Article II only states the executive power will be given to the president without any restrictions stated. There are no enumerated powers.

Because the president's powers are not expressly stated in the Constitution there are two ways to approach the Constitution. The two opposing sides to this issue are extremely set in their beliefs. There is one side of the debate that feels since the Constitution does not say word

for word the executive branch holds the prerogative power, then the president evidently does not possess it. In other words, the executive branch only has the powers stated in the Constitution. These people are said to have a strict interpretation of Article II of the Constitution. Many prominent figures in government hold this belief such as Supreme Court Justice Hugo Black. In the case *Youngstown Sheet and Tube Company v. The United States*, Justice Black wrote in the majority. The main point of the opinion was that “the president only holds the powers expressly given to him in the Constitution or that Congress gives to him.”ⁱⁱ Their argument is simple and straightforward. On the other hand there are those who believe that there are implied powers in Article II in the implied powers of the Constitution. An implied power is not actually stated in the Constitution but is indirectly mentioned.

For example Melanie Marlowe, professor of political science at Miami University, suggests there are a lot of powers left implied. “The text of the Constitution is clear; Article II vests “the executive Power within a President of the United States.” Unlike the authority granted to Congress in Article I and to the federal judiciary in Article III, Article II includes no qualifying provision in the vesting clause that would diminish the grant of authority or indicate that either of the other branches of government has the executive power”ⁱⁱⁱ

To comprehend the entirety of this quote, let us first look at Article I Section I. This section is as follows, “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.” It is necessary to look carefully at the language the writers of the Constitution used. This section of Article I says “all legislative Powers *herein granted* shall be vested...” The two most important words are herein granted. This seems to be saying there are other legislative powers, however if it is not stated in Article I then the Congress of the United States does not have the power. Article I

Section 8 lists the “herein granted” powers to the Congress. Then Article I Section 9 tells of all the things Congress cannot do. The legislative branch has a strict outline of what it can and cannot do. It is only fair to look at the judicial branch and what Article III states. Article III Section II does say “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” While the judicial power is vested in one Supreme Court, Congress has some say in how it will be distributed to lower courts on occasion. Article III Section II then goes on to say “the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...” The authors of the Constitution made a point to say where they have jurisdiction. They then go on to list all the different disputes they are allowed to make a verdict on. The authors made sure both the legislative and judicial branches had set limitations to their offices. The executive branch does not have these outlines.

As I have previously explored Article II Section I of the Constitution states “the executive Power shall be vested in a President of the United States of America.” It then goes on to mention how the President shall be chosen. There are no limitations put on his power. Instead, in Article II Section II the founders explain what other positions the President will hold other than head of the executive branch, as well as mention “he shall take care that the Laws be faithfully executed.” This extreme difference in the articles is fascinating. Both the legislative and judicial branches have certain rules and guidelines they must follow. The legislature is not even allowed to have all of the powers that are thought of when one would think of “the legislative.” The judicial branch is not able to have jurisdiction over every aspect of American life. The executive however is fully given to the President of the United States. There are no

qualifiers. With this being the case, it seems as if the framers were giving the president a certain kind of prerogative. Not only must he faithfully execute the laws of the United States but he is able to exercise every part of the executive power.

The second way to look for the prerogative power is in Article II Section III of the Constitution. It is stated in Article II Section III of the Constitution, “he shall take Care that the Laws be faithfully executed.” It is important for us to focus on the word faithfully. What does it mean? Does faithfully mean that the laws need to be followed exactly as spelled out by Congress without any deviation? Or does it mean that the President has the power and the duty to enforce the laws as he thinks the Constitution demands? Let us look at President Andrew Jackson for the answer. On July 10, 1832 President Jackson vetoed the Bank Bill. In the veto he stated,

The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both.^{iv}

According to Jackson it is up to each branch of government to interpret the Constitution. To answer the question, the president has the power to enforce the laws as the Constitution demands not as Congress spells out.

Furthermore, interpreting the word faithfully to mean the president has some discretion in laws allows the president to enforce the laws by way of the preamble. The Preamble sets out the guidelines for the United States government. In other words, the Preamble is a synopsis of

what the Constitution will say. The Preamble states that the United States is a union that “establishes justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty.” The president by way of enforcing laws needs to make sure the laws establish justice, insure domestic tranquility, etc. He needs to make sure the laws are followed out by way of the Constitution. If a law were to break one of these ends in the Preamble, is the president to follow through with it? Or can he look at the big picture in light of those ends and interpret the law broadly as he enforces it? The word faithfully allows the president to weigh the outcomes. If he were to follow the law and the outcome would have a negative effect on the nation, the president does not need to enforce said law. Must the president enforce the law as Congress wants enforced or can he enforce it on how he sees it? This question leads back to Andrew Jackson’s Veto on the Bank Bill. The President is able to interpret the Constitution and enforce it as he deems is necessary. This is an example of how the prerogative power is used by the President of the United States.

In order to fully understand the broad understandings I will give a hypothetical example. Congress passed a law that would not “promote the general welfare.” Included in this law, it states “children can no longer drink milk.” If children were not able to drink milk anymore, their bones would become fragile and break more easily. This would also carry into adulthood. The public’s general welfare would be disrupted. The President therefore should not execute this law. This example may seem simple and possibly even trivial but the concept is the same for every law. The President must faithfully execute the office of the president by enforcing the guidelines set out by the Preamble. The word faithfully is only one word, yet it holds a hefty amount of magnitude. It is the central word in understanding how the president should fulfill the

office of president. This one word allows the president to assess any given situation and do what is best for the nation in light of those ends laid out in the Preamble of the Constitution.

A third way to explore the possibility of the President having the prerogative power is to compare the office of the president with the King of England. Alexander Hamilton did just that in Federalist Paper number 69. His first few sentences tell exactly of what we will be discussing. “I proceed now to trace the real characters of the proposed Executive, as they are marked out in the plan of the convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.” Hamilton makes it extremely clear that there are rumors going around as to what the President may or may not be able to do. These rumors include the belief that the President will be oddly similar to the King of England. The last thing people in the late 1700’s wanted was a leader in any way similar to what they fought so hard against during the American Revolution. It is necessary to look at the entire ending paragraph of Federalist 69 to fully grasp the differences between the President of the United States and the King of England:

The President of the United States would be an officer elected by the people for *four* years; the king of Great Britain is a perpetual and *hereditary* prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable. The one would have a *qualified* negative upon the acts of the legislative body; the other has an *absolute* negative. The one would have a right to command the military and naval forces of the nation; the other, in addition to this right, possesses that of *declaring* war, and of *raising* and *regulating* fleets and armies by his own authority. The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the *sole possessor* of the power of making treaties. The one would have a like concurrent authority in appointing to offices; the other is the sole author of all appointments. The one can confer no privileges whatever; the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies. The one can prescribe no rules concerning the commerce or currency of the nation; the other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorize or prohibit the

circulation of foreign coin. The one has no particle of spiritual jurisdiction; the other is the supreme head and governor of the national church! What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.^v

Hamilton point out 9 distinct ways of how the president is different from the king of England, we will go through every example to clearly understand what Hamilton was trying to explain to the prospective citizens of the United States of America. In the first sentence, Hamilton shows that the president will only be in office for four years, not for life like the King. Also, the president will only enter into office by being voted there by the people. The king enters into his position due to his family lineage. The second difference between the president and the king is that the president is “amenable to personal punishment and disgrace,” meaning if he were to act against the will of the people, then the people can punish him by not letting him in office for a second term or having Congress impeach him. On the other hand, the person of the king is “sacred and inviolable.” Those two words are very loaded. No act of the king would be contestable because he is a sacred man to his subjects. Everything he does is the correct thing to do, and no one is able to think otherwise. He is furthermore inviolable, meaning he is never to be dishonored. Saying the king did not act in the best interests for his subjects would be dishonoring him. Therefore, there is no way he could be taken out of office either by the people or by another type of governing body. The third difference Hamilton points out between the president and the king is the president is able to have a negative on acts of Congress, though it is a limited negative. When Congress passes a bill it will be sent to the president to either sign or veto. If the president were to veto the bill then Congress could still pass it if they have a 2/3 majority vote. A limited negative is much less dangerous than the negative of the King. The

king can stop anything the legislative body is planning and/or putting into effect. There would be no way to stop the King from doing this.

The fourth and fifth differences Hamilton brings up have to do with foreign affairs. According to Hamilton the president is able to “command the military” and navy of the United States. This is a power the King of England also had, so Hamilton was quick to add “in addition to this right” to show the people living in America that the King has a great deal of more power than the president would. The King also had the rights that were given to Congress, “declaring war, and raising and regulating fleets and armies.” Again, these powers were given to the United States Congress for a reason. The framers of the constitution knew by giving Congress some of the military power it would limit the power of the president. For the same reason the framers divided making treaties between the president and the Senate. The King was the only person in charge of making treaties. He negotiated/wrote/ ratified/enforced treaties but this is not the case in the United States.

The sixth difference Hamilton talks about deals with appointments. When it comes to appointing offices, the King was the sole person to appoint. King had the whole power. The president does not, he can only nominate and then the senate approves. The seventh difference between the president and the king seems to deal with specific royal prerogative power. For example the king could make anyone a nobleman, grant certain privileges, make anyone a citizen or kick someone out of the country, as well as grant monopolies. The King is able to do all of these actions without Parliament. The president has none of these powers. The eighth difference which shows the president has no control over the currency or commerce of the United States. Instead, Congress has these powers. In England, the King is in charge of all currency and commerce and all avenues that are related. The ninth and final example, Alexander Hamilton

points out the King is the head of the church in England. In the United States of America there is not a national church; therefore the president cannot be the head of one. Furthermore the president has no authority to compel anyone with religious beliefs or practices. The King can punish based on religious beliefs. The reason the King is able to do all of these things is because he, as well as his subjects, believe God chose him to be King. This is called divine right.

Alexander Hamilton wrote Federalist Paper 69 for an extremely important reason. By pointing out the major differences between the King and the President of the United States it is easier for people to understand that they are not actually that similar. Hamilton points out the framers put many constitutional limitations on the office of the president. Many powers that were traditionally known as kingly powers have now been given to Congress. Hamilton believes the president is essentially boxed in. This means the president is highly unlikely to do or be able to do anything that would be dangerous to the public. Hamilton was able to point out the exact differences of the two offices. Federalist 69 was able to show that the office of president is not one to be feared. And therefore, if the president has something like “prerogative” power, that power is also much less to be feared.

This is not the opinion of Hamilton alone; James Madison brings it up in federalist 48. Madison argues the legislative branch is much more dangerous to liberty than the executive branch. Madison does as Hamilton in comparing the office of the president to the office of the king. “In a government where numerous and extensive prerogatives are placed in the hands of a hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire,” James Madison states. “But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power but in legislative.”^{vi} Madison is making the point that the

president is not powerless, but in fact is boxed in by certain constitutional constraints. The legislative body is what needs to be feared because it is the branch most likely to usurp all power to itself.

If the president does something that is contrary to Article II of the Constitution, there are three avenues by which he can be punished. The first avenue is through the ballot box. Every four years there is a presidential election. In the presidential election there are two main rules. The first, any person from any walk of life is able to run for president as long as they are a) thirty-five years or older and b) born in the United States. A person who is running for a second term in office will more than likely not become re-elected if the nation does not believe his previous actions were for the public good. This form of control comes directly from the people. The second avenue Congress has the ability to decide if waiting for the ballot box is too long of a process. Instead, they are able to impeach the president. An impeachment involves the House of Representatives technically holding a trial and the Senate convicting the president of going “against the public good.” This is how the Congress is able to “check and balance” the use of unconstitutional executive power. Both of these ways to get rid of a president are extremely nonviolent. The founders did this on purpose in order to avoid the third avenue for taking power away, which is through a revolution. They wanted to make sure if the people did not agree with the government, there was a solution other than a complete revolution. While these two avenues do exist if a president does not faithfully execute the laws of the land, a revolution can indeed happen and is guaranteed by the Declaration of Independence.

The preamble defines more narrowly the prerogative power. To put this into larger perspective, it is necessary to think about what the Preamble stands for. Again, the Preamble states the people of the United States wants a nation that “establishes justice, insures domestic

tranquility, provides for the common defense, promotes the general welfare.” The overarching idea the Preamble lays out is that the public good should always be taken into consideration. Protecting the public good is why this nation was formed. Forrest McDonald, author of *The American Presidency: An Intellectual History*, mentioned this while talking about how the government has transformed over the course of years. “While presidential enforcement of acts of Congress was following its erratic course,” McDonald writes, “the presidency was simultaneously expanding into a wide range of activities, including the making of law and the coercion of individuals and groups, not in accordance with law, but constant with its conception of public good.”^{vii} While the president may not always follow the laws exactly, he is always looking out for the public good. If he has not had the public good in mind the whole time he is subject to impeachment, and being voted out of office as mentioned earlier.

We have examined how the prerogative power fits into the Constitution of the United States as well as the Preamble. Another place the prerogative can be found is in the oath the president gives at inauguration. “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.” The word “faithfully” appears again, this time right before the word “execute.” Let’s take out the word faithfully and reread it. “I do solemnly swear (or affirm) that I will execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.” It seems to imply the president can only enforce the laws in the way they are written. There is a law, and the executive must enforce it. Reinsert the word “faithfully” though, it gives the impression that the president will be faithful to the executive office. In order to be faithful to the office, one must also be faithful to the people. In order to be faithful to the people the president must be

able to decipher what is for the public good and what is not. The only times he should act is when something is indeed for the public good. This might mean the president, as chief executive, will have to go against the laws already put in place or overstep his boundary. He may have to do that in order to execute the office. “American Chief executives have asserted their power to act in defense of what they consider the national interest.”^{viii}

The only reason he would need to do this is because there is no way congress can foresee the. Everyday something new happens, that is not accounted for in the Constitution, the Amendments or the laws. Should the president follow laws that are already put in place even if that means it is not in the interest of the public good? No, he should be able to protect the citizens by putting them bad laws, against the public interest. President Harry Truman possibly said it best: “[U]nder similar circumstances the President of the United States has to act for whatever is for the best of the country.”^{ix} We see Truman giving a broad explanation of what the prerogative power means.

Alexander Hamilton makes a point to address the prerogative power of the executive branch in the Federalist Papers. In Federalist #70 Hamilton states, “Energy in the executive is a leading character in the definition of a good government.” Let’s look at the words used in this sentence. The first word is energy. What exactly does it mean to have energy? Does energy mean being thrilled to be the president of the United States of America? Or does it mean the ability to act quickly and forcefully as the President? Energy in the executive is the second of the questions. An energetic executive is someone who has the ability to work effectively, frequently, quickly and without delay. The office of the president needs to have, “decision, activity, secrecy and dispatch.”^x To illustrate these four characteristics we will go into another hypothetical situation. In Country H an enormous tsunami has hit. The tsunami hit without any

warning. There has been at least 10,265 deaths and over 14,000 people are missing. The local government has been trying to get a handle on the how bad the devastation is. They are unable to perform rescues and give medical attention. In some places even riots have begun to break out. An energetic president would be one that would intervene in the local government and help. A president who had dispatch would intervene quickly. He would not wait for Congress to pass a bill authorizing the president to help. Congress could not be in session and lives are being lost every minute. In this situation the president has the prerogative power. He is making a unilateral decision. The president in the example is also being active. By not waiting around for other branches of government to decide if it is constitutional for him to step in to aid in the relief efforts he is being active.

The third characteristic of an energetic president is secrecy. For our purposes this is the characteristic that will have the most time spent discussing. Let's think about this. An energetic president needs to be secret. Secret how? There are times the president needs to withhold information from the Congress in order to look out for the public welfare. If there is an issue in another country and the president is informed of it, he has the ability to tell Congress and the American people. If telling Congress and the people would be against national security, he can decide against it, for example, releasing the pictures of Osama bin Laden. President Obama told the American people that bin Laden was killed, yet he did not show the pictures. Many Americans wanted to see the pictures in order to know for sure our enemy number one was in fact killed. If President Obama released the pictures it could have caused mass hysteria throughout the country. People could be offended because of the graphic nature and in others it might incite a reaction to kill more Al Qaeda members. It is single handedly up to the president to protect the nation and its citizens against any leaks that would not be beneficial to their lives.

The last characteristic is dispatch. A president who has this attribute is able to send out troops for the protection of the people. Another example of secrecy is the president is unable to give out exact locations of the troops. If he were to make that information public it would not be for the public good. That information could fall into the wrong hands and the United States could lose the war effort.

To this point we have discussed the prerogative power in theory, but not in actual practice. In order to go into the practices of the prerogative it is necessary to go over what we have been talked about so far. We should review what we have argued so far. The prerogative power is not expressly given to the president through the Constitution. Instead it is implied through the language of Article II Section I – “the executive Power shall be vested in a President of the United States of America.” The executive power given to the President allows him to defend the preamble. The executive office is better able to “establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare.” We also saw that Alexander Hamilton in Federalist 69 points out exactly how different the office of President is different from that of the King of England. He finds it necessary to do this because the word prerogative has such a negative connotation, since the King holds that power. He does this to show the king has virtually unlimited prerogative power, whereas the president is in a box, and will likely not abuse the office of president as much. Hamilton also shows us that the executive office needs to be energetic, meaning it must have four qualities, decision, activity, secrecy and dispatch. All of these things suggest the president has something like a prerogative power, though it is checked through many different avenues in the United States. They are through Congress impeaching the president, the people of the nation not reelecting the same person, and Congress passing a bill into law even if the president veto’s the bill. Now that we understand the

theory behind the prerogative power, in the next two chapters we will look at how past and recent Presidents have used it.

Chapter 2 – Historical Examples of the use of prerogative

Most, if not all of the presidents have used the prerogative power, or at least have acted as if they believe they have prerogative power. They believed it was their duty to do what was right for the United States. Thomas Jefferson put it best when he said, “A strict observance of the written law is doubtless one of the high duties of a good citizen, but it is not the highest.”^{xi} Observing the laws and obeying them is every citizen’s obligation. It is an even larger responsibility for the President. However, the highest obligation of all is self-preservation. If the country is not preserved, then there would be no laws to be carried out. To be clearer I will give a *fictional*, yet realistic example. This example deals with other countries. Therefore it is a part of the foreign sphere. There are two different types of spheres the president can exert the prerogative power on. The two spheres are, domestic in which the president actions within the boundaries of the United States and not directly dealing with any foreign nations, and the foreign directly with foreign nations, not directly affecting the domestic policy of the United States. During a time of peace in the 1920’s the president learns of a country, Country J, which is planning to attack the United States, on our soil. The president, as Commander- in-Chief, would like to try having negotiations with the country as soon as possible. However the United States Congress passed a law in 1872 stating “No negotiations or attacks will be performed from the United States unless otherwise provoked. Provoked is defined as coming under attack either on American soil, or while trying to preserve peace elsewhere.” By law, the president is unable to have negotiations with Country J. Should the president follow the law and await an attack by Country J? Or should he go against the law and pursue negotiations? If the president chooses

the first option, the United States has a possibility of disappearing altogether. The attack could lead to the government being taken over by Country J. Even though this could be the end result, the president still executed the laws of the land. If the president decided to follow the second option, the United States has a large chance of not being attacked. He would be able to work out the issue with Country J with a treaty of some sort. The president did not follow the laws of this great nation. In fact, he took the law into his own hands and acted on a situation. By doing this, he saved the nation and faithfully executed the laws of the United States. Again, this situation is entirely fictional but it allows the point to be made. A law can be broken and the nation will still be intact. A nation can disappear, but at the same time, all of the laws that went along with it will also disappear.

One of the most significant acts of the prerogative before 1900 was President Cleveland's interaction with the Pullman Strike in 1894. Just to clarify, this is an example of a domestic use of the prerogative. The Pullman Palace Car Company made luxury railroad cars. The founder, George Pullman, wanted a place where his employees could live. He then founded a town in Illinois to house the workers, Pullman, Illinois. In this town was everything a person could need, including homes, stores and even a library. Unfortunately a recession hit the United States in 1893. The recession hit Pullman, Illinois just as hard as it hit the rest of the nation. In order to keep the business going, as well as his town, George Pullman had the employees take about a twenty-five percent wage cut. If Pullman would have taken the rent down as well, there would have not been a strike. However, he left the rent at the same price and thought his workers would be able to come up with the money. After the workers were told the rent would not decrease they declared a strike on May 10, 1894. This strike lasted for months, yet it was a peaceful strike. Once the strike started to affect other cities, such as Chicago, the federal

government became involved.^{xii} The president and the governor had talked and decided President Cleveland would not send in troops unless requested by the governor. On June 3, 1894 President Cleveland sent federal troops to Chicago in order to get rid of the strike. The use of federal troops was not the idea of the governor. The governor made it very clear that the federal troops were not welcome. President Cleveland thought the federal troops were needed though, in order to gain control over the situation. If the strike was not stopped, the entire railway system could have been shut down. The Pullman workers were affiliated with the same union as the Chicago railway workers. There were also many other cities with the same affiliation. If other major cities would have been affected, the entire railway could have been on strike, therefore no goods or people would be moved around the nation. This chain of events could have possibly stopped the productivity of the United States. If the productivity stopped, a depression could ensue as well as losing trade with other nations. President Grover Cleveland decided to step in when it came to the Pullman strike. In order to be able to faithfully execute the laws of this nation, there needed to be a nation. If this strike continued, there is no telling what could have possibly happened to the United States. This example suggests the prerogative was used because the governor did not specifically ask the president to send in federal troops. If the governor had contacted President Cleveland and told him to send in troops, then this would not be an act of prerogative. Instead, the president would have been following directions given by the governor. Article IV Section IV of the Constitution is the republican guarantee clause. This clause protects states from being invaded by the national government. President Cleveland did not follow this section. If the governor would have asked for government assistance it would not have been an act of prerogative because there is nothing stated on whether or not the federal government can assist in state affairs.

Rutherford B. Hayes was one of the first presidents to formalize prerogative power into executive orders. For example, Hayes gave an executive order (a way of using the prerogative power) on August 7, 1877 that forbade trade with Indian Nations by US citizens.

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked and all applications therefore to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued-- the introduction into the Indian country, for the purpose of sale or exchange to or with Indians, of any breech-loading firearms, and of any special ammunition adapted to such arms, and the sale and exchange to Indians in the Indian country of any such arms or ammunition, is hereby prohibited; and it is hereby directed that all authority under any license to trade in such arms or ammunition is hereby revoked.

The introduction into the country or district occupied by any tribe of hostile Indians, for the purpose of sale or exchange to them, of arms or ammunition of any description, and the sale or exchange thereof to or with such Indians, is hereby prohibited; and it is hereby directed that all license to trade in arms or ammunition of any description with such tribe be revoked.

The military forces of the United States may be employed in such manner and under such regulations as the President may direct--

Third. In preventing the introduction of persons and property into the Indian country contrary to law, which persons and property shall be proceeded against according to law.

all military commanders are hereby charged with the duty of assisting in the execution of the above order and of Executive order of November 23, 1876,* the provisions of which are extended to include all Indian country within the Territories of Idaho, Utah, and Washington and the States of Nevada and Oregon.
R.B. HAYES^{xiii}

The reason I included the entire executive order is to show what exactly the prerogative power looks like on paper. By showing this executive order, at least in my own mind, it allows the prerogative to not be an intimidating object. Other hand much like a decree Instead it looks like a consolidated bill that could have came out of Congress. The very first sentence shows the idea of the first chapter come to life. It says “The President is authorized, whenever in his opinion the public interest may require the same.”^{xiv} This means the president is able to make the decision

whether or not the public interest may require something in their best interest. At the same time he says exactly the outlines of the prerogative. This is an easy sentence to overlook however it is extremely important. President Hayes is showing and admitting to having the prerogative power. He is saying he is the one that best can tell what is best for the people of the United States. After making this enormous step in the prerogative, he states all people will cease trade with the Native Americans. It does not matter if you have a license or not, it needed to stop.

Why would President Hayes use his prerogative power for this instead of allowing Congress to make the decision? There are many possible explanations. For example, Congress may want to continue to have trade with the Native Americans for the benefit of their individual constituents. It may be a positive act of trade for one district, however not for the majority of the people. Another possible reason is Congress was not in session. Since Congress was not in session to take on this issue, President Hayes felt it best to take the situation under his own discretion. President Hayes then goes on to talk about the trade of firearms and ammunition. With such trade going on, the Indians could and did for that matter, attack the Americans. This has happened since before the United States was a country. Continuing on the president makes it clear the military will be helping him enforce these rules. Not only will the police be in charge of executing this law, so will the military. The only reason I can see why this is, is because if the Indians are hostile and they have fire arms and ammunition, the military will need to defend the United States. Finally he tells of where this act of prerogative will take place. It is law in not only the states of Nevada and Oregon but also the territories of Washington, Idaho and Utah. Main reason was because he felt it necessary to promote the common defense and faithfully execute the constitution by way of the preamble.

In the next chapter we will look at the modern uses of the prerogative power and the different avenues it takes. We will begin to do so we have to take a look at a president that forever changed the office of the president. President Theodore Roosevelt greatly expanded the power and was one of the driving forces behind the different avenues.

Chapter 3 – Modern Use of Prerogative

As stated in the previous chapter President Theodore Roosevelt took the office of the presidency and greatly expanded it. We will look at the fifth chapter of his autobiography to fully grasp his understanding of the presidency of the United States. There will be many excerpts used from his autobiography, but only to interact with Roosevelt himself and try to thoroughly understand his views on the prerogative. To start off, Theodore Roosevelt states:

The President's duty is to act so that he himself and his subordinates shall be able to do efficient work for the people, and this efficient work he and they cannot do if Congress is permitted to undertake the task of making up his mind for him as to how he shall perform what is clearly his sole duty. – Theodore Roosevelt^{xv}

Roosevelt clearly understood what it meant to be the president of the United States. First he knew that the prerogative power existed in the office. He knew that he had to have the best interest of the people in mind at all times. Congress is not to make up the mind of the president. That is the job of the president and no one else. While it is a simple fact; it must be well comprehended in order to go on with our conversation with Roosevelt. In the next excerpt, Roosevelt goes on to speak of the exact view he took on the presidency and the other view that is held.

The course I followed, 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, was substantially the course followed by both Andrew Jackson and Abraham Lincoln.

Other honorable and well-meaning Presidents, such as James Buchanan, took the opposite and, as it seems to me, narrowly legalistic view that the President is the servant of Congress rather than of the people, and can do nothing, no matter how necessary it be to act, unless the Constitution explicitly commands the action. Most able lawyers who are past middle age take this view, and so do large numbers of well-meaning, respectable citizens. My successor in office took this, the Buchanan, view of the President's powers and duties. – Theodore Roosevelt^{xvi}

He points out the exact differences between the two views. The first being the one he chose, where he is able to actively serve the people as long as the Constitution does not forbid him. What's moving is he points out who else took this view, both Abraham Lincoln and Andrew Jackson. Both of these presidents were extremely influential during their terms. The other, or Buchanan approach, allows the president to be the slave of Congress. He is only allowed to execute the laws that are passed by Congress. Theodore Roosevelt did point out that this is the legalistic view of the president. It seems it would be easier to follow this approach if you were a lawyer. Why, simply because there would be no implied powers to look at. Roosevelt goes off the assumption of the implied powers of the president. Buchanan and lawyers do not think of implied powers because there is no direct line in the Constitution where it is stated that there are implied powers. To close our discussion on Roosevelt we will end with one more quote. This excerpt shows exactly what President Roosevelt believed. He believed he was the steward of the people. He would act for what he felt was the best interest of the people and he did want to limit himself to being Congress's errand boy.

The most important factor in getting the right spirit in my Administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. – Theodore Roosevelt.^{xvii}

Theodore Roosevelt was a man that strongly believed that the president was a “steward of the people.” He believed he was in office for the people of the United States. Roosevelt was a supporter of implied powers of the Constitution and he was able to act on those implied powers of Article II.

The word modern will be used in talking about events from the year 1900 until the present day. In the first chapter we discussed the theory behind the prerogative power. In the second chapter we went over some examples from history (1789-1899.) Now we will go over the modern uses. In the modern age avenues in which the prerogative power is used have been given names. These avenues are executive orders, secret orders, and emergencies. We will spend sufficient time looking at each of these individually.

The first example is the executive order. This is also the most common use of the prerogative power. An executive order is an order given by the president that does not need to approval of Congress or the Courts. The order goes straight into effect, essentially becoming a law. In order to show the extent of the executive orders, it is necessary to show the presidents and how many executive orders they gave.

“George Washington – 8, John Adams – 1, Thomas Jefferson – 4, James Madison – 1, James Monroe – 1, John Quincy Adams – 3, Andrew Jackson – 12, Martin Van Buren – 10, William Henry Harrison – 0, John Tyler – 17, James K. Polk – 18, Zachary Taylor – 5, Millard Fillmore – 12, Franklin Pierce – 35, James Buchanan – 16, Abraham Lincoln – 48, Andrew Johnson – 79, Ulysses S. Grant – 217, Rutherford B. Hayes – 92, James Garfield – 6, Chester Arthur – 96, Grover Cleveland (First term) – 113, Benjamin Harrison – 143, Grover Cleveland (Second term) – 140, William McKinley – 185, Theodore Roosevelt - 1,081, William Howard Taft – 724, Woodrow Wilson – 1,803, Warren G. Harding – 522, Calvin Coolidge – 1,203, Herbert Hoover – 968, Franklin Delano Roosevelt – 3,522, Harry S. Truman – 907, Dwight D. Eisenhower – 484, John F. Kennedy – 214, Lyndon B. Johnson – 325, Richard Nixon – 346, Gerald R. Ford – 169, Jimmy Carter – 320, Ronald Reagan –

381, George Bush – 166, William J. Clinton – 364, George W. Bush – 291, Barack Obama (as of 1/20/2012) – 109.”^{xviii}

This list is able to show that every single president, except William Henry Harrison, has used an executive order. The first executive order happened the day George Washington was inaugurated, June 8, 1789. This executive order “required officials in the new government who had been in office under the Articles of Confederation to submit a report that would give him ‘a full, precise, and distinct general idea of the affairs of the United States’ in their domain.”^{xix} This shows executive orders are nothing new in the 20th and 21st centuries. Instead they have been around since the beginning of our nation. They have though, become more widespread. President William McKinley only used 185 executive orders throughout his time as president yet President Theodore Roosevelt used 1,081. Theodore Roosevelt was the first to hit and go above the 1,000 mark. Since then presidents such as Woodrow Wilson, Calvin Coolidge and Franklin D. Roosevelt have all gone above and beyond the 1,000 mark.

Why would presidents use executive orders when there is already a way to make laws? Congress is present for a reason. Yet as Melanie Marlow says,

“Presidents have come to favor the use of executive orders because they provide speed and flexibility and bypass the complicated legislative process, especially when it appears Congress may be hostile to a president’s goals.”^{xx}

If Congress will be hostile to what the president believes to be for the public good it makes more sense to issue an executive order. This way the long and arduous task of passing laws will be cut, quite possibly in half. As I, a regular United States citizen, see it the executive order would particularly come in handy when the President is of one political party and Congress the other. When this is the case, most of the president’s agenda is not filled and neither is the agenda of the

majority of the Congress. Instead the country is at a standstill. Due to this, there have been over 50,000 executive orders made.

President Harry S. Truman issued Executive Order 9981 on July 26, 1948. This executive order launched a new committee – President’s Committee on Equality of Treatment and Opportunity in the Armed Services. This committee was in place to make sure there will be “equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin”^{xxi} Truman also made sure that “this policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale”^{xxii} This executive order is just one example of how a usage of the prerogative power by the president is a safe, efficient and needed power. Executive Order 9981 was put into being in order to make the Armed Forces equal on all levels including race, religion and national origin. I mention that it was efficient to make this executive order because this issue could have very well been introduced in Congress. If that were the case, then every representative and senator would have to agree on the exact wording of the bill which could take weeks even months. That President Truman realized, as Commander in Chief, the United States Armed Forces needed to be equal in treatment and in opportunity. He did have the chance to introduce the idea to Congress, but instead knew something needed to happen and that it was in the best interest of the people in the Armed Services and the public. It is obvious as to why it was in the best interest for the people in the military but explanation is needed as to why it is best for the public. By making the military equal, more individuals will want to sign up and fight for their country. The people will feel even more pride for their country when they know the military is equal.

President Ronald Reagan issued Executive Order 12546 on February 3, 1986. The name of this executive order is the Presidential Commission on the Space Shuttle Challenger Accident. Given by the name this executive order has to do with the tragic Challenger accident which occurred on January 28, 1986. 12546 established a Commission to find out exactly what was the cause of the Challenger accident. The executive order gave the following requirements for the Commission.

Review the circumstances surrounding the accident to establish the probable cause or causes of the accident and Develop recommendations for the corrective or other action based upon the Commission's findings and determinations. ^{xxiii}

Reagan made sure to have a timeline for this Commission as well. They were to fulfill the requirements within one hundred and twenty days. Once they gave their final report to the President and the National Aeronautics and Space Administration the Commission was to be expired within sixty days.

The next way a president can act on the prerogative power is with secret orders. Secret Orders have many different names such as National Security Decision Directives, Presidential Directives, and National Security Decision Memorandums. As can be seen in the name of the orders, they are secret and because of this three fourths of these orders are not made public. Due to this, it is impossible to know exactly how many secret orders there are. It is known however, that President Ford made at least 84 secret orders. Add that to his number of executive orders and that equals 253 orders over his presidency. One of these secret orders was issued in August of 1974 and was an authorized plan for underground nuclear tests and assigned "highest national priority" to those tests scheduled for completion before Threshold Test Ban Treaty was to take effect in 1976 (The Unitary Executive and the Modern Presidency.) Why was this a National Security Decision Memorandum (NSDM)? Perhaps it was to keep the public good in mind. By

making this secret, Ford was not alarming the public. If the public was aware that nuclear tests were going on underground there would be pandemonium. The people would more than likely think a nuclear war really was coming with the Soviet Union. By putting out a NSDM instead of an executive order, there was no pandemonium about nuclear testing underground between 1974 and 1976.

President Jimmy Carter, who named his secret orders Presidential Directives, has some Presidential Directives that have become unclassified. Most still have parts of them that are blanked out, but the basic concept behind them is able to be made out. While looking through the Presidential Directives that are unclassified, Jimmy Carter made sure not very many people on his cabinet received these. Only the people that were directly related were notified. The one we will be looking at is Presidential Directive/NSC-53 that went into effect November 15, 1979. This Presidential Directive was given to many people due to it needing many people to be executed. The following people were sent Presidential Directive/NSC-53 (notice no names are given only titles): The Vice President, The Secretary of State, The Secretary of Defense, The Attorney General, The Secretary of Commerce, The Secretary of Transportation, The Secretary of Energy, The Director, Office of Management and Budget, The Director of Central Intelligence, The Assistant to the President for Domestic Affairs and Policy, The Administrator, General Services Administration, and The Director, Federal Emergency Management Agency. Why would Carter not want any specific names to be given? It seems it would be easier to say Walter Mondale instead of the Vice President or Charles Duncan instead of Secretary of Energy. Since the Presidential Directives were meant to be classified and no one unless authorized was supposed to see them, this made it so mix-ups were made. There could have been another Walter Mondale, or Charles Duncan working at the White House, Pentagon, or other government

building. Now, we will return to Presidential Directive/NSC-53, or National Security Telecommunications Policy. The opening paragraph states:

“...It is essential to the security of the United States to have telecommunications facilities adequate to satisfy the needs of the nation during and after any national emergency. This is required in order to gather intelligence, conduct diplomacy, command and control military forces, provide continuity of essential functions of government, and to reconstitute the political, economic and social structure of the nation. Moreover, a survivable communications system is a necessary component of our deterrent posture for defense...”^{xxiv}

In breaking down this paragraph it is easy to see the overarching idea of this presidential directive, a secret communication device throughout the nation in the case of national security.

In the event an event would happen that the government would need to use the secret telecommunications, Carter says exactly what it would be used for. It would be used to “gather intelligence, conduct diplomacy, command and control military forces, provide continuity of essential functions of government, and to reconstitute the political, economic and social structure of the nation.” All of these facets are a part of the president’s duties discussed in Chapter One. I like that he then states what the Presidential Directive/NSC-53 is, but in a more broad spectrum in order to make sure everyone involved knows why there will be a national security telecommunications policy. When reading the rest of the Presidential Directive it is extremely evident that the Cold War was the main cause for this directive. Carter presents a long list as to what the telecommunications must provide for. For example:

“- Connectivity between the National Command Authority and strategic and other appropriate forces to support flexible execution of retaliatory strikes during and after an enemy nuclear attack.

-Support of military mobilization in all circumstance.

-Continuity of government during and after a nuclear war or natural disaster.

-Recovery of the nation during and after a nuclear war or natural disaster”^{xxv}

President Jimmy Carter had one thing in mind while writing and authorizes this Presidential Directive, to protect the United States citizens from a nuclear attack. This directive was given November 15, 1979, in the heat of the Cold War. Therefore it is obvious all President Carter was trying to accomplish was a means of protecting the people of the United States in the case of the Soviet Union launching a nuclear attack.

The third way a president can exercise the prerogative power is through emergencies. It is sometimes called the emergency power of the president. It is interesting to note that once an emergency power is used, the power never goes away. I will give a hypothetical situation in order to further elaborate. Again this is extremely fictional. The United States has been through a year with little to no rainfall, and an extreme drought has occurred in most of the nation. Since the drought is present, livestock are dying in mass quantities and there are very little crops. The only way to fix this situation is to use a new technology that converts ocean water to drinking water. Congress has been avoiding the bill that would allow companies to use the technology and sell the water. Since the United States is in such a predicament, the president decides to use the emergency power. By using this power he allows five companies to use the technology and sell the purified water. Now that the president has called it an emergency, the next time a drought occurs the president can do the same thing.

President Harry Truman is known for using this emergency power with the steel mills. The United States was involved in the Korean Conflict and the American steel mills decided to go on strike. By going on strike, the steel mills would obviously not be producing war materials. Without any war materials, the chances of winning the Korean Conflict would drop drastically. President Truman saw this as an emergency. With his emergency power, he overhauled and nationalized the steel mills and had them produce war goods. The steel company's owners took

this to court in *Youngstown Sheet and Tube Company v Sawyer* in 1952. The court decided that the president is unable to seize steel mills due to it being a lawmaking power that was given to Congress, not the President. However before the case made it to the Supreme Court, the federal district judge and a lawyer had this exchange:

Judge Pine: So you contend that the Executive has unlimited power in time of an emergency?

Lawyer: He has the power to take such action as is necessary to meet the emergency.

Pine: If the emergency is great, it is unlimited, is it?

Lawyer: I suppose if you carry it to its logical conclusion, that is true. But I do want to point out that there are two limitations on the Executive power. One is the ballot box and the other is impeachment.^{xxvi}

The lawyer believed the same as President Truman. He believed that the president should be able to make decisions in an emergency. By being able to make a decision in an emergency, the president would not rely on Congress to pass a law. Instead he has taken it into his hands the responsibility to make a decision. Truman was obviously not content with this verdict because he believed as Thomas Jefferson did. He believed that self-preservation was needed before following the written law. Without having war materials there is a strong possibility there would be no more United States. Without a United States, there would be no law to break. Truman did not say it as eloquently, instead he said “The president has the power to keep the country from going to hell.”^{xxvii} That is exactly what Truman tried to do when he overhauled the steel industry.

The prerogative power has greatly evolved within the executive over the 20th and now 21st century. President Theodore Roosevelt believed the president was the steward of the people and is supposed to look out for their best interests. The way presidents do that is through executive orders, secret orders, and emergencies. While the president does indeed have the

power to look out for the best interests, the people can vote him out of office. This point has been brought up again and again; nevertheless it is an essential part to my argument. We the people are able to decide if the president is working towards our best interest or not. We are the check on the prerogative power.

Conclusion

Americans are still divided on the question of “does the president have the prerogative power?” It is and will forever be a topic of contention. By saying the prerogative power is held by the president, some would say the president may overstep the boundaries given to him in the Constitution. However, as I have pointed out, these claims are not true. In chapter one, we started by looking at whether or not the framers actually gave the prerogative power to the president. The Preamble, Oath of Office, the Constitution, Alexander Hamilton and James Madison all shows that yes, the framers gave the president something of the prerogative power. Whether it be the word “faithfully” and its ability to allow the president to interpret laws, or Article II Section I, vesting all of the executive power in one office, the prerogative can be seen.

My personal view on the subject is it is controversial to say the least. It is an interesting topic to study. It allows for a much deeper look at the Constitution and a better understanding of what the framers had in mind when they wrote Article II of the Constitution. I believe the prerogative power can be used for good because it allows the president to not wait around for Congress in a trying time. To go back to an earlier example it allows the president to act when a natural disaster hits the United States. There are ways the president could use the prerogative against the public benefit of the nation. Yet, I feel confident in knowing that the people are the final check

on the president. If we do not believe he is acting in the public interest then we can vote him out of office or have Congress impeach him.

-
- ⁱ Thomas E. Woods Jr. and Kevin R. C. Gutzman, "Who Killed the Constitution?", Page 28
- ⁱⁱ Thomas E. Woods Jr. and Kevin R. C. Gutzman, "Who Killed the Constitution?", Page 33
- ⁱⁱⁱ The Unitary Executive and Modern Presidency, Page 78
- ^{iv} Andrew Jackson "Veto of the Bank Bill" 10 July 1832
- ^v Alexander Hamilton, Federalist Paper 69
- ^{vi} James Madison, Federalist Paper 48
- ^{vii} Forrest McDonald, American Presidency, Page 293
- ^{viii} The Unitary Executive and the Modern Presidency, Page 43
- ^{ix} Thomas E. Woods Jr. and Kevin R. C. Gutzman, "Who killed the Constitution?", Pg 30
- ^x Alexander Hamilton, Federalist Paper 70
- ^{xi} Forrest McDonald, American Presidency, Page 3
- ^{xii} <http://www.kansasheritage.org/pullman/index.html>
- ^{xiii} <http://www.presidency.ucsb.edu/ws/index.php?pid=68591>
- ^{xiv} <http://www.presidency.ucsb.edu/ws/index.php?pid=68591>
- ^{xv} Theodore Roosevelt, "The Presidency: Making an Old Party Progressive" Chapter X
- ^{xvi} Theodore Roosevelt, "The Presidency: Making an Old Party Progressive" Chapter X
- ^{xvii} Theodore Roosevelt, "The Presidency: Making an Old Party Progressive" Chapter X
- ^{xviii} The American Presidency Project, <http://www.presidency.ucsb.edu/data/orders.php>
- ^{xix} Melanie Marlowe, "Unitary Executive and the Modern Presidency", Page 76
- ^{xx} Unitary Executive and the Modern Presidency Page 80
- ^{xxi} Executive Order 9981
- ^{xxii} Executive Order 9981
- ^{xxiii} Executive Order 12546
- ^{xxiv} Presidential Directive/NSC-54
- ^{xxv} Presidential Directive/NSC-53
- ^{xxvi} Thomas E. Woods Jr. and Kevin R. C. Gutzman, "Who Killed the Constitution?", Page 27
- ^{xxvii} Thomas E. Woods Jr. and Kevin R. C. Gutzman, "Who Killed the Constitution?", Page 28