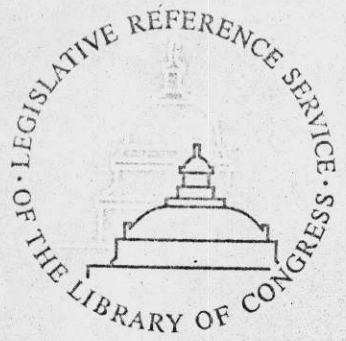

POWERS OF THE PRESIDENT, 1969.

WILLIAM R. TANSILL
Government and General Research
Division

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POWERS OF THE PRESIDENT

General

The Constitution, in Section 1 of Article II, unequivocally endows the President with the "executive Power" in the Federal Government. As stated this power is plenary; yet elsewhere in the Constitution certain defined powers are accorded the President, some to be exercised by him alone and others to be shared by the Congress. Scholars long have wondered why, if all executive authority resides in the President, the framers of the Constitution considered it necessary to itemize specific powers. Was it intended that the President be precluded from enjoying any power not expressly granted? And when the Congress, by law, confers certain additional powers and duties upon the President, are these truly executive powers; and if they are, how could Congress originate them if the President is the sole source of executive authority? Is it necessary for the Chief Executive to turn to Congress for both the means and the authority to act in contingencies of rebellion, social unrest, national catastrophe, or threat of war?

Such questions -- which defy simple or conclusive answers -- illustrate the complexity of this country's divided system of government and the razor-thin line sometimes separating power between the Executive and the Legislature.

Since the adoption of the Constitution, two broad and competing schools of thought have interpreted the intent of the Founding Fathers. One, reflecting the broad view and including within its ranks Hamilton, Jefferson (when he purchased Louisiana), Jackson, Lincoln, the two Roosevelts, Wilson, Truman, Kennedy, and Johnson, has insisted that the President's prerogatives transcend both the specific powers enumerated in the Constitution and any express Congressional authorization. This view holds, too, that an emergency justifies the President's exercise of all necessary power -- unless expressly forbidden by either the Constitution or statute -- on an independent basis, if need be.

The other group, espousing the limited view maintained with especial tenacity by Buchanan, Grant, Taft, Harding, and Coolidge, has asserted that the President is denied any power not directly stemming from a specific grant of power or an authority "justly implied" within that specific grant. In Taft's words, "There is no undefined residuum or power which [the President] can exercise because it seems to him to be in the public interest" (William Howard Taft, Our Chief Magistrate and His Powers, 1916, pp. 139-140).

The first broad concept, particularly in the twentieth century, has elicited frequently (but by no means invariably) the support of the people, the courts, and even the Congress. It is this elastic theory, accordingly, that has largely fashioned the office of the Presidency into its present form and powers. The exercise of these

powers, however, depends in no small measure upon the capacity, viewpoint, imagination, and character of a given President. If his outlook is broad and his personality forceful, the scope of his authority will tend to expand; but if his concept of his office is limited and his approach diffident, the powers fostered by his more aggressive predecessors will tend to shrink from lack of exercise.

Classification of Presidential powers and duties:

express, implied, or assumed

1. Power to execute and enforce the laws and to maintain order.

The President's oath of office demands that he "protect and defend" the basic law of the land from which all others evolve -- the Constitution itself; and Section 3 of Article II of that charter provides that he "shall take care that the laws [including, by implication, treaties and ordinances] be faithfully executed." He is not only charged with enforcing all Federal laws, but is also required, by the force of logic, to protect all Federal instrumentalities and property. To execute and protect the laws, to suppress violence and insurrection, and to repel invasion, he, as Commander in Chief, can utilize all the armed forces of the Nation, including the militia (National Guard) when the latter is called into Federal service.

Although the power to federalize the National Guard is ostensibly a Congressional rather than Presidential prerogative, the Congress, by a series of statutes enacted as early as 1792, has delegated to the President the power to call out the Guard whenever the execution

and integrity of national laws is threatened by groups powerful enough successfully to resist judicial restraints. It has been held, indeed, that in extraordinary circumstances this power is virtually an intrinsic and absolute one, rather than a delegated authority. Should the President have valid reason to believe that disorder would seriously affect any national function, the security of national property, the free flow of interstate commerce, or the performance of national court orders, he can employ "the entire strength of the nation" to remove the threat whether or not the Congress, the State Governor, or the State legislature requests or approves such action (158 U.S. 564). The President's use of troops, Federal and/or State, in Little Rock in 1957, in Oxford in 1962, in Birmingham and Tuscaloosa in 1963, and in Selma in 1965 are cases in point.

With respect to riots, which, of course, are evidences of disorder, Chapter 15 of Title 10 of the United States Code authorizes the President, at the request of State authorities, to intervene with force if violence hinders the execution of the laws and denies the people equal protection of such laws. These statutory authorizations, however, can be considered implementations of Constitutional provisions, while affirming powers the President has always possessed as Chief Executive and Commander in Chief. In essence they provide guidelines; it is highly questionable that they are binding or indispensable, especially during occasions of dire emergency. President Johnson, after ordering the use of Federal troops during the Detroit rioting, made

it clear that he did so reluctantly. He authorized spokesmen to declare that the primary responsiblity for law enforcement lay with the State and local officials. But he did not deny, through these same spokesmen, that the Federal Government, personified by the Chief Executive, could intervene unilaterally "'when all else fails'" (The New York Times, July 25, 1967, p. 20).

Nonetheless, the President's power to enforce and sustain the laws, even in emergencies, is not without qualification. He is, after all, ultimately dependent upon the Congress for both the personnel and the money to carry out his directives; and he is dependent, too, upon the efficiency of the national public service.

2. Power to lead in legislation.

The framers of the Constitution were imprecise in proclaiming in Article I that "All legislative Powers . . . shall be vested in . . . Congress." Elsewhere in the same document they assigned the President certain duties and powers that bore directly on legislation, and which potentially, at least, were power-laden. In Article II, Section 3, he was instructed "from time to time [to] 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."

This injunction conferred, on the face of it, a duty; but this obligation under dynamic Presidents has metamorphosed into a power of such magnitude that the Chief Executive often has become, if not

the Chief Legislator, the legislative leader. The majority of major public bills are drafted, at least in essence, in Executive agencies, not in Congressional committees. The committees may put a given bill in final form and may even amend it substantially, but the heart of the measure usually is formulated elsewhere.

The classic example of virtual abdication by Congress of its legislative primacy was its largely automatic endorsement of FDR's "suggestions" during the unforgettable "Hundred Days."

The continuing significance of the President's role in law making was emphasized afresh when Speaker John W. McCormack expressed surprise that President Nixon had been slow in presenting his legislative program to the 91st Congress.

Congress, of course, can reject out of hand any Presidential proposal; but the Chief Executive has powerful allies never contemplated by the Constitution to assist him in getting a bill or program adopted. Radio and television have enabled him to dramatize his own ideas and policies and to appeal effectively to the people over the heads of Congress, while his control of patronage and the spread of his gospel by his own "lobbyists" -- employees of the Executive departments who keep close liaison with Congress -- constitute other "persuaders" of reluctant legislators.

The President can also draw a formidable weapon from the Constitution itself when he decides to oppose a measure the Congress on its own has authored: he has the right to veto any bill or joint resolution

it has enacted, and the measure dies unless two thirds of both Houses vote to override the veto. Relatively speaking, only a handful of vetoes have themselves been negated.

Two minor powers constitutionally accorded the President concern his right to intervene in the meeting of the Members. "He may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper" (Article II, Section 3). Until the passage of the 20th Amendment, which largely eliminated any need for special sessions, the President occasionally convened both Houses to consider specific proposals and rather frequently called the Senate alone into session to pass upon appointments to office. But he has never adjourned the Congress.

3. Power to appoint and remove civil and military officers.

In the United States Government only two officers are popularly elected: the President and the Vice President. All others are appointed. The Constitution, in Article II, Section 2, clause 2, provides that 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, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior

Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

Under this Constitutional mandate, the President is the chief administrator of the National Government and as such is the primary appointing officer; but in practice, of course, the great majority of the nearly three million Federal employees are hired by the heads of Departments and agencies. Although the bureaucratic chiefs owe their appointments, and consequently their fealty, to the President, they necessarily are accorded discretion in serving as the employing agents of the great mass of public servants: the President simply has not the time to devote to such routine administrative matters. But this delegated authority -- delegated by both President and Congress -- is not unlimited in terms of controlling careers. Those Federal employees who are clothed with permanent status in the classified service are protected from arbitrary action by the statutes upon which the merit, or Civil Service, system is based. For example, they can be removed only for "cause."

There are, however, broad categories of employees with respect to which the President's power to appoint is immediate and, save for the necessity of Senatorial confirmation, virtually unfettered. These include, in addition to Department heads, Under Secretaries, Assistant Secretaries, and some bureau chiefs; ambassadors, ministers, and consuls; Supreme Court Justices and Federal judges; district attorneys and marshals; members of Federal commissions and boards; collectors of

customs and of internal revenue; and the first three classes of postmasters (although President Nixon has recommended that all postmasters be removed from patronage).

The President's control of patronage, indeed, remains a formidable tool, and sometimes enables him to exercise influence on specific legislative matters. The exchange of favors between President and legislator is part of the process of politics.

The power to appoint carries with it, generally, one of the more important "implied" powers -- that of removing incumbents from office. The Constitution itself is silent with regard to removals, except for its provision that any civil (and presumably first-line) officer is liable to impeachment. This, however, is a time-consuming and involved process and can be based only on the charges of treason, bribery, and other high crimes and misdemeanor. To handle cases of neglect, incompetence, and similar problems on the part of "inferior" officers -- a term that custom, not the Constitution, has applied to those in the intermediate and lower grades -- the President has been adjudged to have the right, through his Department and agency heads, to terminate employment for cause. For well over a century, however, there was doubt as to whether he could independently remove those whom he had appointed in concert with the Senate. Then, in the case of Myers v. United States (272 U.S. 52), the Supreme Court, in 1926, ruled that the President was constitutionally empowered arbitrarily to remove an

officer without Senate sanction, even though that officer had been confirmed in his appointment by the Senate.

It developed, though, that the President's power to remove high-ranking officers is not absolute. In 1935 the Supreme Court held, in Rathbun, Executor, v. United States (295 U.S. 602), that the President cannot remove an officer from an independent, non-partisan, and essentially non-executive regulatory agency except for "inefficiency, neglect of duty, or malfeasance in office." Such an angency, or commission, was established by Congress for the express purpose of carrying out Congressional directives under officers whose tenure was specifically set and whose removal was to be effected by the President only for specified causes. Should the President attempt to dismiss any such officer for personal or political reasons, or for any cause other than those prescribed by Congress, his action would be in violation of the principle of separation of powers and hence unconstitutional.

It is interesting to note that there is one officer of the United States who can be removed by the Congress. Acting on its own, and by joint resolution, Congress may at any time remove the Comptroller General of the United States on grounds of inefficiency and criminal or immoral conduct (31 U.S.C. 43). And Congress indirectly can effect the removal of other officers it deems anathema: it can simply abolish the office or agency employing the offending officer or officers. It has been known to do this.

4. Power to direct the Administration.

Stemming logically from the President's power to appoint and remove officers is his power to direct their performance. It is a power he shares only with his own subordinates, despite the fact that Congress still retains a large measure of control over the Departments and agencies. By creating the offices, funding their operations, outlining their objectives, imposing regulations upon them, and maintaining its right to investigate, to criticize, and to curtail and even eliminate appropriations, Congress keeps the agencies responsible, in no small degree, to itself. The fact remains, nevertheless, that the actual directing, or administering, of the various offices of the Government is left necessarily to the Chief Executive and his lieutenants. In its injunction that the President execute the laws, the Constitution, by implication, also endows him with the power to direct the officers he has appointed to help him perform that duty.

Congress has contributed steadily to the enhancement of both the scope and the depth of the President's power to direct by providing him with new organizations to be supervised and new directive obligations to be assumed.

The President can even exert great pressure upon officers whose duty it is to perform acts required by law. Should the President find a given statute distasteful, he might threaten dismissal for any officer who enforces it; and that unhappy man would

be forced to choose between losing his job and facing the probability of incurring judicial ire, especially if Congress were to nudge the courts into taking cognizance of the President's apparent dereliction. In the past, officers caught in such dilemmas usually have sought refuge in temporizing.

Inherent in the President's implied power to direct is the authority to issue detailed rules and regulations in the form of executive orders. Laws define in broad terms the functions of government, but the means and the manners of implementing the laws, the nuances of administration, must be left to the managers who are on top of the work. And their decisions and regulations must, and do, have the force of law. Responsibility for this whole body of "administrative law" rests ultimately, of course, with the President.

5. Power to control the Nation's armed forces, in peace and war.

Although the defense of the Nation depends, structurally, upon Congress (which provides the armed forces and the money to support them), the President is the prime mover in directing that defense. And his powers have grown to vast proportions. Some are express, some implied, and some assumed. All three types derive, in varying degrees and as the result of diverse interpretations, from three principle sources: (1) his designation in the Constitution as the premier executive; (2) his role, expressly assigned by the Constitution, as Commander in Chief; and (3) powers granted or delegated to him by Congress.

It should be stressed that often there is an overlapping, a blending, of the President's executive and military powers; in fact, it is impossible always to keep them distinct. Among those powers which clearly come from his position as Chief Executive but which also are augmented, but in indeterminate degree, by his role as Commander in Chief are these: (1) commissioning (with Senate concurrence) of regular and reserve military officers; (2) enforcing military regulations, those enacted by Congress and those formulated by himself; (3) approving or vetoing legislation pertaining to things military; (4) presenting budgets for military expenditures; and (5) utilizing armed force, when he deems it appropriate (or upon the request of State officials), to ensure the execution and protection of the laws and to suppress discord and violence.

The President's power to employ the Nation's armed forces in suppressing domestic disturbance is outlined in a preceding portion (Section 1) of this report.

Regardless of the role -- or roles -- he exercises as defense head, the President seldom has to draw exclusively from his own resources. Congress often is a cooperative and indulgent ally. It not only affords him men and money, but it also confers on him, in times of stress, powers of such broad compass that he rivals in authority the most absolute of monarchs. Examples of the extremes to which his hegemony may expand are seen in the Lend-Lease Act of 1941, the War Powers Acts of 1941 and 1942, and the Emergency Price

Control Act of 1942. Under these, the President became final arbiter of such vital processes as food and fuel production and control, transportation, communications, and the determination of price and wage levels -- besides being boss of production of war materiel. It is true that such powers were delegated for limited periods, but they were extended from time to time.

As for the initiation of war itself, only the Congress has the power to declare war. But the President can initiate processes, and influence public opinion, to such an extent that war becomes inevitable. Many authorities maintain that the War with Mexico (1846-48) was, in effect, started deliberately by President Polk. It is a fact, indeed, that all of our declared wars (save possibly the War of 1812) have been at the requests of Presidents.

On the other hand, the President could, conceivably, avert a war that Congress wanted. He could veto a Congressional declaration of war (embodying a joint resolution) and, by enlisting public opinion, have it sustained over any attempt to override it.

Once a state of declared war exists, the President's powers are imposing. In addition to the aforementioned control over the Nation's economy, he can take virtually any measure he deems necessary for the fullest prosecution of the war. The only caution he must observe is not to violate any Constitutional or statutory provision. (Lincoln, though, refused to recognize any restraint whatever, including the Constitution. At times he violated all law on the

ground that as Commander in Chief both the initiative and the responsibility in the war -- which, incidentally, was never formally "declared"-- were his alone, and that the restoration of the Union by whatever means or cost was his primary duty. Although most of his extreme measures were ratified by Congress, they were done so "after the fact.")

The President can even take the field as top commander, but he is unlikely ever to do so because he would be too busy with the myriads of details incident to administering a nation at war.

America from its beginning has been involved in undeclared wars. The suppression of the Barbary pirates, the naval war with the First French Republic, the succession of Indian "wars," the Siberian adventures of 1918-20, the Korean "police action," and the Vietnam conflict are all examples of conflicts that did not "merit" formal Congressional proclamations of hostility or, for various reasons, did not provoke Congressional initiative. In the Korean conflict, it is true, President Truman acted under some sanction of law inasmuch as the United States was a member of the United Nations and that body supported the President's decision to fight. American involvement in Vietnam, however, has been the result entirely of Presidential decisions. Congress has not declared war and the United Nations has not endorsed the American role.

President Johnson maintained that his authority to commit America's armed forces to continued fighting in Vietnam was unassailable.

The more important sources from which it stemmed were these: his power as Commander in Chief; American responsibilities under the Southeast Asia Treaty (and any treaty in force is the "law of the land"); the pledges given South Vietnam by Eisenhower and Kennedy, which buttressed his own; the concurrent Congressional resolution of August 6-7, 1964; and the continuing approval by the Congress of defense appropriations, as well as of general assistance programs for South Vietnam. Needless to say, there are some who deny that these are sufficient reasons to involve -- and keep involved -- the United States in a conflict that is similar to a full-scale war, whether formally recognized as such or not.

6. Power to conduct foreign relations.

Although the Constitution diffuses power among all three branches of government with reference to international relations, and does not specifically designate the President as the main conductor of foreign intercourse, he, as Chief Executive and the principal international representative of the United States, necessarily is the prime manager of America's foreign affairs. The Congress as a whole can either support or thwart him by providing or denying implementation, and the Senate is a permanent partner in treaty making, as well as in the appointment of officers serving abroad. The judiciary,too, has a potential role in the interpretation of relevant laws. But it is the President who primarily represents the United States in the society of nations.

His powers and duties embrace a number of categories. First, he is responsible for the day-to-day contacts with other governments. He appoints, with Senate approval, all ambassadors, ministers, and foreign service officers. He may also employ, entirely on his own authority, special or personal agents to serve outside the formal channels of diplomacy. He receives, under specific Constitutional direction, all foreign ambassadors and lesser officers and can, if he so desires, have them recalled by their own governments; he can, indeed, break off relations entirely with such governments. But it is through the Department of State that most of the business of foreign affairs, major as well as routine, is conducted. The Department prepares and evaluates correspondence, receives and disseminates information, and negotiates settlements. In this particular area the Congress is shut out: it has no right to negotiate, or even correspond, with any foreign government. The President's power, on the other hand, is unlimited. He can, if he likes, personally handle <u>all</u> important matters. He can, in effect, be his own Secretary of State -- as was Franklin D. Roosevelt.

Stemming from the President's constitutional, and exclusive, right to correspond with foreign governments is the implied power -- long supported by both precedent and judicial affirmation -- to recognize or ignore new regimes, either <u>de jure</u> or <u>de facto</u>. President Theodore Roosevelt's recognition of the Republic of

Panama, born out of revolution, made it possible for him to realize his dream of an isthmian canal.

A third power, again both implied and court-supported, is his authority to protect American citizens traveling or sojourning abroad, as well as aliens domiciled in the United States. If Americans incur mistreatment, or even threats of such, he can resort to any means short of declaring war to afford them relief. Usually, he need only remind the host country of mutually confirmed provisions of protection spelled out in treaties binding the two countries. The President is also responsible, in large degree, for the safety of aliens legally resident in the United States. To protect them, he may enforce all appropriate provisions of law, whether in the Constitution, Federal statutes, or treaties. Although he cannot compel a given State to treat aliens fairly in matters outside Federal jurisdiction, he can provide the offended parties with legal assistance.

In time of war not involving the United States he can extend to both citizens and aliens a substantial measure of protection simply by proclaiming this country's neutrality, with the admonition --stated or implied--that everyone concerned conduct himself with circumspection.

A fourth Presidential power in the area of foreign affairs is that of making international commitments, in the form either of

treaties or executive agreements. In scope, the President's power to negotiate treaties is virtually unlimited, although he must, of course, secure the assent of a two-thirds majority of the Senate. Otherwise, the only restriction upon his power is that a given treaty be "under the authority of the United States;" it need not be, according to the Supreme Court, "in pursuance" of the Constitution (252 U.S. 416). A treaty calling for the exercise of a power not expressly accorded either the President or the Congress may be entirely valid so long as it conforms with the "necessary and proper" implementation of legislation and does not contain patently unconstitutional provisions.

Any treaty duly ratified and promulgated becomes the supreme law of the land, and neither Congress nor the Supreme Court can abrogate it as a binding international contract. But treaties are not necessarily permanent. Some contain within them dates for their own expiration; some die with the outbreak of war; some are supplanted by fresh conventions; and still others perish by denunciation on the part of one or more of the signatories.

Should the United States find a given treaty, or parts of it, no longer useful, it can find relief in several ways. The President, acting entirely on his own, can repudiate the agreement in whole or in part; or he may, in the interest of consensus, ask Congress to support his abrogation with a concurrent resolution; or Congress

itself might make certain provisions ineffective domestically by passing legislation inconsistent with such segments. (The Supreme Court has held that whereas treaties are the supreme law of the land, they are no more supreme than statutes, despite its ruling that a statute clearly in violation of a treaty is invalid.) Thus a treaty can be made unenforceable with reference to the United States, but it remains on the books as an international instrument unless the President, on his own authority, denounces it.

Although the President is ever the sole negotiator, the Senate can, and sometimes does, play an important part in the treaty-making process. It can threaten to veto any proposed treaty (by the disapproval of only one third plus one of its membership); it can insist on amendments, thus requiring the President to renegotiate with the other government (or governments); and it can attach reservations whereby certain provisions of a multilateral treaty are declared not binding on the United States.

But the President's role in treaty making remains preeminent. Not only does he alone have the right to initiate negotiations, but he also controls, save for possible negative action on the part of the Senate, the progress of negotiations every step of the way. After drafting of the instrument has been completed, by both governments, he may himself reject it. Or, after he has submitted it to the Senate for approval, he may change his mind and refuse to ratify it even after Senate confirmation. He may even refuse to promulgate it after both he and his opposite foreign officer have ratified it.

An enormous power accruing to the President that is implied, assumed, and ill-defined is that of making executive agreements with officers of other countries. The Constitution contains no reference whatever to such a power, yet executive agreements often have been adjudged to have the same force and effect as treaties even though they are not subject to Senate confirmation. Sometimes they are based upon prior Congressional authorization, as in the case of trade agreements, but frequently they are negotiated by the President acting solely on his own authority, which, in turn, is based, he may allege, on his power to negotiate treaties, or on his prerogatives as Commander in Chief, or on his authority as Chief Executive, or simply on his position as the legal representative of the United States in its foreign affairs. If the President decides to act in concert with the Congress, he submits the agreement to <u>both</u> Houses for approval; but such submission, presumably, is in the nature of a courtesy or a stratagem rather than a legal requirement.

The bulk of executive agreements, of course, deals with matters beneath the dignity of treaty sanction; but some have related to considerations of the highest significance. Presidents, as a matter of fact, on occasion have resorted to the executive agreement as a means of circumventing manifest or probable Senate opposition to a given policy or project. President Theodore Roosevelt, in 1905, concluded a temporary agreement with the Dominican Republic after the Senate rejected a treaty containing the same provisions. Two years later the Senate capitulated and assented to a treaty making the agreement permanent.

Among many examples of executive agreements on matters of major import are these: the Rush-Bagot convention of 1817, which pledged the United States and Britain to join in limiting naval power on the Great Lakes; Roosevelt's "Gentleman's Agreement" of 1907 with Japan; the armistice of 1917 with Germany; Franklin Roosevelt's destroyer deal with Britain in 1940; and various agreements under the Lend-Lease Act of 1941. The Senate, though, became increasingly critical of the device, which it considered, at best, to be of doubtful constitutionality. Recent Presidents have sharply curtailed its use in matters above the routine level. The United Nations Charter, the Marshall Plan, the NATO pact, and the "Pacific Area" alliances were all submitted to the Senate for approval.

Should a President be dissuaded from employing the executive agreement device out ot fear of alienating the public, as well as the Senate, and decide not to chance rejection of a treaty by a Senate containing enough opponents to make a two-thirds assent at least doubtful, he can try another "end-run." He can submit his proposal to both Houses in the form of a joint resolution; and if simple majorities in each chamber vote for it, the measure, upon his signature, becomes law. This was how Texas was annexed in 1845 and Hawaii in 1898, and how the war with the Central Powers was brought to a close in 1921 after the Senate had failed to accept the Treaty of Versailles.

7. Power to grant pardons, reprieves, and amnesty.

The Constitution, in Article II, Section 2, empowers the President "to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." It is a comprehensive power in that it enables the President to reduce, delay, or cancel entirely an individual's punishment, even before conviction. But the power is limited in that it cannot be applied to violators of State law and cannot be employed to negate Senate convictions of Federal officers impeached by the House.

Recommendations for clemency are usually made by the Attorney General of the United States, after screening by the Department of Justice and interrogation of the prosecutor and district judge involved in a given case. The President, of course, can dispense with all intermediaries and dispose of the application for mercy without benefit of advice, but he very rarely does.

The pardoning power has been adjudged to extend to granting amnesty to whole groups of persons. President Andrew Johnson, for example, issued a proclamation of amnesty embracing nearly every rebel who had fought against the Union.