

Activity Four: Debating the powers of the President

Student Name _____ Date _____

Reading Set A: Absolute or qualified veto power?

[Absolute veto rejected](http://www.yale.edu/lawweb/avalon/debates/604.htm) (4 June 1787)
<http://www.yale.edu/lawweb/avalon/debates/604.htm>

Mr. GERRY...moves to...propose "that the National Executive shall have a right to negative any Legislative act which shall not be afterwards passed by ----- parts of each branch of the national Legislature."

...Mr. WILSON ...The Executive ought to have an absolute negative. Without such a self-defense the Legislature can at any moment sink it into non-existence...

Mr. SHERMAN was agst. enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the Legislature...

Mr. WILSON believed as others did that this power would seldom be used. The Legislature would know that such a power existed, and would refrain from such laws, as it would be sure to defeat...

Mr. BUTLER had been in favor of a single Executive Magistrate; but could he have entertained an idea that a compleat negative on the laws was to be given him he certainly should have acted very differently. It had been observed that in all countries the Executive power is in a constant course of increase...Gentlemen seemed to think that we had nothing to apprehend from an abuse of the Executive power...

Col. MASON...The Executive may refuse its assent to necessary measures till new appointments shall be referred to him; and having by degrees engrossed all these into his own hands, the American Executive, like the British, will by bribery & influence, save himself the trouble & odium of exerting his negative afterwards. We are Mr. Chairman going very far in this business. We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one...Do gentlemen mean to pave the way to hereditary Monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do I venture to tell them, they are mistaken. The people never will consent...He never could agree to give up all the rights of the people to a single Magistrate. If more than one had been fixed on, greater powers might have been entrusted to the Executive. He hoped this attempt to give such powers would have its weight hereafter as an argument for increasing the number of the Executive...

On the question for striking out so as to give Executive an absolute negative-Massts. no. Cont. no. N. Y. no. Pa. no. Dl. no. Md. no. Va. no. N. C. no. S. C. no. Georga. No...

On a question for enabling two thirds of each branch of the Legislature to overrule the revisionary check: it passed in the affirmative sub silentio; and was inserted in the blank of Mr. Gerry's motion...

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Directions: Read the documents that accompany Activity 4 Reading Set A and answer the following questions.

Question	Answer
1. Which delegate supported the absolute negative and what reasons were given?	
2. Which delegates were against the absolute negative and what were their reasons?	
3. What decision was reached? Why do you think it was decided this way?	

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Reading Set B: Foreign policy and treaty-making powers

1. ["To direct all military operations"](http://www.yale.edu/lawweb/avalon/debates/615.htm) (15 June 1787)
<http://www.yale.edu/lawweb/avalon/debates/615.htm>

The propositions from N. Jersey moved by Mr. Patterson were in the words following...

4. Resd...that the Executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any enterprise as General or in other capacity...

2. [The power to "make" but not "declare war"](http://www.yale.edu/lawweb/avalon/debates/817.htm) (17 August 1787)
<http://www.yale.edu/lawweb/avalon/debates/817.htm>

[On the proposed power of Congress] "To make war"

Mr. PINKNEY opposed the vesting this power in the Legislature. Its proceedings were too slow. It wd. meet but once a year. The Hs. of Reps. would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions...

Mr. BUTLER. The objections agst. the Legislature lie in great degree agst. the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

Mr. MADISON and Mr. GERRY moved to insert "declare," striking out "make" war; leaving to the Executive the power to repel sudden attacks.

Mr. SHARMAN thought it stood very well. The Executive shd. be able to repel and not to commence war. "Make" better than "declare" the latter narrowing the power too much.

Mr. GERRY never expected to hear in a republic a motion to empower the Executive alone to declare war.

Mr. ELSWORTH. there is a material difference between the cases of making war and making peace. It shd. be more easy to get out of war, than into it. War also is a simple and overt declaration. peace attended with intricate & secret negotiations.

Mr. MASON was agst. giving the power of war to the Executive, because not safely to be trusted with it...

On the motion to insert declare-in place of make, it was agreed to.

3. [Brearily Committee recommends treaty-making power](http://www.yale.edu/lawweb/avalon/debates/904.htm) (4 September 1787)
<http://www.yale.edu/lawweb/avalon/debates/904.htm>

Mr. BREARLY from the Committee of eleven made a further partial Report as follows. "The Committee of Eleven to whom sundry resolutions were referred on the 31st. of August, report that in their opinion the following additions and alterations should be made to the Report before the Convention, viz...

(7) 'Sect. 4. The President by and with the advice and Consent of the Senate, shall have power to make Treaties...But no Treaty shall be made without the consent of two thirds of the members present.'

4. Treaty power shared with Senate (7 September 1787) <http://www.yale.edu/lawweb/avalon/debates/907.htm>

Mr. MADISON then moved to authorise a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President."-The President he said would necessarily derive so much power and importance from a state of war that he might be tempted, if authorised, to impede a treaty of peace...

Mr. GORHAM thought the precaution unnecessary as the means of carrying on the war would not be in the hands of the President, but of the Legislature.

Mr. Govr. MORRIS thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests.

Mr. BUTLER was strenuous for the motion, as a necessary security against ambitious & corrupt Presidents...

On the motion of Mr. Madison & Mr. Butler N.H. no. Mas. no. Ct. no. N.J. no. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. ay. Geo. ay.

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Reading Set C: The appointment power

1. [Appointing Federal judges](http://www.yale.edu/lawweb/avalon/debates/718.htm) (18 July 1787)
<http://www.yale.edu/lawweb/avalon/debates/718.htm>

Resol. 11 "that a Natl. Judiciary be estabd. to consist of one supreme tribunal." agd. to nem. con. "The Judges of which to be appointd. by the 2d. branch of the Natl. Legislature."

Mr. GHORUM...He suggested that the Judges be appointed by the Execuve. with the advice & consent of the 2d. branch, in the mode prescribed by the constitution of Masts. This mode had been long practised in that country, & was found to answer perfectly well.

Mr. WILSON, still wd. prefer an appointmt. by the Executive; but if that could not be attained, wd.. prefer in the next place, the mode suggested by Mr. Ghorum. He thought it his duty however to move in the first instance "that the Judges be appointed by the Executive." Mr. Govr. MORRIS 2ded. the motion...

Mr. MASON. The mode of appointing the Judges may depend in some degree on the mode of trying impeachments of the Executive. If the Judges were to form a tribunal for that purpose, they surely ought not to be appointed by the Executive...

Mr. MADISON, suggested that the Judges might be appointed by the Executive with the concurrence of 1/3 at least, of the 2d. branch. This would unite the advantage of responsibility in the Executive with the security afforded in the 2d. branch agst. any incautious or corrupt nomination by the Executive.

Mr. SHERMAN, was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the Executive...

On the question for referring the appointment of the Judges to the Executive, instead of the 2d. branch Mas. ay. Cont. no. Pa. ay. Del. no. Md. no. Va. no. N. C. no. S. C. no.-Geo. absent.

Mr. GHORUM moved "that the Judges be nominated and appointed by the Executive by & with the advice & consent of the 2d. branch & every such nomination shall be made at least days prior to such appointment."...

Question on Mr. Ghorum's motion Mas. ay. Cont. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C. no. S. C. no. Geo. absent.

Mr. MADISON moved that the Judges should be nominated by the Executive, & such nomination should become an appointment if not disagreed to within days by 2/3 of the 2d. branch...

By common consent the consideration of it was postponed till tomorrow.

2. [Appointment by Executive or Congress?](http://www.yale.edu/lawweb/avalon/debates/721.htm) (21 July 1787)
<http://www.yale.edu/lawweb/avalon/debates/721.htm>

The motion made by Mr. Madison July 18 & then postponed, 'that the Judges shd. be nominated by the Executive & such nominations become appointments unless disagreed to by 2/3 of the 2d. branch of the Legislature," was now resumed.

Mr. MADISON stated as his reasons for the motion. 1. that it secured the responsibility of the Executive who would in general be more capable & likely to select fit characters than the Legislature, or even the 2d. b. of it, who might hide their selfish motives under the number concerned in the appointment. -2. that in case of any flagrant partiality or error, in the nomination it might be fairly presumed that 2/3 of the 2d. branch would join in putting a negative on it...

Mr. PINKNEY was for placing the appointmt. in the 2d. b. exclusively. The Executive will possess neither the requisite knowledge of characters, nor confidence of the people for so high a trust...

Mr. ELSEWORTH would prefer a negative in the Executive on a nomination by the 2d. branch, the negative to be overruled by a concurrence of 2/3 of the 2d. b. to the mode proposed by the motion; but preferred an absolute appointment by the 2d. branch to either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses & intrigues than the Senate...

Col. MASON...He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary department itself...

On the question, the motion now being that the executive should nominate, & such nominations should become appointments unless disagreed to by the Senate" Mas. ay. Ct. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

On question for agreeing to the clause as it stands by which the Judges are to be appointed by 2d. branch Mas. no. Ct. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. ay. S. C. ay. Geo. ay.

3. [Brearily Committee recommends shared appointment power](http://www.yale.edu/lawweb/avalon/debates/904.htm) (4 September 1787) <http://www.yale.edu/lawweb/avalon/debates/904.htm>

Mr. BREARLY from the Committee of eleven made a further partial Report as follows...

(7) 'Sect. 4. The President...shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, and other public Ministers, Judges of the Supreme Court, and all other Officers of the U. S., whose appointments are not otherwise herein provided for.'

4. [Shared appointment power accepted](http://www.yale.edu/lawweb/avalon/debates/907.htm) (7 September 1787) <http://www.yale.edu/lawweb/avalon/debates/907.htm>

Mr. Govr. MORRIS said that as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security. As Congress now make appointments there is no responsibility.

Mr. GERRY. The idea of responsibility in the nomination to offices is chimerical. The President can not know all characters, and can therefore always plead ignorance...

On the question on these words in the clause viz-"He shall nominate & by & with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers (and Consuls) Judges of the Supreme Court." Agreed to nem: con...