***Three Presidential Views of Presidential Power***

I. **Abraham Lincoln: The Prerogative Theory of the Presidency (1864).**

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

II. **Theodore Roosevelt: The Stewardship Theory of the Presidency (1913).**

I declined to adopt the view that what was imperatively necessary for the nation could not be done by the President unless he could find some specific authorization for it. My belief was that it was not only his right but his duty to do anything that the needs of the nation demanded unless such action was forbidden by the Constitution or by the laws…. I did not usurp power, but I did greatly broaden the use of executive power…. I acted… whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition…. The course I followed [was] of regarding the Executive as subject only to the people, and, under the Constitution, bound to serve the people affirmatively in cases where the Constitution does not explicitly forbid him to render the service. [*Source*: *The Autobiography of Theodore Roosevelt* (NY: Scribner’s, 1913).]

III. **William Howard Taft: The Literalist Theory of the Presidency (1916).**

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

**THEORIES OF PRESIDENTIAL POWER.**

**The Constitutional Theory of Presidential Power.**

      President William Howard Taft put forward what some call the **constitutional theory of presidential power**.  According to Taft, Article II of the Constitution enumerates the powers of the president, and the president must justify his actions on the basis of those enumerated powers or some power reasonably implied from the enumerated powers. His view of presidential power was much more limited that his immediate predecessor as president, Theodore Roosevelt.

**The Stewardship Theory of Presidential Power.**

    In contrast to the constitutional theory of Taft, stands President Theodore Roosevelt's **stewardship theory of presidential power**.

    Roosevelt said that "Occasionally great national crises arise which call for immediate and vigorous executive action, and in such cases it is the duty of the President to act upon the theory that he is the steward of the people," who "has the legal right to do whatever the needs of the people demand unless the Constitution or the laws explicitly forbid him to do it."

    During a coal strike in 1902, President Theodore Roosevelt threatened to seize the mines and run them under his authority if so requested by the governor of a state. The coal shortage threatened the well being of millions of Americans during the winter.

    A member of Congress protested to President Roosevelt "What about the Constitution of the United States?" That is, under the Constitution only Congress had the power to seize private property for a public purpose, and Congress had not acted.

    In response, the President said that "The Constitution was made for the people and not the people for the Constitution!" However, TR's threat to seize the mines worked, the owners agreed to an arbitration commission, and the President did not seize the mines.

**President Truman and the Steel Seizure Case.**

    In a similar situation during the Korea War, President Harry Truman ordered Commerce Secretary Charles Sawyer to seize the steel industry to prevent a strike, and based his order on his power as commander in chief of the military and his powers as chief executive.

    The strike would harm the war effort, and this grave damage damage to the national security justified his action, Truman said.

    The steel companies challenged Truman's order in court. In Youngstown Sheet & Tube Company v. Sawyer (1952), the United States Supreme Court ruled that the president could seize the steel mills to settle a strike only if Congress had given him this power, which Congress had refused to do.

    The Supreme Court ordered Truman to withdraw his order to seize the steel mills. President Truman obeyed the order of the Supreme Court.

    The Court ruled that Truman's powers under Article II did not include seizing private property, even during wartime. Truman was commander in chief of the troops in Korea, but that power did not extend to seizing private property in the United States.

**The President and the Iranian Hostages Crisis.**

    Still later, President Jimmy Carter used an existing law to seize Iranian assets in the United States after Iranians seized the American Embassy in Tehran in 1979. President Carter protected these assets against legal judgments by United States Courts. In 1981, the crisis ended with President Carter making an executive agreement with Iran that required all claims against Iranian assets to be submitted to a special Iran-United States Claims Tribunal.

    When a company protested that the president lacked the power to transfer its claim against Iran from the federal courts to the joint Tribunal, the United States Supreme Court upheld the president's actions.

    The Supreme Court said that Carter's seizure of assets was justified under existing law, and that the Congress had approved the use of executive agreements to settle claims with respect to resolving major foreign policy disputes in the past. The case was settled during the Reagan administration in an action brought against Secretary of the Treasury Donald Regan in  Dames & Moore v. Regan (1981).

**The Prerogative Theory of Presidential Power.**

    The English political philosopher John Locke wrote of the executive prerogative. In governments in which executive and legislative powers are in different hands, "the good of the society requires that several things should be left to the discretion of him that has the executive power." Those in the legislature could not foresee and legislate for future contingencies. The executive must have the prerogative to act "for the public good, without the prescription of the law and sometimes even against it...." That is, the president may, for the public good, act without legal authority or, in some extreme circumstances, violate the letter of the law to save the nation.

    Thomas Jefferson purchased military supplies without Congressional authorization after the British fired on the American ship the Chesapeake. He reported his actions to Congress, stating that "To lose our county by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means."

    At the start of the Civil War the Congress was in recess. President Lincoln delayed called them into session, and on his own authority called up state militias, suspended the writ of habeas corpus, placed a blockade on the South, and spent money that had not been appropriated. Later he told Congress that his actions, "whether strictly legal or not, were ventured upon under what appeared to be  a popular demand and a public necessity, trusting then, as now, that Congress would readily ratify them." Congress obliged the president, and a divided Supreme Court approved his blockade. A lower federal court declared his suspension of the writ of habeas corpus unconstitutional, but Lincoln ignored it. And only after the war did the Supreme Court strike down the military trials of civilians in states where the civilian courts were operating, bringing back to life the writ of habeas corpus.

    President Franklin D. Roosevelt's view of his office went beyond the stewardship theory of his cousin. FDR essentially adopted John Locke's prerogative theory in such actions as ordering more than 100,000 persons of Japanese ancestry, two thirds of whom were U.S. citizens, into "relocation centers" because of fears of spying and sabotage. The Supreme Court approved this action, but during the administration of President Reagan, the United States apologized for this action and provided compensation for those still living.

    However, the Supreme Court's refusal to approve Truman's seizure of the steel mills as a war measure during the Korean War suggests that presidents should be very careful when asserting great claims to act without benefit of law or even against the law.

    Emergencies may be the occasions for presidents to exercise power, but emergencies do not necessarily create new presidential powers, at least not without the consent of Congress and the Courts.

Excerpted from sources housed at The University of Arkansas Little Rock, Dr. Neil Snortland, Professor of Political Science