

# Korematsu v. United States / Presidential Powers in Wartime

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## Directions:

1. Complete **Who Should Have the Power?**
  2. Complete **Interpreting the Constitution** (page 3)
  3. Complete **Presidential Power Scenarios** (page 5)
  4. If your teacher assigns it, complete **Extension Activity: Questions About Presidential Power in Wartime** (page 7)
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## Who Should Have the Power?

The delegates to the 1787 Constitutional Convention were very concerned about the balance of power in the government they sought to create. In the office of presidency, they were worried that a single person at the head of government would take too much power and become a tyrant, like their past experience with England's King George III. However, they were also aware that legislatures with too much power could also be oppressive. Thus, they sought to divide power between the branches, so that no one had too much, and they incorporated a system of limits on each branch of government by the others. Thus, explained James Madison in *Federalist 51*, "Ambition must be made to counteract ambition."

Since the ratification of the U.S. Constitution, there have been many battles between the branches of government over the scope of their respective powers. One such battle concerns the power to conduct war. The activity below will help you understand how the Framers of the U.S. Constitution dealt with the question of who should have this power in government.

Using the chart below, brainstorm some advantages and disadvantages of having the power to conduct war held exclusively by one branch of government, or in sharing that power.

	Advantages	Disadvantages
War powers are held exclusively by the president		

<b>War powers are held exclusively by the legislature</b>		
<b>War powers are shared by the president and the legislature</b>		

## Interpreting the Constitution

In small groups, examine the excerpts from the U.S. Constitution regarding the powers of the president and legislature in war and answer the questions that follow:

### **Article 1, Section 8, Powers of Congress concerning war**

The Congress shall have Power...

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

### **Article 2, Section 2, Civilian Power over Military, Cabinet, Pardon Power, Appointments**

[1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he 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.

1. What wartime powers does the U.S. Constitution give to Congress?
2. What wartime powers does the U.S. Constitution give to the president?
3. Which branch appears to have more war powers, in terms of number?
4. Which branch appears to have more dominance with its war powers? In other words, does one branch appear to have more important war powers than the other? Explain.
5. Without mentioning every single power, how would you summarize the way that the Framers divided the war powers between the two branches?
6. In your opinion, did the Framers divide the power well? Why or why not?

## Presidential Power Scenarios

While the U.S. Constitution may appear clear in the way it divides power, in practice, there have been questions over whether presidential actions in wartime were constitutional.

Your teacher will assign your group the number 1, 2, or 3. Appoint a recorder and reporter for your team.

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1. The following scenarios represent actual presidential actions during war. For the number you have been assigned, read the scenario and discuss whether the president should be able to exercise this power or not.

The reporter should write down the arguments that your group formulates regarding the use of presidential power.

Some issues to think about as you discuss:

- a. Is there evidence of this power for the president in the U.S. Constitution? If there is nothing specifically, could you interpret the Constitution in such a way that the president would have this power?
- b. What are the advantages and disadvantages of the president having this power?

**Scenario #1:** Suppose the United States is involved in a war overseas and needs more steel to produce military equipment. The owners of the steel factories and the workers are in a disagreement over wages and working conditions. The steel workers' union announces that there will be a strike. Should the president have the power to put the factories under government control, so that they continue to produce steel?

**Scenario #2:** Suppose the United States is involved in a war overseas. Not all citizens are completely supportive of the U.S. involvement and there are some groups organized specifically in protest of U.S. involvement in the war. A protester is arrested by federal officers, held in jail, and put on trial before a military tribunal. Should the president have the power to suspend habeas corpus (the protection against illegal imprisonment) and allow for civilian prosecutions to take place in military courts?

**Scenario #3:** Suppose the United States is involved in a war overseas as a result of a terrorist attack that took place on American soil. U.S. troops capture an individual who is a U.S. citizen, claiming he was fighting against the U.S. and is therefore considered an unlawful combatant. As such, the government says he is not entitled to the same rights as a regular U.S. citizen (such as access to the court system and legal counsel). Should the president have the power during wartime to label U.S. citizens as unlawful combatants (with no oversight), hold them indefinitely, and deny them counsel?

2. After you have finished discussing your scenario, ask your teacher for the summary of the Supreme Court's decisions.

Read the summary. Do you agree with it?

3. The reporter from each group should explain to the class as a whole 1) the arguments that your group formulated regarding the use of presidential power in the situation and 2) how the Supreme Court decided the case.

**Extension Activity: Questions About Presidential Power in Wartime**

1. What does the U.S. Constitution say about the respective war powers of the president and Congress?
2. Does the power of the president as “commander in chief” give them unlimited power to act in time of war? Cite evidence from the three Supreme Court cases you read and heard about to support your answer.
3. How did the Supreme Court rule in the *Korematsu* case with regard to President Roosevelt’s use of presidential power in wartime?
4. Why do you think that the Supreme Court was willing to defer to the president in *Korematsu*, but not in the other three cases?
5. On the continuum below, place an “X” in the position that designates how much power the president should have in a time of war. Below the continuum, write two reasons to justify your position.

