

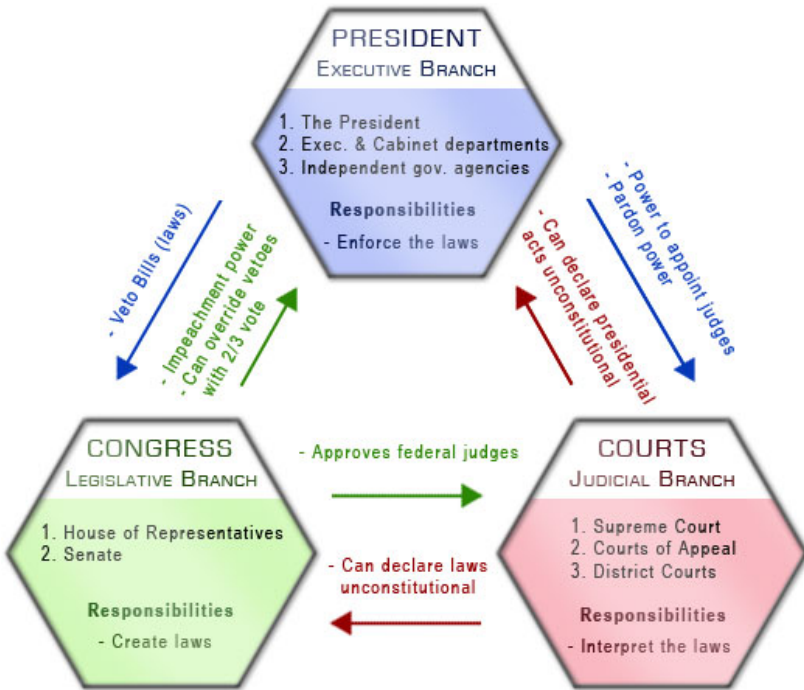
3.2

Examine the Relationship of the Three Branches

Standard 3.2 Examine the Relationship of the Three Branches (the Checks and Balances System)

Examine the interrelationship of the three branches (the checks and balances system). (Massachusetts Curriculum Framework for History and Social Studies) [8.T3.2]

**FOCUS QUESTION: How Does the System
of Checks and Balances Function Between
Branches of United States Government?**



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In theory, the **system of checks and balances** is designed to ensure that no single branch has too much power over the other branches. As James Madison wrote in [Federalist Number 51](#) (1788), “the power surrendered by the people is first divided between two distinct governments [the Federal government and the governments of the several states], and then the portion allotted to each subdivided among distinct and separate departments [the executive, the legislative, and the judicial].”

How does the system of checks and balances actually function in American government? The modules for this standard explore this question in terms of what checks exist between branches, what

powers does the President and the Congress have to conduct wars, and for what can and should a President be impeached.

Modules for this Standard Include:

1. [INVESTIGATE: Checks and Balances between the Branches and Presidential vs. Parliamentary Systems](#)
2. [UNCOVER: The War Powers of the President](#)
3. [ENGAGE: When, and For What, Should a President Be Impeached?](#)
 - [MEDIA LITERACY CONNECTIONS: Writing an Impeachment Press Release](#)

1.INVESTIGATE: Checks and Balances Between the Branches and Presidential vs. Parliamentary Systems

The system of checks and balances is designed so each branch can respond to the actions of the other branches. In this context, a **balance** of powers means each branch can “**check**” or stop something from happening. Since each branch has separate powers within the government, each branch can provide a check on the actions of the other branches.

The Legislative branch has the following checks and balances on the other branches:

- On the Judicial branch:
 - Senate approves justices
 - The House can impeach justices
 - The Senate tries impeached justices
 - Congress can create amendments

- Congress can set jurisdiction for courts
- Congress can alter the size of the Supreme Court
- On the Executive branch:
 - House can impeach a President
 - Senate tries an impeached President
 - If there is no electoral majority, the House chooses the President and the Senate chooses the Vice President
 - Congress can override a Presidential veto with a 2/3 vote in the House and Senate
 - Senate approves departmental appointments, treaties, and ambassadors
 - Congress has to approve replacements to the Vice President
 - Congress declares war
 - Congress can tax
 - The President is required to make "State of the Union" addresses

The two houses of Congress (Senate and House of Representatives) also have checks and balances on each other:

- Bills must be passed by each house before becoming law
- Revenue bills must start in the House
- There has to be consent from the other house before a house adjourns for more than three days
- All journals of official business from each house are required to be published

The Judicial branch has the following checks and balances on the other branches:

- On the Legislative branch:
 - [Judicial Review](#)
 - Compensation is not allowed to decrease
 - Judicial seats are held on good behavior

- On the Executive branch:
 - Judicial Review
 - During impeachment trials, the Chief Justice is President of the Senate

The Executive branch has the following checks and balances on the other branches:

- On the Legislative branch:
 - The President has the power to veto
 - The Vice President is the President of the Senate
 - The President is the Commander in Chief of the military
 - The President can make appointments of senior federal officials while the Senate is in recess
 - The President can call the House and Senate into emergency sessions
 - When the houses do not agree on adjournment, the President has the power to force it to happen

- On the Judicial branch:
 - The President can appoint justices
 - The President has pardon power

Presidential and Parliamentary Systems of Government

Writing in *The Nation* in early 2021, commentator Alexis Grenell declared Joe Biden should be the last American President, urging the U.S. to shift from a **presidential** to a **parliamentary** system of government. Although the U.S. has the longest running Presidential system in the world, Grenell wrote that system had become too polarized and dysfunctional to continue.

Presidential (as in the United States, Mexico, Brazil and the Philippines) and Parliamentary (as in Great Britain, Canada, Japan

and Italy) are the two major types of government in democracies in the world today.

Presidential systems are headed by a executive elected by the people who is independent of the legislative branch (Congress in the U.S.). Parliamentary systems are headed by a Prime Minister who is chosen by the legislative branch (Parliament in Great Britain).

The U.S. President is elected for a 4-year term and as demonstrated by the Trump era, extremely hard to remove from office through impeachment. A Prime Minister has not limit on how long she or he can serve, but can be removed at any time following a vote of no confidence by the Parliament.

The U.S. presidential system is dominated by two major political parties who vie for control of the government. Parliamentary systems have multiple political parties and the Prime Minister must create coalitions among them in order to govern. This encourages compromise by working together to achieve political goals.

For more information, go to [Parliamentary System](#) and [Presidential System](#) from Annenberg Classroom, (2021).

The Powers of the Presidency

The **President of the United States** is often referred to as the most powerful person in the world. although some believe that in 2020/2021, Russian President Vladimir Putin or China's leader Xi Jinping are more powerful. It is true that any U.S. President has an impressive collection of powers—both those given to the office by the Constitution and those a President gains from what one political scientist had called “the subjective views of others” (Neustadt, 1990, p. x). In this respect, Presidents have power in part because the American people broadly believe those powers exist.

For, as political scientist Matt Glassman (2018) has stated:

"Presidents compete with numerous actors — Congress, the courts, interest groups, political appointees in the departments and agencies, and career civil servants — for influence over public policy. The president must rely on his informal ability to convince other political actors it is in their interest to go along with him, or at least not stand in his way."

Taken collectively, the powers given to the President by the Constitution combined with the ways a person in that office can energize public opinion to support policies give a President enormous influences over national and state government and the country as a whole.



[President Barack Obama](#) delivers his [State of the Union](#) address, Feb. 12, 2013
"[2013 State of the Union Address](#)" by Lawrence Jackson | Public Domain

What powers does a President actually have?

- The Constitution gives the President a central role in how bills (legislative proposals) become laws. Presidents can **propose legislation** at any time. Presidents use the annual **State of the Union address** to announce new initiatives along with a proposed budget to pay for them ([Ten Facts about the State of the Union Address](#), 2019). The President can also **veto** (prevent from becoming law) bills passed by Congress, although the Congress can override that veto by a two-thirds vote of the House of Representatives and the Senate.
- Presidents have the power appoint Cabinet officials and Supreme Court justices, and to do whatever the President believes is necessary to faithfully execute the laws of the land.
- Under the Constitution's Executive Power (Article II, Section 1), Presidents can issue **Executive Orders**. Modern Presidents have used this power to take highly significant public policy actions without Congressional approval or a vote of the people. Here is a list of all [Executive Orders by American Presidents](#) from George Washington to Joseph Biden. The Trump Administration used executive orders to enact policies sought by conservative and right-wing political groups in areas from immigration to the environment. On the first day of his administration, Joe Biden used 17 executive orders reversing Trump-era policies, including rejoining the Paris Climate Accord, halting construction of the southern border wall, mandating officials reunite families separated at the border, initiating a mask mandate in federal facilities, and mandating racial equity in policy decisions.
- Presidents have a **Bully Pulpit**—meaning they can use the media (television, radio, newspapers, Twitter, and other online platforms) to manage and shape public opinion. Presidents are automatically listened to when they speak and social media expands their reach tremendously. Cable news networks

mention the President many times every day—during the first years of his Presidency, Donald Trump consistently received about 15% of the combined airtime on CNN, MSNBC, and Fox News ([Leetaru, 2018](#)). Newspapers devote extensive space to covering the President’s statements and schedule. As a result, a President has countless opportunities to convince people to support certain policies over others.

- **The Pardon Power** is given to the President by Article 2, Section 2 of the Constitution that states the President has “power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.” Although the pardon power is limited to federal crimes and not state offenses or civil suits, this is an area where Presidents have broad, nearly unlimited power ([Why U.S. Presidents Can Pardon Anyone](#)).
 - The idea that there should be one person in government with the ultimate power to pardon convicted persons originated with English kings who could overturn any court sentence. George Washington issued the first presidential pardon in 1794 to Pennsylvania farmers who participated in the [Whiskey Rebellion](#). Franklin Roosevelt issued the most pardons, 3,687 in 3 terms; Harry Truman pardoned 2,044; Bill Clinton 456; George H. W. Bush 77 ([How Presidential Pardons Work](#)).
 - The functioning of the pardon power came under close scrutiny during the closing weeks of the Trump Presidency, including whether a President can issue **prospective pardons** before charges are filed (Yes, based on an 1866 Supreme Court case *Ex Parte Garland*); whether a President can **pardon family members, relatives and close allies** (Yes, the Constitution does not limit who can be pardoned), and whether a President can **pardon himself** (Unclear, since this has never happened in American history). This

information is from Clemency Explained: Can a President Give Pre-emptive Pardons? *The New York Times*, December 6, 2020, p. 18.

- As President, Donald Trump has issued highly publicized pardons to political and business figures resulting in renewed debates over what should be a fair and equitable process for presidential pardons. In December 2020, Trump pardoned 5 individuals including Paul Manafort and Roger Stone who were convicted of crimes as part of Robert Mueller's investigation of Russian interference in the 2016 Presidential election. And on January 19, 2021, during in his final day in office, Trump issued another 143 pardons.

Limits on Presidential Power

Historians and political scientists broadly agree that the power of the President has been expanding dramatically in recent decades. In 2019, a group of Harvard Law School faculty concluded that modern Presidents, notably the three most recent, have "used lessons from the past as blueprints to expand their capacities," including choosing the leaders of the growing number of the government's executive agencies; issuing executive orders to bypass lengthy legislative processes; and using social media to build support for their policies among voters ([Presidential Power Surges](#), Harvard Law School Bulletin, Summer 2019).

As President, Donald Trump and his advisors including Attorney General William Barr have claimed virtually unlimited power, citing what is known as the [unitary executive theory](#). Under this theory, the President, rather than being the head of one of the three co-equal branches of government, is at the top of a institutional hierarchy of power. Using that theory, Trump refused to release his tax records to Congressional committees or federal prosecutors in New York who were looking into possible campaign law violations by the President

and his election committee.

In two notable cases, *Trump v. Vance* and *Trump v. Mazars*, the Supreme Court rejected the claim that the President did not have to respond to legal subpoenas for information with Chief Justice John Roberts declaring: "Two hundred years ago, a great jurist of our Court established that no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding. We reaffirm that principle today and hold that the President is neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need" ([Trump v. Mazars LLP](#), 2020, p. 21). These decisions establish clear limitations on Presidential power.

Suggested Learning Activities

- **Take a Virtual Tour**
 - [The White House Virtual Tour from Google](#)
- **Draw a Conclusion:** Do modern Presidents have too much power?
 - Use the following resources to explore this question:
 - [Does the President Have Too Much Power?](#) Aberbeen (Washington) School District
 - [Presidential Powers: An Introduction](#), from Exploring Constitutional Conflicts
 - [Anxiety is Growing in Congress Over How Much Power a President Can Wield](#), NPR (March 12, 2019)
 - [Is the Presidency Too Powerful?](#) Podcast from the National Constitution Center (February 21, 2019)
- **Write a Constitutional Policy Statement**
 - Should the President Have the Sole Power of Pardons?
 - When should individuals receive pardons?
 - What steps are needed to ensure that there is fairness and justice in the pardon process?

Online Resources for the Powers of the Presidency

- [60-Second Presidents](#), PBS Learning Media
- [The American Presidency](#), Smithsonian National Museum of American History
- [The American Presidency Project](#), University of California Santa Barbara
- [U.S. Presidents](#), Miller Center, University of Virginia
- VIDEO: [How to Elect a President in Plain English](#)
- BOOK: *Unmaking the Presidency: Donald Trump's War on the*

World's Most Powerful Office. Susan Hennessey & Benjamin Wittes (Farrar, Straus and Giroux, 2020)

- [Should the President Use Executive Orders to Create Public Policy?](#) from Illinois Civics.org.
- [Republicans Now Are More Open to the Idea of Expanding Presidential Power](#), Pew Research Center (August 7, 2019). In the same poll, 66% of the public said "it would be too risky to give Presidents more power to deal directly with many of the nation's problems."

2.UNCOVER: The War Powers of the President

The President is the **Commander in Chief of the military** and although the Constitution states that Congress has the power to declare war and raise and support the armed forces (Article I, Section 8), Presidents have significant **war powers**. Presidential war powers have expanded dramatically since the end of World War II.



President [Abraham Lincoln](#) and General [George B. McClellan](#) in the general's tent at Antietam, Maryland, October 3, 1862

["Lincoln and McClellan 1862-10-03"](#) by Alexander Gardner | Public Domain

In [Presidents of War](#) (2018), historian Michael Beschloss explains that “since the start of the Republic, Presidents of the United States have taken the American people into major wars roughly once in a generation” (p. vii). He then examines eight Presidents who entered wars and one who had the opportunity to do so, but did not. The Presidents and their wars are:

- James Madison and the War of 1812
- James K. Polk and the Mexican War
- Abraham Lincoln and the Civil War
- William McKinley and the Spanish-American War

- Woodrow Wilson and World War I
- Franklin D. Roosevelt and World War II
- Harry Truman and the Korean War
- Lyndon B. Johnson and in War in Vietnam

It was Thomas Jefferson who avoided war with Britain in 1807 over the Chesapeake Affair and the issue of “impressment” (taking individuals into military service against their will without notice) of sailors on American ships.

While the Constitution gives Congress the sole power to declare war and raise and support the armed forces (Article I, Section 8), there has been no official Congressional declaration of war since 1942. Here is a listing of all [Official Declarations of War by Congress](#) from United States Senate website.



[Emblem of the GRU](#) the Military Intelligence Service of the Russian Military
Public Domain

In recent years, Presidential war powers have been expanded by the [**AUMF \(Authorization for Use of Military Force Against Terrorists\)**](#) passed just after the September 11, 2001 attacks on the World Trade Center and the Pentagon. An AUMF allows the President to utilize “all necessary and appropriate force . . . to prevent future acts of international terrorism against the United States” ([What the AUMF Is and Why You Should Care](#), Biparistan Policy Center, April 18, 2018). Although the AUMF was initially intended to be used against al Qaeda and the Taliban, it has been used dozens of times in 14 countries, including the Trump Administration’s use of a missile strike to kill an Iranian general in Iraq on January 2, 2020.

Suggested Learning Activities

- **Write a Public Policy Recommendation**
 - To what extent should Congress control the war powers of the President?
 - When can a President act militarily without consulting Congress?
- **Learn Online**
 - [Nixon and the War Powers Resolution](#) from the Bill of Rights Institute has learning activities centered on the **War Powers Resolution**, passed in 1973 over President Richard Nixon's veto. This resolution requires the President to consult with Congress before committing U.S. troops into combat or potential combat situations. Presidents from both parties have held that the resolution unconstitutionally limits the power of the executive branch.
- **Additional Resources**
 - [Principles of American Government](#) (Khan Academy)
 - [The War Powers Resolution](#) (JSTOR)
 - [Congress, the President, and the War Powers Lesson](#) (National Archives)

3.ENGAGE: When, and For What, Should a President Be Impeached?

On December 18, 2019, the House of Representatives passed two articles of **impeachment** against Donald Trump: Article 1: Abuse of Power and Article 2: Obstruction of Congress ([READ: Articles of Impeachment Against Donald Trump](#)). On February 5, 2020, [Donald Trump was acquitted](#) by the U.S. Senate on both impeachment articles. It was just the fourth time in United States history that the

Congress engaged in an **impeachment** of a sitting President.

Just days before his term was to end, Trump was impeached for a second time on January 13, 2020 for "[incitement of insurrection](#)" following a bloody attack on the Capitol by a mob of the President's supporters.



Image on Pixabay

Previously, impeachment proceedings had been initiated against [Andrew Johnson](#) (1868), Richard Nixon (1974) and [Bill Clinton](#) (1998). Neither Johnson or Clinton was convicted and both remained in office as President; Nixon resigned the Presidency before the House could vote on the impeachment charges against him. As Brenda Wineapple (2020) states in her study of the post-Civil War trial of Andrew Johnson, each case demonstrates the complexity that impeachment is "designed to remedy peculiar situations for which there are no remedies" (p. 419).

In theory, impeachment is intended to serve as a way to remove from office **someone who is abusing their power through corrupt actions and activities**. Yet, neither the Johnson trial nor the others that followed have resolved the fundamental constitutional question: Was "impeachment to be understood as a judicial matter" or "was

impeachment designed to punish malfeasance in office" (Wineapple, 2020, p. 417).

Procedurally, impeachment is a process where, according to Article II, Section 4 of the Constitution, "a President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." In addition to Presidents, 17 other officials—one senator, one Cabinet secretary and 15 judges—have been impeached in U.S. history. [Business Insider](#) has a full list of those federal officials who were impeached.

The word "impeachment" means **'accusation'** or **'charge'**. The process happens as follows: Any member of the House of Representatives can suggest the body begin an impeachment inquiry. The Speaker of the House then decides whether to proceed forward with that inquiry or not. The House can impeach based on a vote by a simple majority of its members (50 percent plus 1 or 218 out of 435 members). The impeached person goes to trial, meaning a hearing before a jury in the U.S. Senate (Gertner, 2020). The Senate conducts an impeachment trial, presided over by the Chief Justice of the Supreme Court. A super majority (67 out of 100 members) is needed to convict and remove a President or other impeached official from office.

Impeachment was part of English law long before its inclusion in the United States Constitution, notes constitutional scholar Frank O. Bowman III (2019). The phrase **"high crimes and misdemeanors"** does not just mean illegal actions, but corrupt and abusive activities on the part of an elected or public leader, what Alexander Hamilton called an "abuse or violation of some public trust" ([The Federalist Papers: No. 65](#)).

Impeachment proceedings against Donald Trump followed from a complaint by an intelligence community whistleblower who believed

the President had engaged in illegal conduct by trying to coerce a foreign leader (Ukraine’s President Volodymyr Zelensky) to aid Trump’s reelection campaign. Federal campaign finance laws prohibit foreign contributions to politicians or their campaigns. In a July 25, 2019 phone call and during subsequent actions, President Trump appeared to withhold Congressionally-approved military aid to Ukraine contingent on that country beginning a corruption investigation into former Vice-President Joe Biden and his son, Hunter. Impeachment advocates contended the Ukraine phone call and the military aid delay violated that law; supporters of the President said it did not.

- Read the White House released [transcript of July 25, 2019 phone call](#) between the Presidents of the United States and Ukraine.
- Read the full text of the [Trump-Ukraine Whistleblower Complaint](#)

Constitutional and legal scholars agree that impeachment in the United States is a political process, as much, if not more than a legal process that happens only rarely at times in history when “our settled expectations about the Constitutional order are shaken” (Bowman, 2019, p. 6).

In that context, every member of our democratic society is faced with having to answer when, and for what, should a President be impeached?

Media Literacy Connections: Writing an Impeachment Press Release

A [Press Release](#) is an official statement provided to the media by an individual or organization. Its purpose is to provide information in a short, simple, highly readable format.

In politics, a press release also serves as a way to promote one's side of an issue as favorably as possible within the boundaries of facts. The White House, on behalf of the President as well as individual politicians, political party organizations, and political interest groups, constantly issues press releases stating their positions and actions on the issues of the day.

In this activity, you will write an **Impeachment Press Release** for one of the Presidential Impeachments in U.S. History. You can write a statement from either the President who is being impeached, the Impeachment Managers from the House of Representatives who are presenting the case against the President, or both.

For example, here are two Press Releases related to the second impeachment of Donald Trump

- [Trial Memorandum from House Committee on the Judiciary](#), February 2, 2021
- [Trump Will Not Testify or Provide Any Statement at Impeachment Trial](#), February 4, 2021

Activity: Write an Impeachment Press Release

Your goal is to make a case **for or against** Presidential impeachment in a press release that presents information as objectively as possible. You must include the actual facts of the situation and state the position of both those arguing for or against impeachment.

You can focus on the second impeachment of Donald Trump or choose one of the other impeachments in U.S. history:

- [President Johnson's impeachment](#)
- [President Nixon's impeachment](#) or [Frost/Nixon](#) (Netflix)
- [President Clinton's impeachment](#)
- [President Trump's first impeachment](#)

Additional Resources

- [Understanding Branches of Power Game](#) (iCivics)
- [The Impeachment Process, Step-by-Step Guide](#) (*The New York Times*)
- [A Lesson for an Impeachment Inquiry](#), The Educator's Playbook, University of Pennsylvania
- [The Impeachment Process and President Trump](#), Choices Program, Brown University

Suggested Learning Activities

- **State Your View: A President or a King**
 - In a ruling in [Committee on the Judiciary v. McGahn](#) (2019), U.S. District Judge Ketanji Brown concluded: “The primary takeaway from the past 250 years of recorded American history is that Presidents are not kings.”
 - Answer the following question posed by Stanford University law professor Michael McConnell (2019): “How can we have a President who is powerful enough to do all the things we expect from a President, but not one who is effectively a king?”
- **Research and Draw a Conclusion**
 - In an editorial, *The New York Times* ([2019, para. 26](#)) stated that impeachment should happen when a President or other public officials violate the public trust by placing “private above public interest.”
 - What other times in U.S. history did Presidential Administrations violate the public trust?
 - Research one the following examples and decide if the President’s actions were impeachable and explain how you drew your conclusion.

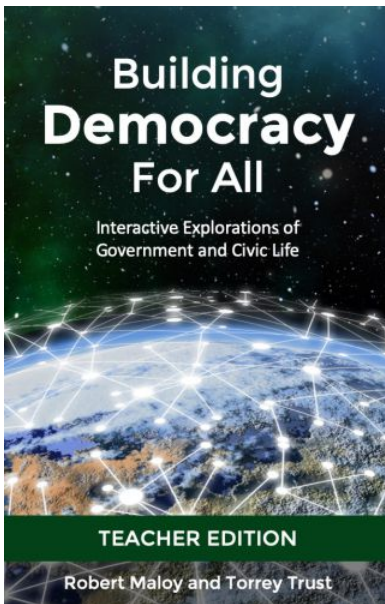
- Andrew Jackson and the Trail of Tears
 - James Buchanan and the Dred Scott Decision
 - Andrew Johnson and Opposition to Reconstruction
 - Warren Harding and the Depot Dome Scandal
 - Ronald Reagan and the Iran/Contra Affair
 - Richard Nixon and the Watergate Scandal
- **Evaluate the Media**
 - Select one of the Presidential Impeachments in history.
 - Look for newspaper articles, news clips, magazine covers, and other artifacts about the impeachment. Try to find examples from media outlets from [all sides](#).
 - What perspective did the media outlet present? Did they take the side of the President? Why or why not?
 - How did the media present information? What text did they share? What visuals did they select?
 - How did the way the media portrayed the impeachment influence peoples' perspectives and understandings? (look for opinion articles, comments on news articles, and/or social media posts to justify your response)

Online Resources for Presidential Impeachment

- [Constitutional Grounds for Presidential Impeachment](#), House Judiciary Committee, 1974 - Issued during the Watergate Investigation into President Richard M. Nixon.
- [Impeachment Inquiry: Ways to Discuss with Your Students](#), PBS Newshour
- [Lesson of the Day: Nancy Pelosi Announces Formal Impeachment Inquiry of Trump](#), *The New York Times*, September 25, 2019
- [Impeachment](#), from the website House of Representatives
- [Impeachment](#), from the website of the U.S. Senate

Standard 3.2 Conclusion

The Constitution established a systems of checks and balances so that no part of the American government would dominate or control the other parts. **INVESTIGATE** identified how each branch can check or respond to the actions of the other branches. **UNCOVER** examined the war-making powers of the President, and how those powers have expanded since World War II. **ENGAGE** asked when, and for what, can a President be impeached.



Maloy, R. W. & Trust, T. (2020). *Building Democracy for All*. EdTech Books. <https://edtechbooks.org/democracy>



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