

Sec. 1—The President

Clause 1—Powers and Term of the President

The Myers Case.—However much the two arguments are still subject to dispute, Chief Justice Taft, himself a former President, appears in *Myers v. United States*²² to have carried a majority of the Court with him in establishing the Hamiltonian conception as official doctrine. That case confirmed one reading of the “Decision of 1789” in holding the removal power to be constitutionally vested in the President.²³ But its importance here lies in its interpretation of the first section of Article II. That language was read, with extensive quotation from Hamilton and from Madison on the removal power, as vesting all executive power in the President, the subsequent language was read as merely particularizing some of this power, and consequently the powers vested in Congress were read as exceptions which must be strictly construed in favor of powers retained by the President.²⁴ *Myers* remains the fountainhead of the latitudinarian constructionists of presidential power, but its *dicta*, with regard to the removal power, were first circumscribed in *Humphrey’s Executor v. United States*,²⁵ and then considerably altered in *Morrison v. Olson*;²⁶ with regard to the President’s “inherent” powers, the *Myers dicta* were called into considerable question by *Youngstown Sheet & Tube Co. v. Sawyer*.²⁷

The Curtiss-Wright Case.—Further Court support of the Hamiltonian view was advanced in *United States v. Curtiss-Wright Export Corp.*,²⁸ in which Justice Sutherland posited the doctrine that the power of the National Government in foreign relations is not one of enumerated powers, but rather is inherent. The doctrine was then combined with Hamilton’s contention that control of foreign relations is exclusively an executive function with obvious implications for the power of the President. The case arose as a challenge to the delegation of power from Congress to the President with regard to a foreign relations matter. Justice Sutherland denied that the limitations on delegation in the domestic field were at all relevant in foreign affairs:

²² 272 U.S. 52 (1926). See Corwin, *The President’s Removal Power Under the Constitution*, in 4 SELECTED ESSAYS ON CONSTITUTIONAL LAW 1467 (1938).

²³ C. THACH, *THE CREATION OF THE PRESIDENCY, 1775–1789*, ch. 6 (1923).

²⁴ *Myers v. United States*, 272 U.S. 52, 163–164 (1926). Professor Taft had held different views. “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 in 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 which he can exercise because it seems to him to be in the public interest. . . .” W. TAFT, *OUR CHIEF MAGISTRATE AND HIS POWERS* 139–140 (1916).

²⁵ 295 U.S. 602 (1935).

²⁶ 487 U.S. 654, 685–93 (1988).

²⁷ 343 U.S. 579 (1952).

²⁸ 299 U.S. 304 (1936).