

NAME

What does the President DO?

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DURATION

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6 SPEAKERS

Archival

Nick Capodice

Hannah McCarthy

Akhil Amar

Andy Lipka

Speaker9

START OF TRANSCRIPT

[00:00:00] Archival

The new president's duties outlined by the Founding fathers had to be translated into everyday detail. Could Washington make the Constitution work? History waited on this one man. Franklin Delano Roosevelt and Harry S Truman. Eisenhower. John Fitzgerald. Kennedy. Lyndon. Baines Johnson, Richard. Nixon, Gerald. Ford, Jimmy. Carter, Ronald. Reagan, George. Herbert Walker. Bush, William. Jefferson. Clinton, George. Walker. Bush, Barack. Hussein. Obama, Donald John. Trump, Joseph. Robinette Biden, Jr. Do solemnly swear.

[00:00:32] Nick Capodice

You're listening to Civics 101. I'm Nick Capodice.

[00:00:35] Hannah McCarthy

I'm Hannah McCarthy.

[00:00:36] Nick Capodice

And today we are going to actually answer a question we've come at from different angles over the years, but never truly head on. What does the president of the United States do?

[00:00:50] Hannah McCarthy

It's funny. I mean, we kind of have danced around it, haven't we?

[00:00:55] Nick Capodice

We have. A veritable jitterbug.

[00:00:56] Hannah McCarthy

And I know we're gonna put links in the show notes for anyone who wants a primer on things like the executive branch or presidential vetoes, or the president and the price of gas. And so I'm excited to talk about what the president does, but honestly, I'm a little trepidatious.

[00:01:13] Nick Capodice

Why are you trepidatious? I mean, I'm trepidatious. Why are you trepidatious?

[00:01:17] Hannah McCarthy

I mean, every president so far has done so much, so many different things. The job has evolved, hasn't it, over the last 250 years?

[00:01:29] Nick Capodice

Yeah, it certainly has. I'm trepid about wading into the waters of this president was good. This president was bad. Sort of a waffling around grand comparison. I don't want to do that. But to your point, Hannah, I hope we can get as close as possible to a 250 year constant. Just a simple answer to that question. What do they do? And to answer it, I spoke to someone who knows the Constitution very well, and I got to share his sound check.

[00:01:59] Akhil Amar

Anna leaf subsides to leaf So Eden sank to grief. And dawn goes down to day. Nothing gold can stay

[00:02:04] Hannah McCarthy

Is that Robert Frost?

[00:02:07] Nick Capodice

It is. I mean, I wasn't interviewing Robert Frost. I was talking about Robert Frost with Akhil Amar.

[00:02:13] Akhil Amar

Hi, I'm Akhil Amar. I teach constitutional law at Yale.

[00:02:18] Nick Capodice

Akhil Reed Amar is one of the most cited constitutional scholars in the United States. He frequently testifies before Congress. The Supreme Court has cited him in over 50 cases, and he is the author of the words that made us America's constitutional conversation. There's a lot more accolades, but I've got just one more hand. I think you're gonna like it.

[00:02:39] Hannah McCarthy

Alright. Lay it on me.

[00:02:39] Nick Capodice

He was an informal consultant to the writers of the West Wing..

[00:02:45] Archival

Promise that I ask everyone who works here to make. Never doubt that a small group of thoughtful and committed citizens can change the world.

[00:02:52] Hannah McCarthy

All right, that's delightful.

[00:02:54] Nick Capodice

Now, Akhil happens to co-host his own podcast, Amarica's Constitution. And he hosts it with this gentleman.

[00:03:03] Andy Lipka

Hi, I'm Andy Lipka. I am the co-host of America's Constitution, and I'm also the president of a nonprofit organization called EverScholar.

[00:03:13] Nick Capodice

In their show, which I wholeheartedly recommend to all our listeners. Andy asks Akhil, his long time friend, questions about the Constitution.

[00:03:24] Andy Lipka

I'm trying to help us move back about 60 years or so, in terms of the way we think about the citizen's role in the presidential election.

[00:03:35] Nick Capodice

So to start, I asked Akhil what the Constitution says presidents do, and here's what he said.

[00:03:42] Akhil Amar

It's a great question, because the Constitution itself actually specifies all the things that Congress is supposed to do. In article one, and it actually specifies the things that courts are supposed to do in article three. And article two does not contain an exhaustive list.

[00:04:04] Hannah McCarthy

We've talked about this before. Article one is huge compared to the other articles.

[00:04:11] Nick Capodice

It is massive. And by contrast article two which lays out the executive branch, is sparse. Article two begins, quote, the executive power of the United States is vested in a president, end quote. And it does indeed list some powers and responsibilities of the job, but not all of them. And when it comes to presidents, they do a lot.

[00:04:34] Akhil Amar

Presidents. Oh my gosh, they do so many things. They're so different, one from the other. Each requires a different kind of competence, and almost no one is good at all of them. You're the lawmaker in chief because of the veto power.

[00:04:51] Archival

You will force me to take this pen, veto the legislation, and will come right back here and start all over again.

[00:05:01] Akhil Amar

You are the head in a sense, of the criminal justice system. Because the pardon power. So you're the prosecutor and partner in chief

[00:05:07] Archival

A Full, free and absolute pardon unto Richard Nixon for all offenses against the United States.

[00:05:14] Akhil Amar

You oversee the armed forces because you're the commander in chief of the Army and Navy.

[00:05:20] Speaker9

On my orders. The United States Military has begun strikes.

[00:05:23] Akhil Amar

You also oversee the National Intelligence Service. You're you're in effect, the spymaster in chief. It doesn't say so explicitly, but a whole bunch of foreign affairs fall to you. It says explicitly, it being the Constitution that you receive. Ambassadors. Okay, you might think that's just a formal thing, but in order to receive an ambassador, you need to know which countries we recognize and which ones we don't. Oh, so that's a recognition power. Are we going to recognize Taiwan or the People's Republic of China or both. You have to be the manager in chief because there are all sorts of federal properties, and you're in charge of supervising that. You're the appointer in chief. You pick cabinet officers and you're the Firer in chief. They serve at the pleasure of the president.

[00:06:14] Archival

President Trump has fired another member of his cabinet. Va Secretary David Shulkin is now out.

[00:06:19] Akhil Amar

We have a functional two party system in America, very strong two party system. And you're going to be the head of one of those two parties. So now you have to unify us all as president. You're the unifier in chief, but you're also the head of a party. Wow. Those are two different things to be both Margaret Thatcher and Queen Elizabeth. And I haven't even begun to itemize all the other things. Probably most of all, you are in power in office 24 seven 365. You're the only Branch. One person nationally selected 24 seven 365. And stuff happens in the world.

[00:07:05] Nick Capodice

Did you get all that?

[00:07:06] Hannah McCarthy

Yeah, I was actually, um, writing them down as he was saying them. Lawmaker and chief prosecutor in chief. Pardoner in chief. Commander in chief. Spymaster in chief. Appointer in chief. Firer in chief. Recognizer in chief. Unifier in chief and head of your party. And finally, you are on the job. 24 seven 365.

[00:07:29] Nick Capodice

Tremendous. And there is one more thing. And it is crucial

[00:07:34] Akhil Amar

To keep the ship of state afloat. To make sure that you're not the last president, that there's going to be an election and an election after that. Oh, and you're going to have to make sure when that election takes place, even if you lose, you peacefully transfer power to the next fellow.

[00:07:52] Archival

Now, it is no secret that the president elect and I have some pretty significant differences. But remember, eight years ago, President Bush and I had some pretty significant differences.

[00:08:04] Andy Lipka

So, Akhil, you know, one of the things that you and I do together is, you know, you lay out the the academic facts and the, you know, sort of the received knowledge of the Constitution and that sort of thing. And then I asked the questions that occur. So as I was listening to you, I'm thinking, well, it sounds like from what you're saying, the Constitution goes out of its way to enumerate the powers of Congress. Like you said, it doesn't do so with the with the president. So does that mean that the president basically has what's left or, you know, if not, how do we determine, you know, because that would sound like a boundless allocation of of power.

[00:08:44] Akhil Amar

Many scholars, justices sometimes define executive power as proper governmental power. That's neither legislative nor judicial. So they kind of define it as a residual category, a catchall. It has to be proper. So president can't typically do things that aren't even given to anyone in the federal government that are reserved for the states.

[00:09:08] Hannah McCarthy

So the states restrict the powers of the president, and they're also checked by the other branches.

[00:09:15] Nick Capodice

And the Bill of rights checks the president, too. So the First Amendment says that Congress shall make no law abridging freedom of speech, but the president shouldn't abridge it either. Neither should the courts.

[00:09:27] Akhil Amar

Beyond that, we have 200 years of tradition enumerating or not enumerating, but giving us a sense of what presidents have done and not done. The most dramatic illustration of that is the two term presidency. You look at the original Constitution. Presidents are infinitely reelected, but Washington chooses to step down after two terms because he's virtuous, because he doesn't. He's not power hungry. That's followed by Thomas Jefferson, who chooses to step down after two terms, and then after Jefferson, Madison and Monroe and Jackson. And now we have a bit of a tradition going, or more than a bit of a tradition. And when it's broken by Franklin Roosevelt, maybe for you know, reasons, because we're on the edge of a there is a world war going on and we're on the edge of it. The Constitution is eventually amended to codify the Washington precedent, so to speak, the two term precedent. You have a sense of actually who the good presidents are, and it is an argument for someone to say, I'm doing just what Washington did.

[00:10:42] Hannah McCarthy

Okay. I thought it was going to come back to Washington because it often does. So how much should we look to the first person who held the job as a guide? You know a person with some admirable qualities, some deeply undesirable qualities. In fact, one glaringly undesirable quality in that he was an enslaver. How does George Washington inform what we should be looking for when we step into the voting booth every four years?

[00:11:12] Nick Capodice

Well, according to Akhil, Washington defines the presidency. A great, great deal, warts and all. And we're going to get to that and our best understanding of the framers' intent in creating the job of the president right after this break. But real quick, before that break, if you want to understand the workings of every branch, every executive department, each chamber of Congress, and a bunch of landmark Supreme Court rulings, Hannah and I put them all into a book. It's called A User's Guide to Democracy How America Works. It is loaded with information as well as cartoons drawn by The New Yorker cartoonist Tom Toro. Just get it wherever you get your books and leave it on the table.

[00:11:55] Hannah McCarthy

We're back. And today on Civics 101, we are discussing the big one, the role of the president of the United States of America. And Nick, we were about to cross the Delaware and talk about George Washington and what we know about the framers intent in creating the role of the presidency.

[00:12:12] Nick Capodice

Absolutely. And here again, is Professor Akhil Amar.

[00:12:16] Akhil Amar

Here is what we do know. They kept article two very short, in part because they couldn't specify all the things that a president was going to do. We know that they designed it for George Washington. He was the unanimously selected presiding officer at Philadelphia. In effect, the Constitution was drafted by him, and for him, people voted for it, knowing that if Virginia ratified, he'd be the first president. And he was, and he was unanimously selected. Every single elector voted for him the first time around and it was unanimously reelected. Every single elector voted for him the second time around. So we know that the that article two and indeed the Constitution were designed for George Washington.

[00:13:08] Hannah McCarthy

So if article two lays out the job, albeit briefly, we can think of this as the framers writing the job description after they'd picked the candidate.

[00:13:19] Nick Capodice

Precisely.

[00:13:20] Akhil Amar

So one thing now that we know is let's look to Washington's example in some ways, because the framers would have wanted us to look to Washington's example. They designed the document for him. And then we have to ask what was special about Washington. And I could tell you some things. We also know from the text of the Constitution that the very first thing a president is supposed to do is to swear a very personal oath of office to, quote, preserve, protect and defend the Constitution of United States. That's the first job description.

[00:13:54] Hannah McCarthy

You talked about this in your oath episode.

[00:13:57] Nick Capodice

I did. And since nobody has really suffered any legal consequences for violating their oath, I kind of looked at the oath as not that important. And maybe that was a mistake because I had not thought about it this way. There is not a lot in article two, but they made a big deal about the oath. They put it in word for word.

[00:14:17] Akhil Amar

I do solemnly swear that I will faithfully execute the office of president, the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States. But it's a very personal oath. I me, mine, I to the best of my ability. We go from we the people do to I, Donald J. Trump, Joe Biden, Kamala Harris, whatever do solemnly swear I do. And so we know it's a very personal office. It's a constitutional office. We know it was designed by and for George Washington. And that gives us a little bit of a sense of who we're supposed to look to. First and foremost, and trying to think about what a president should do and shouldn't do. If you're a Christian, you ask yourself, what would Jesus do? If you're a constitutionalist, it's perfectly sensible to say, what did Washington do?

[00:15:08] Hannah McCarthy

So what did Washington do?

[00:15:10] Nick Capodice

Andy Lipka, co-host of America's Constitution, asked the same question.

[00:15:15] Andy Lipka

So, Akhil, you know, you're about to tell us, I think, some of Washington's extraordinary qualities that caused the founders to, first of all, believe that he was the right choice to have this universal agreement, that he was the right choice to be the first president to design the presidency for him. If Washington indeed is extraordinary and you design the office for an extraordinary individual, is there a problem? If you get an individual, that's not extraordinary. In other words, someone may may not have the great qualities of Washington. And indeed, if every if it was so easy to find someone that had those qualities, they wouldn't need to design it for him. So. So is this a problem? Is it a flaw? And if it is a flaw, you know, how have we dealt with it over the years? And how might we, you know, have to face it in the future? If someone has a flaw that previous presidents didn't have in the past.

[00:16:13] Akhil Amar

So there are two parts of that question. One, Why Washington? And then, you know, how do we think about finding another Washington? And if we can't, is that a real problem? So why Washington? One because America at the time was militarily vulnerable, and you need someone who can defend the national security. And Washington can. He actually was the leading general in a long war which won American independence against the most powerful military the world had ever seen. You need someone strong who can defend There because otherwise there is no constitution. There is no America. But two you need someone strong who also is not power hungry, who is willing to walk away from power, who has the virtue to walk away. And Washington has already shown that before the Philadelphia Convention, he had all power. He had the only effective army on the continent. And he walked away. He he resigned. So people thought we can trust him. Third and related, he is a unifier in chief, and that is part of the job of the president to be not just commander in chief, but unifier in chief. He spends time in all parts of the country. He's the only real figure who spent a lot of time in all parts of the country. And it's a big country, and they have different points of view. This is a world before the emergence of political parties. But he's respected by everyone, by even by people who vote against the Constitution. And now you ask me. Well, Akhil, that sounds like a pretty extraordinary guy. There are not that many Washington's in any generation, you know, much less in every generation. Is that a problem for our Constitution? If we can't find someone who can fill these shoes? Because the shoes were designed for Washington's feet, and it is a problem, it is the Achilles heel of our Constitution. And our Constitution could ultimately fail if we pick someone who doesn't have Washington's virtue in certain regards, especially this willingness to walk away from power.

[00:18:32] Hannah McCarthy

Nick, have you ever seen the statue of George Washington that's at the National Museum of American History?

[00:18:38] Nick Capodice

I don't think I have. What's it like?

[00:18:46] Hannah McCarthy

It's striking, to say the least. Washington is shirtless in a toga and sandals, sitting on a throne. One hand holds a sword and the other points heavenward. He's extremely muscular and bringing this up because I feel like we might be echoing the sentiment of the guy who carved that statue. Washington looks like a Greek god, and he wasn't Nick. I mean, he lost battles. He lashed and on occasion hanged deserters. And he enslaved over a hundred people. 300. If you include those kept in bondage by his wife, Martha. And you should. How do we use a man who engaged in that practice as a model for the leader of the free world?

[00:19:35] Nick Capodice

Yeah, it's a difficult contradiction, and it's one that I put to Akhil. How do we adulate someone who committed an unforgivable crime?

[00:19:45] Akhil Amar

I admire Washington, especially because the very last thing he ever did was free, all, provide for the freeing of all the slaves that he owned in his own right. I would I would have loved it if he had been able to say this earlier while in the presidency. But the very last thing he did was to free his slaves. I tell that story in my book, *The Words That Made Us*. It's actually the last chapter. It's called chapter called 'Adieu.' It's how they all leave the, shuffle off this mortal coil. I say they the great founders. They're six of them by acclamation. The first four presidents Washington, Adams, Jefferson, Madison, Hamilton and Franklin. In that last chapter, I tell how each of them dies. And I think Washington dies very well because he frees his slaves and Jefferson doesn't. So in my book, Jefferson is is not at the same level, and Madison doesn't free his slaves, so shame on them. They follow Washington's example in that they step down after two terms. Good for them, but they don't, in their personal lives, follow his example by freeing their own slaves. Shame on them. Washington doesn't solve all the problems of his era. No human being does. But I think, especially at the end, that's a very, very important aspect of Washington's legacy. I'll say it one other way. Washington is not only our first president, he is our first ex president, and he set some important precedents as ex president. He doesn't try to muck things up for the people as ex president who have the crushing responsibilities. He doesn't do that. He's well behaved as ex president. And the best thing he does as ex president is free the slaves. But let's take Jimmy Carter and Jimmy Carter. Probably history won't reckon as one of our greatest presidents. And here's why he doesn't get reelected. But I think history will consider him a very good ex-president. He's done many admirable things as ex-president. Not for profit organizations. Habitat for humanity. Other things. He. He hasn't actually riled people up and roiled the waters as ex-president. That's part of Washington's example too.

[00:22:05] Nick Capodice

Hannah do you remember when we did our first series ever on the midterm elections?

[00:22:10] Hannah McCarthy

I do.

[00:22:10] Nick Capodice

So for everyone out there, the last episode of that series was on voting, and we had to have a team meeting to discuss whether or not we could say to our audience, go vote.

[00:22:21] Hannah McCarthy

Yeah, we had to figure out if telling people that they should vote could be construed as a political call to action or a partisan statement of some kind, and we decided that, yes, it was absolutely okay to tell people they should vote.

[00:22:40] Nick Capodice

Yeah, and we did. And we stand by that. Now, Americans, unlike in other democracies do not have mandatory voting. It's not required. But Akhil says civic participation in any form is a necessity if we want to keep this country going.

[00:22:58] Akhil Amar

Republics in the past have fallen, ours could fall, and I don't want to fail on my watch. Civics and citizenship and cities, they're all actually connected in Latin. And it's the obligation. Not just the right, but the duty, the responsibility of citizens to keep the Republic alive. And how do we do that? I think most of all, by taking very seriously not just our voting in general, but especially for the presidency above everything else, because the presidency is the Achilles heel, the the vulnerable point in the system. When you're thinking about the voting for president, it's not about necessarily who's going to be better for your taxes. I don't like paying, you know, high taxes any more than the next person or who's going to bring lower prices or promises that I like on on this agenda item or that one lower grocery prices. Um, uh, it's ultimately about who's going to serve the Republic best of all going forward, who's going to, most important of all, make sure that this isn't the last presidential election.

[00:24:09] Andy Lipka

And, Akhil, I think that, you know, we talk about originalism, but the Constitution originally was meant to be discussed and understood. Probably a lot of people in this audience have read the Constitution because it's short. But what they may not have read is a short letter from George Washington that accompanied the Constitution, where he is endorsing it and telling people, you know, this is, you know, I support it, you should ratify it. And this this letter, which was published right alongside the Constitution, virtually everywhere that the Constitution was published was considered to be one of the main reasons that the Constitution in fact was ratified, but you may not have read it. You should read it. It's a paragraph, you know, but you should read it.

[00:24:57] Hannah McCarthy

Have you read it?

[00:24:58] Nick Capodice

I had not until I spoke to Akhil and Andy. But I have now. Have you read it?

[00:25:02] Hannah McCarthy

I have, I like that it's a sort of. "All right States. You're not going to like every little part of this. But we gave it a lot of thought. And we think that if you read it, you'll see why we did what we did here." Did any part of it stand out to you?

[00:25:18] Nick Capodice

Yeah, the whole thing did, honestly. And that is exactly what it sounds like, Hannah. And I'm not going to read all of it here. I'm just going to share my favorite paragraph. "In all our deliberations on this subject. We kept steadily in our view, which appears to us the greatest interest of every true American, the consolidation of our union in which is involved our prosperity, felicity, safety, perhaps our national existence."

[00:25:45] Hannah McCarthy

I'm George Washington, and I approve this messag

[00:25:48] Nick Capodice

That's what the president does and what the framers thought about it, this episode was made by me Nick Capodice with you Hannah McCarthy. If you want to listen to more Akhil and Andy, check out their podcast Amarica's Constitution, we have a link in the shownotes. Our staff includes Senior Producer Christina Phillips and Executive Producer Rebecca Lavoie. Music in this episode from Epidemic Sound, as well as Florian Decros, HoliznaCCO, Jahzzar, Eric Ryan Kilkenny, KieLoKaz, Blue Dot Sessions, Yung Kartz, and the civics 101 composer in chief, Chris Zabriskie. Civics 101 is a production of NHPR, New Hampshire Public Radio.

END OF TRANSCRIPT



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