

United States v. Nixon / Nixon's Views on Presidential Power—Answer Key

The following is an excerpt from an interview with President Richard Nixon conducted by David Frost. It aired on television on May 19, 1977.

David Frost: The wave of dissent, occasionally violent, which followed in the wake of the Cambodian incursion, prompted President Nixon to demand better intelligence about the people who were opposing him. To this end, the Deputy White House Counsel, Tom Huston, arranged a series of meetings with representatives of the CIA, the FBI, and other police and intelligence agencies.

These meetings produced a plan, the Huston Plan, which advocated the systematic use of wiretappings, burglaries, or so-called black bag jobs, mail openings and infiltration against antiwar groups and others. Some of these activities, as Huston emphasized to Nixon, were clearly illegal. Nevertheless, the president approved the plan. Five days later, after opposition from J. Edgar Hoover, the plan was withdrawn, but the president's approval was later to be listed in the Articles of Impeachment as an alleged abuse of presidential power.

So what in a sense, you're saying is that there are certain situations, and the Huston Plan or that part of it was one of them, where the president can decide that it's in the best interests of the nation or something, and do something illegal.

President Richard M. Nixon: Well, when the president does it that means that it is not illegal.

Frost: By definition.

Nixon: Exactly. Exactly. If the president, for example, approves something because of the national security, or in this case because of a threat to internal peace and order of significant magnitude, then the president's decision in that instance is one that enables those who carry it out, to carry it out without violating a law. Otherwise they're in an impossible position.

Frost: So, that in other words, really you were saying in that answer, really, between the burglary and murder, again, there's no subtle way to say that there was murder of a dissenter in this country because I don't know any evidence to that effect at all. But, the point is: just the dividing line, is that in fact, the dividing line is the president's judgment?

Nixon: Yes, and the dividing line and, just so that one does not get the impression, that a president can run amok in this country and get away with it, we have to have in mind that a president has to come up before the electorate. We also have to have in mind, that a president

has to get appropriations from the Congress. We have to have in mind, for example, that as far as the CIA's covert operations are concerned, as far as the FBI's covert operations are concerned, through the years, they have been disclosed on a very, very limited basis to trusted members of Congress. I don't know whether it can be done today or not.

Frost: Pulling some of our discussions together, as it were; speaking of the Presidency and in an interrogatory filed with the Church Committee, you stated, quote, "It's quite obvious that there are certain inherently government activities, which, if undertaken by the sovereign in protection of the interests of the nation's security are lawful, but which if undertaken by private persons, are not." What, at root, did you have in mind there?

Nixon: Well, what I, at root I had in mind I think was perhaps much better stated by Lincoln during the War between the States. Lincoln said, and I think I can remember the quote almost exactly, he said, "Actions which otherwise would be unconstitutional, could become lawful if undertaken for the purpose of preserving the Constitution and the Nation."

Now that's the kind of action I'm referring to. Of course in Lincoln's case it was the survival of the Union in wartime, it's the defense of the nation and, who knows, perhaps the survival of the nation.

Frost: But there was no comparison was there, between the situation you faced and the situation Lincoln faced, for instance?

Nixon: This nation was torn apart in an ideological way by the war in Vietnam, as much as the Civil War tore apart the nation when Lincoln was president. Now it's true that we didn't have the North and the South—

Frost: But when you said, as you said when we were talking about the Huston Plan, you know, "If the president orders it, that makes it legal", as it were: Is the president in that sense—is there anything in the Constitution or the Bill of Rights that suggests the president is that far of a sovereign, that far above the law?

Nixon: No, there isn't. There's nothing specific that the Constitution contemplates in that respect. I haven't read every word, every jot and every title, but I do know this: That it has been, however, argued that as far as a president is concerned, that in war time, a president does have certain extraordinary powers which would make acts that would otherwise be unlawful, lawful if undertaken for the purpose of preserving the nation and the Constitution, which is essential for the rights we're all talking about.

From the third Nixon-Frost interview, *The New York Times*, May 20, 1977, p. A16.

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Questions to Consider

1. Article II of the Articles of Impeachment against President Nixon stated that the president “repeatedly engaged in conduct violating the constitutional rights of citizens.” If the president took action against antiwar groups, which constitutional rights did he likely violate?

The articles were probably referring to antiwar activists' First Amendment rights to freedom of speech and freedom of assembly. The due process rights of the Fifth and Sixth Amendments were likely also violated.

2. In this interview, how does President Nixon justify these alleged violations of constitutional rights?

President Nixon justifies these actions by saying that in wartime the president is allowed to take actions that in normal times and by normal people would be considered illegal. He says that some actions that would ordinarily be illegal may be legal if they are carried out to preserve the nation.

3. It has often been said that in the United States we have the rule of law, not men. What do you think this means? Does President Nixon's statement that “when the president does it [something illegal], that means that it is not illegal” support the idea that the United States has the rule of law, not men? Why or why not?

Having a system of rule of law (not men) means that there is a clear and uniform set of laws that apply to all, even the most powerful politicians in the country, even those who create the law. In a system where men—not laws—rule, the actions of government can become arbitrary and unpredictable. President Nixon's quote undermines the concept of the rule of law because he has basically said that the president is above the law, that no action he takes can be illegal (later he qualifies this to say that this is true in times of national security).

4. President Nixon states that there are other ways of containing a president's power besides the rule of law. What, according to Nixon, keeps a president in check? Do you think these checks are enough to prevent the abuse of power by a president?

President Nixon claims that the electorate can keep a president in check. If he runs amok, the people can always refuse to re-elect him or impeach him. He also says that because the president must get appropriations (funds/money) from Congress, that his also acts as a check. Student answers as to whether these checks are enough will vary.

5. President Nixon compares the situation he faced as president during the Vietnam War with the situation that Lincoln faced during the Civil War. He uses that comparison to support the idea that presidents may have to take extraordinary, even illegal, actions to hold the nation together and preserve its security. Does Nixon's comparison stand up? In other words, from your understanding of the historical period and President Nixon's actions, was he justified?

Student answers will vary, but it is unlikely that President Nixon's claim is supported by history. Lincoln was dealing with a civil war that threatened to divide the nation into two halves. The war President Nixon faced, in and of itself, was not a direct threat to the country and the protests that surrounded it, while contentious and at times violent, certainly did not threaten the nation itself.