

CHAPTER 8 THE PRESIDENCY

Narrative Lecture Outline

A president must not only be able to exercise constitutional powers, but unwritten ones as well. The ability of a president to use the symbols of office and bring the nation together is often at least as important as the powers laid out in Article II.

Ever since Watergate, the president has been under intense public and media scrutiny. The relationship between the president and the public has changed and the relationship between the president and the media has changed dramatically. People looked to the president to solve problems even as their respect for the office declined.

In this section of the course, we will look at the institution, the men who have occupied it, and public expectations of the office.

The Roots of and Rules Governing the Office of President of the United States

As in the case of Congress, historical experience influenced the presidency. The King of England and the royal governors (appointed by the King) were often at odds with the elected colonial legislatures and the people. They had the best interests of England at heart. The colonists had different ideas by the mid-1700s. The colonists distrusted both the King and the royal governors so much so that the Articles of Confederation neglected the executive branch to a large degree.

At the Philadelphia Convention, the Framers worried about how to frame an executive so that the office would be strong enough to govern, but not so strong that it could abuse power. The majority of the Framers agreed that the executive power should be vested in a single person to be called the president.

Presidential Qualifications and Terms of Office

The Constitution requires that the president must be:

- 35 years old
- 14 years a U.S. resident
- a natural born citizen

The length of the president's term was quite controversial. Four, seven, and 11-year terms were suggested at the Convention and several of the Framers suggested a limit of one or two terms. Hamilton suggested the president should serve for "good behavior." The compromise was a four-year term with eligibility for reelection.

George Washington, the first president, served two terms and then stepped down. This pattern became traditional for over 150 years. FDR ran for, and won, four terms. His long tenure in office led to the passage of the 22nd Amendment that limited presidents to two four-year terms or a total of 10 years in office.

Impeachment and removal are the ultimate check on the office of the president. The House conducts an investigation and drafts Articles of Impeachment for "treason, bribery, or high crimes and misdemeanors." The Senate then tries the case with the Chief Justice of the Supreme Court presiding. If 2/3rds of the Senate votes for the Articles, the

president is removed from office. Only two presidents have been impeached: Andrew Johnson and William Jefferson Clinton. Neither was removed.

Rules of Succession

Through 2004, eight presidents have died in office from illness or assassination. The vice president takes office according to the Constitution. If the office of vice president were vacant, there could be problems. So Congress passed the Presidential Succession Act of 1947 that stated the order of succession after the vice president:

- *Speaker of the House
- *President Pro Tempore of the Senate
- *Secretary of State, Treasury, Defense, and other Cabinet heads in order of the creation of their department

In 1967, the Twenty-fifth Amendment was added to allow the president to appoint a new vice president if the post were vacant. A simple majority of both houses of Congress was needed to approve the nominee. The amendment also states that the vice president and a majority of the cabinet may force a president who is incapacitated to give up his/her power. A president may also do this voluntarily and temporarily, for example, when undergoing surgery.

The Constitutional Powers of the President

In contrast to Article I's laundry list of powers for Congress, Article II is quite short and details few powers. Distrust of a powerful executive is one reason for the vagueness in Article II. A lack of consensus among the delegates to the convention also contributed to the situation. The Framers also took great comfort in knowing that George Washington would be the first president. He was widely respected and seen as a statesman, not a politician. They believed that Washington would set a precedent of responsible exercise of executive power.

The president received certain enumerated powers in the Constitution that we will discuss shortly. But the first line of Article II may be the most important grant of power to the president. It states that "the executive power shall be vested in a President of the United States of America." Much like the "necessary and proper" clause for Congress, the executive power clause has been the basis for implied powers or has been an elastic clause allowing the powers of the president to exceed the list of enumerated powers in Article II.

The Appointment Power

The president has the power to appoint "ambassadors, public ministers, consuls, judges of the Supreme Court, and other officers" with the advice and consent of the Senate. The president today makes over 3,000 appointments to his administration. If you count military officers, he makes over 75,000 appointments. Through the power to choose his advisors and assistants, the president assembles a team that is extremely valuable in setting the agenda for the nation and formulating policies. Court appointments, to the Supreme Court and the federal bench, give the president broad influence that lasts beyond his term of office.

Traditionally, the Senate has approved presidential appointments to his Cabinet, an advisory group selected by the president to help him make decisions and execute the laws. Until recently, over 97 percent of presidential Cabinet appointments were approved. This has changed in recent years. Confirmation was a real problem during the Clinton administration. The Republican Senate refused to even hold hearings on over 140 federal judges were nominated by Clinton. Even conservative Chief Justice William Rehnquist of the Supreme Court publicly stated that the quality of justice was being harmed by the sheer number of vacancies on the federal bench and the Senate's refusal to allow President Clinton to fill them.

Prior to Bill Clinton's presidency, 97 percent of all presidential appointments were confirmed. His presidency may have been an anomaly but time will tell. George W. Bush was in office 14 months before he had a nominee defeated (Charles Pickering, a nominee for the federal bench).

Presidents today try to appoint a Cabinet that "looks like America" in terms of gender, racial, and ethnic make-up. Bush's first five appointments were two blacks, two women, and an Hispanic. By mid 2005, 36 percent of his appointments were women.

The Power to Convene Congress

According to the Constitution, the president must periodically inform the Congress on the state of the union. This has become an annual televised address to a joint session of Congress though many earlier presidents sent a written statement over to Congress and dispensed with speechmaking altogether. The president can convene Congress at other times as well. Though today, the Congress is virtually full-time and is in session almost year round, so the power is not as important as it once was.

The Power to Make Treaties

The president has the power to make treaties but 2/3rds of the Senate must vote to ratify. The president also receives ambassadors. These powers have been interpreted to mean that the president also has the power to formally recognize the existence of a country.

The Senate does not always ratify treaties that the president feels are important. Over the years, presidents have gotten around the Senate through the use of executive orders. Executive orders allow a president to enter into secret and sensitive arrangements with foreign countries without Senate approval. Executive agreements are binding during the administration, but do not bind the next administration. However, as these agreements have become more common, it has also become common for incoming presidents to agree to abide by some executive agreements made during the last administration.

Veto Power

Presidents can reject any congressional legislation either through a general veto or a pocket veto (we talked about this during the Congress section of the course). The threat of veto can often have a significant effect on congressional action thus allowing the president another influence on law-making. However, the Congress can override a veto with a 2/3rds vote of both houses. Historically, there have been over 2,500 presidential vetoes and only about 100 have been overridden.

The Power to Preside Over the Military as Commander-in-Chief

The president is commander in chief of the army and navy according to Article II. Though Congress also has war powers, the president has been considered preeminent in foreign policy.

Congress has attempted to assert control over aspects of foreign policy on a number of occasions including in the mid-1970s with the War Powers Act, and again in 1999 over the air war in Yugoslavia. However, presidents have basically ignored these congressional attempts to control the presidential ability to wage war. Presidents continue to insist that the WPA infringes on executive power, however, George W. Bush sought congressional approval for his military response to the attacks on 9/11 and for the war in Iraq.

The Pardoning Power

Presidents have a check on the judiciary in the pardoning power. They can grant reprieves or pardons releasing an individual from the punishment or legal consequences of a crime before or after conviction and restores all rights and privileges of citizenship. The most famous pardons include the pardon granted to President Nixon by incoming President Gerald Ford over Watergate. President Jimmy Carter pardoned Vietnam draft dodgers. George Bush pardoned participants in the Iran-Contra affair in 1992 as well.

And when President Clinton left office, he pardoned 140 individuals. Not only was the number controversial, but who received pardons was controversial as well. Among the recipients was Marc Rich, who was the ex-husband of a major Clinton donor. As a result, Congress passed a law {sponsored by Hillary Clinton (D-NY) and Arlen Specter (R-PA)} requiring anyone lobbying for a pardon to register as a lobbyist.

The Development and Expansion of Presidential Power

The power and success of the presidency is dependent upon the nature of the person and of the office. The informal powers of the presidency are heavily dependent upon the personality and goals of the officeholder, but all presidents have the same formal grants of power and constraints via the Constitution. And, of course, timing matters. Events often shape a presidency, for example, crises often lead to an expansion of presidential powers.

Establishing Presidential Authority: The First Presidents

The first three presidents set the tone for those who came after them. George Washington, John Adams, and Thomas Jefferson had a variety of impacts on the office. Washington chose to step down after two terms hoping to set a precedent (which stood until the 1930s and FDR). John Adams had poor leadership skills and probably hastened the development of political parties, and Jefferson expanded the role of the president in Congress and expanded the idea of inherent powers through the Louisiana Purchase.

Incremental Expansion of Presidential Powers: 1809-1933

Despite the precedents set by the early incumbents of the presidency, Congress remained the “heavyweight.” From Jefferson to FDR, Congress was the most powerful branch of government. Very few presidents during this period expanded the powers of the office. Andrew Jackson expanded the electorate, Lincoln fought the Civil War and took a number of other “questionable” acts including ignoring Congress while pursuing the war, Teddy Roosevelt and Woodrow Wilson also expanded the powers of the office somewhat. Besides these few, most presidents limited their conduct to the enumerated powers flowing from the Constitution.

The Growth of the Modern Presidency

In the twentieth century, the presidency has become ever more powerful beginning with FDR who served four terms during two huge national crises: the Great Depression and WWII. When FDR took office in 1933, the country was in the grip of the Great Depression. FDR asked for a huge grant of power to address the emergency from Congress and got it. He created the New Deal: a series of programs to invigorate the economy mostly through government spending. Among his programs that expanded presidential prerogatives were:

- a bank holiday to end public runs on the banks
- legislation passed by Congress to provide emergency relief, public works jobs, regulation of farm production, and improved terms and conditions of work for workers in industry
- a new standard that the executive branch sends legislative programs to Congress for approval instead of waiting passively to respond to congressional initiative
- an increase in the size of the federal bureaucracy from 600,000 to over 1 million workers

Following the Great Depression, WWII also allowed FDR to gather more power in the hands of the president. He also personalized the presidency through his use of radio to have “fireside chats” with the nation. The result was the modern presidency in which the president leads a large government, plays an active and often leading role in foreign and domestic policy, plays a strong legislative role, and uses technology to get “close to the people.”

The Presidential Establishment

As the powers of the presidency grew, so did the establishment around the president. Today, the president has numerous advisors, staffs, and interns to help make policy and fulfill the duties of chief executive.

The Vice President

The vice president's primary duty is to assume office if the president dies. He/she does preside over the Senate and vote in case of a tie. But historically, the office has had little power and little respect.

A vice president has traditionally been chosen for a number of reasons:

- geographical balance for the electoral ticket
- political balance to bring the party back together at the convention. This often causes problems because the president and vice president are from different wings of the party and may have run against each other in the primaries...like Reagan/Bush.
- social and cultural balance. Vice presidents can be used to overcome candidate shortcomings...a stiff presidential candidate may choose a relaxed vice president.

In the 2000 elections, the choices were made somewhat differently. Al Gore chose Joe Lieberman, a senator from Connecticut. Lieberman was the first Jewish candidate on a major party presidential ticket and often expressed his faith during the campaign. However, he was probably chosen because he was an active and outspoken opponent of some of Clinton's excesses. Lieberman helped Gore distance himself from Clinton and regain some moral and ethical high ground after the peccadillos of the Clinton years. Cheney was also chosen to combat perceived negatives for his candidate. George W. Bush was considered a lightweight without significant experience by many. Cheney who had served in numerous offices and capacities in both the public and private sectors was seen as highly competent, very intelligent, and quite experienced. He helped W overcome his perceived weaknesses.

Some vice presidents have exercised powers given to them by the president. Walter "Fritz" Mondale, Al Gore, Jr., and Dick Cheney were the examples given in the textbook of vice presidents who were particularly active. Since Dick Cheney presided over an evenly divided Senate for a time and is often considered to be more knowledgeable on many issues than the president, he is likely to be quite powerful.

The Cabinet

The Cabinet is not mentioned in the Constitution and is formulated by each president as he sees fit. Usually, the Cabinet consists of the heads of the major bureaucratic departments (State, Defense, Treasury, etc.). Most presidents include their vice president and other agency heads or officials to whom Cabinet status seems necessary or appropriate.

Congress exercises some control over the bureaucracy—through advice and consent and budget controls. This coupled with the sheer size of recent Cabinets has served to reduce the importance of the Cabinet as an advising body.

The First Lady

First Ladies assist presidents as both informal advisors and sometimes make more formal contributions to policy. Among the strongest and most visible First Ladies have been Edith Bolling Galt Wilson, Eleanor Roosevelt, and Hillary Clinton. Laura Bush has made weekly radio addresses for the president, spoke to the United Nations on the plight of women in Afghanistan, and campaigned actively for members of Congress.

The Executive Office of the President (EOP)

The EOP was established by FDR and has become a very important inner circle of advisors to the president especially when coupled with the White House staff. The EOP is staffed by persons responsible to the president alone and includes such important offices as the National Security Council, the Council of Economic Advisors, and the Office of Management and Budget.

White House Staff

The staff and advisors most directly responsible to the president are the White House staff such as personal assistants, senior aides, administrative personnel and more. There is no Senate confirmation and their power comes solely from their personal relationship with the president. The White House staff reached a height of 583 members in 1972, but has gotten smaller since then generally running at around 400-500.

The President as Policy Maker

The President's Role in Proposing and Facilitating Legislation

FDR broke with tradition and sent a legislative packet to Congress. FDR claimed the leadership and agenda setting for the president and got it. He shifted the president's powers from that of simply executing policy to making it.

That doesn't mean Congress always passes what the president and executive branch send over. Generally, presidents have a hard time getting Congress to pass their programs especially during periods of divided government—when the president's party does not control Congress.

However, presidents can use their bully pulpit to bring public opinion to bear on an issue. Presidents can also use patronage powers and personal rewards to win support. A sitting president is also the head of his/her political party and can call on those resources to mobilize support.

The Budgetary Process and Legislative Implementation

A president also sets priorities and policy through the budget proposal. The Office of Management and Budget (began under FDR but renamed by Nixon) plays a strong role in presidential budget making. However, Congress remains a very important player in the budget. The lesson of 1998—the year of the balanced budget—was that Congress, the OMB, and the president must work together to achieve their goals.

Policy Making Through Regulation

Legislation is just one way to make laws. Major policy changes can also be enacted through executive orders. The Office of Homeland Security was established via executive order before it was raised to Cabinet department status by Congress. Bush also used an executive order to radically change the Presidential Records Act thus allowing former presidents to block the release of documents from their administrations for up to 12 years. It also allows family members and former vice presidents to extend the secrecy of classified documents. Critics argue that President Bush is seeking to protect his father and members of the elder Bush's administration by this act.

Winning Support for Programs

The ability of a president to be effective depends upon his ability to get his programs through Congress. A president must successfully lobby Congress to pass his agenda, and he can do that through:

- patronage—jobs, grants, and favors in exchange for support
- party—party discipline and campaign visits
- style and force of personality
- leadership
- persuasion—personality and public opinion can help the president persuade Congress to adopt his programs

The success of a president often seems to turn on this last strategy. Truly great presidents have known how to use the power, mystique, and majesty of the office to shape the national destiny.

Presidential Leadership

Leadership is difficult to define, but often easy to recognize. One of the best ways to exercise leadership seems to be by increasing public attention to particular issues, thus leading the way and setting the agenda. The State of the Union address is one way a president can do this.

The Power to Persuade

Formal powers are not enough to make a successful president. He must also be able to exercise informal powers such as persuasion. Such political skills are not found in all presidents but are found in all successful presidents.

Presidential Leadership and the Importance of Public Opinion

The president must persuade Congress but also must persuade public opinion. Presidential popularity has become very important particularly in the relations between the president and Congress. The president has a much easier time passing legislation when his poll numbers are high.

But poll numbers are cyclical. Presidents often start out with very high ratings during the so-called honeymoon period. However, as the term progresses, the job approval tends to drop. Many factors affect the job approval rating of the president including the economic straits of the country, international events (sometimes war or international crises raise a president's approval ratings), party conventions, allegations of wrongdoing, or many other things.

Presidents today often use a strategy referred to as “going public” meaning that they take their case directly to the people and over the heads of Congress. This can work if the issue is a popular one. People then bring pressure to bear on Congress. But it doesn't always work.