

CH. 12 – THE PRESIDENCY

When the founders created the three branches of the government, they disagreed about the amount of power to be vested in the executive. Many feared more than anything a strong president whose powers could be compared to those of the king of England. Others believed, in the words of Alexander Hamilton, that "energy in the executive is a leading characteristic of good government." As the modern presidency has evolved, Hamilton's point of view seems to prevail today, as the president is the single most powerful individual in the American political system. Although the checks and balances set in motion in 1787 still operate, the presidency described in the Constitution is much different from the one that we have today.

THE EVOLUTION OF THE PRESIDENCY

Constitutional provisions limited the early presidency, although the personalities of the first three presidents - George Washington, John Adams, and Thomas Jefferson - shaped it into an influential position by the early 1800s. However, all through the 1800s up until the 1930s, Congress was the dominant branch of the national government. Then, in the past seventy years or so, the balance of power has shifted dramatically, so that the executive branch currently has at least equal power to the legislative branch. How did this shift happen?

THE PRESIDENCY IN THE CONSTITUTION

Article II of the Constitution defines the qualifications, powers, and duties of the president and carefully notes some important checks of the executive branch by the legislature.

Qualifications

- The president must be a "natural-born citizen." Only individuals born as citizens may seek the presidency; all others are excluded from consideration. This provision has become controversial in recent years, with a movement backing California Governor Arnold Schwarzenegger, a naturalized citizen, for president. Recent Secretaries of State Madeline Albright and Henry Kissinger were also unqualified for the presidency under this constitutional provision.
- The president must have lived in the United States for at least 14 years before his election, although the years don't have to be consecutive.
- The president must be at least 35 years old (in contrast to a minimum age of 30 for a senator and 25 for a representative). This provision has never been seriously challenged, since presidents tend to be considerably older than 35. The youngest presidents were Theodore Roosevelt and John F. Kennedy, who both took office at the age of 43.

Powers and Duties

The Constitutional powers and duties of the president are very limited. Those specifically granted are as follows:

- **Executive power** - According to Article II, Section One, the president holds "the executive power" of the United States. The "executive" was meant to "execute", or administer the decisions made by the legislature. This phrase at least implies an executive check on the legislature, and in fact, has been the source of presidential power over the years.
- **Military power** - The president is commander in chief of the armed services. The intention of the founders was to keep control of the military in the hands of a civilian, avoiding a military tyranny. In Madison's words (*Federalist* No. 51), "Ambition must be made to counteract ambition." As commander in chief, the president has probably exercised more authority than in any other role. Although Congress has the sole power to declare war, the president can send the armed forces into a country in situations that are the equivalent of war. Congress has not officially declared war since December 8, 1941 (one day after the attack on Pearl Harbor), yet the Country has fought wars in Korea, Vietnam, and the Middle East. Congress attempted to control such military activities when it passed the **War Powers Resolution** in 1973, requiring the president to consult with Congress when activating military troops. The president must report to Congress within forty-eight hours of deploying troops, and unless Congress approves the use of troops within sixty days or extends the sixty-day time limit, the forces

must be withdrawn. Even so, the president's powers as commander in chief are more extensive today than they have ever been before.

- **Diplomatic power** -The president makes treaties with foreign nations, but only with the "**advice and consent**" of the Senate. Two-thirds of the Senate must approve a treaty; a president's signature is not enough to make it binding. This provision is a check of the executive by the legislature. However, presidents have gotten around this provision by using **executive agreements** made between the president and other heads of state. Such agreements do not require Senate approval, although Congress may withhold funding to implement them. Whereas treaties are binding on future presidents, executive agreements are not. The Constitution also gives the president the power of **diplomatic recognition**, or the power to recognize foreign governments. When twentieth century presidents have withheld this recognition, it has often served as a powerful comment on the legitimacy of governments. For example, the U.S. did not recognize the U.S.S.R. government created in 1917 until the 1930s, nor did the president recognize the People's Republic of China (created in 1949) until the early 1970s.
- **Appointment power** - The president appoints ambassadors, other public officers, and judges of the Supreme Court, but again, only with the "**advice and consent**" of the Senate. Two-thirds must confirm the appointments. The president may appoint many lower positions without Senate approval, but those positions are created and defined by Congress. The appointment power is generally limited to cabinet and subcabinet jobs, federal judgeships, agency heads, and about two thousand less jobs. Most government positions are filled by civil service employees, who compete for jobs through a merit system, so presidents have little say over them. Presidents generally have the power to remove executives from power, with a 1926 Supreme Court decision affirming the president's ability to fire those executive-branch officials whom he appointed with Senate approval. Judges may be removed only through the impeachment process, so presidents have little power over them once they have been appointed.
- **Veto power** - A president can veto a legislative bill by returning it, along with a veto message or explanation, within ten days to the house in which it originated. Congress in turn may override the veto by a two-thirds vote. The president may also exercise the pocket veto. If the president does not sign the bill within ten days and Congress has adjourned within that time, the bill will not become law. Of course, the **pocket veto** can only be used just before the term of a given Congress ends.

STRENGTHENING THE PRESIDENCY

From the very beginning, informal influences have shaped the presidency. The framers almost certainly fashioned the president in the image of George Washington, the man unanimously selected to first occupy the office. Washington's qualities of wisdom, moderation, and dignity defined the more formal duties and powers, and his nonpartisan attitudes created expectations for behavior in presidents that followed. Other strong presidents have contributed to the presidency as it exists today, such as Andrew Jackson, who first used the veto power extensively; Abraham Lincoln, who carried the meaning of "commander in chief" to new heights during the Civil War; and Franklin Roosevelt, who formulated sweeping New Deal policies that were finally checked by the Supreme Court. Many informal qualifications, powers, and duties of the president have evolved that are not mentioned in Article II of the Constitution.

EXECUTIVE PRIVILEGE

The Constitution says nothing about presidential rights to keep private communications between himself and his principal advisers, but presidents have traditionally claimed the privilege of confidentiality - **executive privilege**. Their claim is based on two grounds.

- Separation of powers keeps one branch from inquiring into the internal workings of another branch.
- Presidents and advisers need the assurance of private discussions to be candid with one another without fear of immediate press and public reaction. This need for privacy is especially important with matters of national security.

Even though Congress has never liked executive privilege, the right was not questioned seriously until 1973 when the Supreme Court addressed the issue directly. As a part of the Watergate investigations, a federal prosecutor sought tape recordings of conversations between Richard Nixon and his advisers. Nixon refused to give the tapes over, claiming executive privilege. In **United States v. Nixon** the Court held that there is no "absolute unqualified presidential privilege of immunity from judicial process under all circumstances." In this

case, executive privilege would block the constitutionally defined function of federal courts to decide criminal cases.

Executive privilege has been further defined by *Nixon v. Fitzgerald* (1982), which states that presidents cannot be sued for damages related to official decisions made while in office. In 1997 President Clinton tried to extend this protection to cover all civil suits, but in *Clinton v. Jones* the Court ruled against his argument that civil suits against a chief executive distract him from presidential duties. These decisions have restricted executive privilege, but they have not eliminated it. In all cases the Court has assumed that the president has the right of executive privilege.

IMPOUNDMENT OF FUNDS

Impoundment is the presidential practice of refusing to spend money appropriated by Congress. Although many previous presidents impounded funds, the test case came with Richard Nixon. A major goal of his administration was to reduce federal spending, and when the Democratic Congress passed spending bills, he responded by pocket-vetoing twelve bills and then impounding funds appropriated under other laws that he had not vetoed. Congress in turn passed the **Budget Reform and Impoundment Act of 1974** that required the president to spend all appropriated funds, unless Congress approved the impoundment. Federal courts have upheld the rule that presidents must spend money that Congress appropriates.

THE PRESIDENT AS MORALE BUILDER

The founders had no way of knowing the evolutionary importance of the symbolic and morale-building functions a president must perform. People turn to their presidents for meaning, healing, assurance, and a sense of purpose. This function is particularly important during times of crisis, such as the period following the attacks on the World Trade Towers and the Pentagon on September 11, 2001. The president is expected to help unify the nation, represent our common heritage, and create a climate that encourages diverse elements to work together.

AGENDA SETTING

The Constitution provides the basis for the important power of **agenda setting** - or determining policy priorities - for the nation. According to Article Two, Section Three,

"He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient."

Even though Congress is charged with passing legislation, the president is expected to make policy proposals in many areas. Presidents often initiate foreign policy, economic goals and plans, and programs that improve the quality of life of citizens. Franklin Roosevelt set a precedent when he shepherded his New Deal policies through the legislature, taking responsibility for programs to get the country out of the Great Depression.

Sometimes initiatives are outlined as campaign issues and are refined by the executive office staff, special task forces, and by Congress. For example, President George W. Bush introduced Social Security reform in the 2000 presidential campaign, an issue that he promoted as president, especially after his reelection in 2004. Initiatives may fail, as did President Clinton's health care proposals in 1993. Presidents generally have more leeway in foreign policy and military affairs than they have in domestic matters, largely because the founders anticipated a special need for speed and unity in our relations with other nations.

THE POWER OF PERSUASION

An effective president is a good politician, a mobilizer of influence in the American political system. Because his formal powers are limited, he must spend much time persuading people to support his agenda.

The president's persuasive powers are aimed at three audiences: fellow politicians and leaders in Washington, party activists and officeholders outside Washington, and the public, with its many different views and sets of interests. All three audiences influence the decision-making process, and the president has the visibility and power to persuade them to listen to his priorities. A powerful president is often at the center of the give-and-take negotiations among these groups, and an effective persuader can be the catalyst that makes it all work.

EXECUTIVE ORDERS

Congress allows the president to issue **executive orders** that have the force of law. These executive orders may enforce the Constitution, treaties, or legislative statutes, or they may establish or modify rules and practices of executive administrative agencies. The only restriction on executive orders is that they must be published in the *Federal Register*, a daily publication of the U.S. Government.

THE CHANGING VETO POWER

In recent years many critics have suggested a **line-item veto** reform that would allow presidents to veto sections of bills without rejecting the whole thing. Congress passed the Line-Item Veto Act in 1996, which allowed the president to veto sections of appropriations bills only. When President Clinton exercised this new provision, the law and the president's action were challenged in *Clinton v. City of New York* (1997). The Supreme Court ruled both the law and the action unconstitutional, criticizing them for permitting the president to construct legislation - an abuse of the principle of separation of powers.

PRESIDENTIAL CHARACTER

Just as early presidents were held to the standards of Washington's personal qualities, modern presidents are judged in terms of the public perception of their personality and character. In his book *The Presidential Character*, Professor James Barber assessed presidents by two character-based criteria:

- active vs. passive inclinations
- positive vs. negative points of view

He concluded that these basic personality characteristics shape a president's approach to his job and largely determine important decisions. For example, Franklin Roosevelt's positive, activist character forged the New Deal programs and U.S. foreign policy during World War II. Likewise, Richard Nixon's negative, activist character made it difficult for him to mobilize support from Congress, the media, and the public, even though he actively pursued his ambitious foreign policy goals. A passive, positive president, such as Gerald Ford, may be genial and well liked, but the lack of aggressive goals and administration of policy make his presidency an undistinguished one. Scholars disagree over whether Barber's theories work, but few deny the importance of personality and character in presidential decisions.

THE ISSUE OF GRIDLOCK

Over the past fifty years, a significant trend has developed: **divided government**, or a government in which one party controls the White House and a different party controls one or both houses of Congress. Until 2003, only two exceptions occurred. Between 1993 and 1995, the Democrats controlled both branches, and for a few months in early 2001, when the Republicans briefly dominated. However, with the midterm election of 2002, Republicans gained control of both houses, putting both branches under Republican control. The election of 2004 affirmed this arrangement, leading many to speculate that a new Republican era was dawning.

Many people criticize divided government because it produces "**gridlock**," or the inability to get anything done because the branches bicker with one another and make decisions difficult. A unique illustration of gridlock occurred in 1995 and 1996 when Congress and the president could not agree on the federal budget, thus shutting down many government operations, including national parks and federal offices, until an agreement could be reached. Even though gridlock may slow the process of decision-making, some supporters of divided government believe that it is not necessarily bad because better balanced policies may result. Others believe that a unified government is a myth, with struggles between the branches a natural part of the give and take of checks and balances. In this scenario, gridlock is just as likely to occur when one party controls both branches as it is when a "divided government" exists. Democratic filibusters in 2003 and 2004 against judicial nominees put forward by President George W. Bush support the notion that gridlock between the branches is an ongoing process.

OTHER IMPORTANT MEMBERS OF THE EXECUTIVE BRANCH

Just as the power of the presidency has grown tremendously in recent years, so have the numbers of people that surround him in high-level jobs in the executive branch. George Washington began his first term with only his nephew to help him with office work. Washington paid even that salary out of his own pocket. Today many

advisors in the White House Office, the cabinet, and the Executive Office assist the president in his work. The vice president and the first lady also have large staffs that complement all the president's aides.

THE VICE-PRESIDENT

"I do not choose to be buried until I am already dead."

A nineteenth century presidential hopeful, Daniel Webster, declined the vice presidency with the above words, expressing a sentiment repeated by many vice presidents over time. The founders paid little attention to the office and assigned it only two formal duties:

- to preside over the Senate, but without a vote except to break a tie. This power is seldom claimed by the vice president who defers to the president *pro tempore* who in turn usually hands the responsibility to a junior senator.
- to help decide the question of presidential disability, as provided in the 25th Amendment in 1967. To date, the vice president has never had to decide a question of presidential disability.

The most important function of the vice president is to take over the presidency if the president is unable to fill his term. That has only happened nine times in history, but of course, the vice president must be qualified to take over the presidency.

A vice president's role in any administration is almost entirely up to the president. Although the original constitution designated the runner-up for the presidency as the vice president, the **12th Amendment** was passed in 1804, which provided for electors to vote for a president/vice-president slate. Traditionally, a presidential candidate chooses a vice presidential partner, usually based on a "balance" to the ticket (region, age, popular base, party subgroup).

In recent years, presidents have given more and more important duties to vice presidents. They often represent the president for important ceremonies, sit on boards or projects, and advise him on major, sometimes specialized, issues. For example, Vice President Al Gore advised President Bill Clinton on environmental issues and headed a national review of the federal bureaucracy. President George W. Bush has involved Vice President Dick Cheney in many policy areas, including those shaped in reaction to the terrorist acts of September 11, 2001.

The vice president is often considered as a presidential candidate when the President's term expires, although George H. Bush was the first Vice President to succeed immediately to the presidency since Martin Van Buren succeeded Andrew Jackson in 1837. Even though a vice president may receive his party's nomination, he doesn't always win the general election. Examples include Richard Nixon in 1960, Hubert Humphrey in 1968, Walter Mondale in 1984, and Al Gore in 2000.

THE WHITE HOUSE OFFICE

Some of the most influential people in government are in the president's White House Office. The organization of the staff is entirely up to the president, and their titles include "chief of staff," "counsel," "counselor," "assistant to the president," "special consultant," or "press secretary." These aides are appointed by the president without Senate confirmation, and they may be fired at will. Often they do not serve an entire presidential term.

The organization of the White House Office has been analyzed according to two models:

- **the "pyramid" model** - In this organizational model, most assistants report through a hierarchy to a chief of staff and/or a chief aide. This model is relatively efficient and it frees the president's calendar for only the most important issue. On the other hand, the president may become isolated or his top advisers may gain a great deal of power, as happened to President Richard Nixon in the early 1970s
- **the "circular" model** - Presidents that use this model have more direct contact with their staff members, with many cabinet secretaries and assistants reporting directly to the president. Bill Clinton employed this structure, especially in the early years of his presidency, when many task forces, committees, and informal groups of friends and advisers dealt directly with the President. This model allows better access to the president, and ideas are not filtered through one or two top aides. Critics say that the model promotes chaos and that the president's time is not well used.

THE EXECUTIVE OFFICE OF THE PRESIDENT

The Executive Office consists of agencies that report directly to the president and perform staff services for him. Some agencies are large bureaucracies. The president appoints the top positions, but unlike the White House Staff members, these Executive Office appointees must be confirmed by the Senate. The Executive Office agencies include the following:

- **The National Security Council** advises the president on American military affairs and foreign policy. The NSC consists of the president, the vice president, and the secretaries of state and defense. The president's national security adviser runs the staff of the NSC and also advises the president.
- **The Office of Management and Budget** (OMB) is the largest office in the EOP, and it has the job of preparing the national budget that the president proposes to Congress every year. The OMB also monitors the spending of funds approved by Congress and checks the budgets and records of executive agencies.
- **The National Economic Council** helps the president with economic planning. The council consists of three leading economists and is assisted by about 60 other economists, attorneys, and political scientists. The NEC is the president's major source of advice and information about the nation's economy.

THE CABINET

The cabinet is the oldest traditional body of the executive branch. The first cabinet members were appointed by Washington to serve as secretary of state, secretary of the treasury, secretary of war, and attorney general. From the earliest feuds between Thomas Jefferson and Alexander Hamilton, the cabinet almost never has served as a deliberative body of presidential advisers. In truth, the cabinet does not have much influence over presidential decisions, nor does it help the president to gain control over the bureaucracy.

Cabinet officers are the heads of fourteen major departments. The order of their creation is important for protocol. When the cabinet meets, the secretary of state sits on one side and treasury on the other, and so forth down the table so that the newest departments are the farthest away from the president. They are appointed by the president and must be confirmed by the Senate. The original four positions (secretary of war is now called secretary of defense), are known as the **inner cabinet**, as still generally have the most power and influence.

The president has very little power over cabinet departments partly because he cannot appoint more than a small number of all a department's employees. The most important reason that the departments operate independently from the president is that cabinet members spend the large majority of their time on departmental business, and seek to defend and promote their own organizations in cabinet meetings. What results is that they often compete with one another for precious resources and attention, and represent the departments to the president rather than functioning as the president's representative to the departments.

INDEPENDENT AGENCIES AND COMMISSIONS

The president also appoints people to agencies and commissions that by law often have an independent status. In contrast to the heads of "executive" agencies, the heads of independent agencies serve by law for fixed terms of office and can be removed only "for cause." The agencies are created by Congress, and include such well-known bodies as the Federal Reserve Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Interstate Commerce Commission, and the Securities and Exchange Commission.

SELECTION OF THE PRESIDENT

One very important characteristic of the American political system is that no one seriously questions the process of selecting a president. Nor have we ever had anything other than a peaceful transition between presidents. Of course, people criticize the men that we choose, not to even mention the fact that we have never chosen a woman. What people accept almost completely is *how* a president is chosen or *that* he should leave office when his time is up.

THE ELECTORAL COLLEGE

The method of selection of the president was one of the most controversial topics at the Constitutional Convention. Most of the framers did not trust the public to directly elect the president, but under the checks and balances system, neither could Congress be allowed to select the head of the executive branch. The solution to the dilemma was to create an **electoral college**, a group of electors chosen by each state who would meet in their respective state capitals to vote for president and vice president. Many framers believed that states would vote for favorite sons and that often the election would be decided by the House of Representatives. It did not work out as they expected, largely because they did not foresee the important role that political parties would play in presidential selection.

Today, all major presidential candidates are selected by their political parties, even though Ross Perot tried to capture the presidency in 1992 without the backing of a party. In 1996, he proved the importance of political parties in the selection process when he tried to run again, but as head of a third party. Presidential candidates are chosen through presidential primaries, and are nominated at a party convention in the summer before a general election in November. The electoral college members in each state vote either by law or tradition - for the same candidate that the majority of voters in the state chose.

RECENT CONTROVERSY

Until the election of 2000, the electoral college was regarded primarily as a formality that didn't affect the outcomes of presidential election. However, in 2000 Democratic candidate Al Gore won the popular vote, but George W. Bush became President because he won the electoral vote. The situation opened a debate, with electoral college supporters arguing that the system protects regional and local balance, and its critics claiming that the electoral college voting system is undemocratic. In the election of 2004 a few thousand changes of votes from George W. Bush to John Kerry would have created the situation again, but in reverse. However, President Bush's narrow victory in Ohio meant that he gained both a popular and electoral majority.

PRESIDENTIAL TERMS, DISABILITY, AND SUCCESSION

According to the Constitution, the president's elected term of office is four years, but no mention is made of the number of terms a president may serve. By a precedent set by George Washington, who retired after two terms, no president before Franklin Roosevelt served longer than two terms. However, in the midst of economic depression and a world war, Roosevelt ran for and won a third and fourth term of office, although he died before he completed the last one. Because the tradition was seen as a safeguard against tyranny, Congress added the **22nd Amendment** to the Constitution, limiting a president to election to two terms and/or serving no more than ten years. A vice president who becomes president with less than two years remaining in the previous president's term may run for the office two times on his own.

PRESIDENTIAL DISABILITY

Among twentieth century Presidents, Woodrow Wilson became incapable of carrying out his job after he suffered a stroke, and his wife apparently made many presidential decisions. Likewise, Dwight Eisenhower was unable to function as President for several weeks after a debilitating heart attack. The **25th Amendment** (1967) to the Constitution covers this important problem concerning the presidential term: disability and succession. It permits the vice president to become acting president if the vice president and the cabinet determine that the president is disabled. If the president challenges the executive decision, Congress decides the issue. The amendment also outlines how a recovering president can reclaim the Oval Office.

PRESIDENTIAL SUCCESSION

The 25th Amendment also created a method for selecting a vice president when the office is vacated. The president nominates a new vice president, who assumes office when both houses of Congress approve the nomination by a majority vote. A vice president who assumes the presidency then nominates a new vice president who is also confirmed by Congress. If there is no vice president, then a 1947 succession law governs: next in line are the speaker of the house, the Senate *pro tempore*, and the thirteen cabinet officers, beginning with the secretary of state.

The disability provision has never been used, but the vice presidential succession policy has. In 1973, Vice President Spiro Agnew resigned amidst charges of bribery, and President Nixon appointed Gerald Ford in his

place. The next year, Nixon resigned as a result of the Watergate scandal, Ford became president, and he appointed Nelson Rockefeller as vice president. For the first time in history, both the presidency and vice presidency were held by appointed, not elected, officials.

THE IMPEACHMENT PROCESS

The Constitution provides a way to remove a president before his term is over, but it is not an easy process. The House of Representatives may, by majority vote, impeach the president for "Treason, Bribery, or other high Crimes and Misdemeanors." Once the House impeaches the president, the case goes to the Senate, which tries the president, with the chief justice of the Supreme Court presiding. By a two-third vote, the Senate may convict and remove the president from office. Only two presidents have been impeached:

- Andrew Johnson was impeached by the House in 1868 in the wake of the post-Civil War politics, but the Senate failed to convict him (by a one vote margin), and he remained in office.
- Bill Clinton was impeached by the House in 2000 on two counts: committing perjury and obstructing justice in the investigation of sex scandals surrounding the President's relationships with Paula Jones and Monica Lewinsky.

Richard Nixon came close to impeachment when on July 31, 1974, the House Judiciary Committee voted to recommend his impeachment to the House as a result of the Watergate scandal. Nixon avoided impeachment by resigning from the presidency a few days later.

Other civil officers besides the president may be impeached, but the provision has had the most meaning for federal judges, who serve for life and are constitutionally independent of the president and Congress. Fifteen judges in U.S. history have been impeached by the House, and seven have been convicted by the Senate.

Despite gridlock, the recent impeachment process, and the disputed election of 2000, the institution of the presidency has survived. The responsibilities and privileges have changed over time so that the office is much more powerful than the one created by the Constitution. Even though events of recent years have checked presidential power, few people would argue that the president is still the most influential and respected single political leader in the country.