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How Powerful Is the President?



WHO GOVERNS?

1. Did the Founders expect the presidency to be the most important political institution?
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TO WHAT ENDS?

1. Should we abolish the electoral college?
2. Is it harder to govern when the presidency and the Congress are controlled by different political parties?

Professor Jones speaks to his political science class: “The president of the United States occupies one of the most powerful offices in the world. Presidents Kennedy and Johnson sent American troops to Vietnam, President Bush sent them to Saudi Arabia, and President Clinton sent them to Kosovo, all without war being declared by Congress. In fact, Clinton ordered our air force to bomb parts of the old Yugoslavia despite the fact that the House of Representatives had rejected a resolution that would have authorized the bombing. President Nixon imposed wage and price controls on the country. Between them, Presidents Carter and Reagan selected most of the federal judges now on the bench; thus the political philosophies of these two men were stamped on the courts. President George W. Bush created military tribunals to try captured terrorists and persuaded Congress to toughen antiterrorist laws. No wonder people talk about our having an ‘imperial presidency.’”

A few doors down the hall, Professor Smith speaks to her class: “The president, compared to the prime ministers of other democratic nations, is one of the weakest chief executives anywhere. President Carter signed an arms-limitation treaty with the Soviets, but the Senate wouldn’t ratify it. President Reagan was not allowed even to test antisatellite weapons, and in 1986 Congress rejected his budget before the ink was dry. President Clinton’s health care plan was ignored, and the House voted to impeach him. Regularly, subordinates who are supposed to be loyal to the president leak his views to the press and undercut his programs before Congress. No wonder people call the U.S. president a ‘pitiful, helpless giant.’”

Can Professors Jones and Smith be talking about the same office? Who is right? In fact they are both right. The American presidency is a unique office, with elements of great strength *and* profound weakness built into it by its constitutional origins.

★ Presidents and Prime Ministers

The popularly elected president is an American invention. Of the roughly five dozen countries in which there is some degree of party competition and thus, presumably, some measure of free choice for the voters, only sixteen have a directly elected president, and thirteen of these are nations of North and South America. The democratic alternative is for the chief executive to be a prime minister, chosen by and responsible to the parliament. This system prevails in most Western European countries as well as in Israel and Japan. There is no nation with a purely presidential political system in Europe; France combines a directly elected president with a prime minister and parliament.¹



The first cabinet: left to right, Secretary of War Henry Knox, Secretary of State Thomas Jefferson, Attorney General Edmund Randolph, Secretary of the Treasury Alexander Hamilton, and President George Washington.

In a parliamentary system the prime minister is the chief executive. The prime minister is chosen not by the voters but by the legislature, and he or she in turn selects the other ministers from the members of parliament. If the parliament has only two major parties, the ministers will usually be chosen from the majority party; if there are many parties (as in Israel), several parties may participate in a coalition cabinet. The prime minister remains in power as long as his or her party has a majority of the seats in the legislature or as long as the coalition he or she has assembled holds together. The voters choose who is to be a member of parliament—usually by voting for one or another party—but cannot choose who is to be the chief executive officer.

Whether a nation has a presidential or a parliamentary system makes a big difference in the identity and powers of the chief executive.

Presidents Are Often Outsiders People become president by winning elections, and sometimes winning is easier if you can show the voters that you are not part of “the mess in Washington.” Prime ministers are selected from among people already in parliament, and so they are always insiders.

Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush did not hold national office before becoming president. Franklin Roosevelt had been assistant secretary of the navy, but his real political experience was as governor of New York. Dwight Eisenhower was a general, not a politician. John F. Kennedy, Lyndon Johnson, and Richard Nixon had been in Congress, but only Nixon had had top-level experience in the executive branch (he had been vice president). George H.W. Bush had had a great deal of executive experience in Washington—as vice president, director of the CIA, and representative to China, whereas Bill Clinton and George W. Bush both served as governors.

From 1828 through 2000, thirty-one different people were elected president. Of these, the great majority were governors, military leaders, or vice presidents; only 13 percent were legislators just before becoming president.

Presidents Choose Cabinet Members from Outside Congress Under the Constitution, no sitting member of Congress can hold office in the executive branch. The persons chosen by a prime minister to be in the cabinet are almost always members of parliament.

Of the fifteen heads of cabinet-level departments in the first George W. Bush administration, only four had been members of Congress. The rest, as is customary with most presidents, were close personal friends or campaign aides, representatives of important constituencies (for example, farmers, blacks, or women), experts on various policy issues, or some combination of all three.

The prime minister of Great Britain, by contrast, picks all of his or her cabinet ministers from among members of Parliament. This is one way by which the prime minister exercises control over the legislature. If you were an ambitious member of Parliament, eager to become prime minister yourself someday, and if you knew that your main chance of realizing that ambition was to be appointed to a series of ever-more-important cabinet posts, then you would not be likely to antagonize the person doing the appointing.

Presidents Have No Guaranteed Majority in the Legislature

A prime minister's party (or coalition) always has a majority in parliament; if it did not, somebody else would be prime minister. A president's party often does not have a congressional majority; instead, Congress is often controlled by the opposite party, creating a divided government. Divided government means that cooperation between the two branches, hard to achieve under the best of circumstances, is often further reduced by partisan bickering.

Even when one party controls both the White House and Congress, the two branches often work at cross-purposes. The U.S. Constitution created a system of separate branches sharing powers. The authors of the document expected that there would be conflict between the branches, and they have not been disappointed.

When Kennedy was president, his party, the Democrats, held a big majority in the House and the Senate. Yet Kennedy was frustrated by his inability to get Congress to approve proposals to enlarge civil rights, supply federal aid for school construction, create a Department of Urban Affairs and Housing, or establish a program of subsidized medical care for the elderly. During his last year in office, Congress passed only about one-fourth of his proposals. Carter did not fare much better; even though the Democrats controlled Congress, many of his most important proposals were defeated or greatly modified. Only Franklin Roosevelt (1933–1945) and Lyndon Johnson (1963–1969) had even brief success in leading Congress, and for Roosevelt most of that success was confined to his first term or to wartime.

divided

government One party controls the White House and another party controls one or both houses of Congress.

unified government

The same party controls the White House and both houses of Congress.

Presidents and Prime Ministers at War These differences in political position are illustrated by how George W. Bush and Tony Blair managed the war in Iraq.

- Once Bush decided to fight, he had to cajole Congress, even though it was controlled by his own party, to support him. Once Blair decided to fight, there could not be any meaningful political resistance in parliament.
- When public opinion turned against Bush, he continued the fight because he could not be removed

from office. When public opinion turned against Blair, he announced that he would resign from office and turn over the job of prime minister to another person in his party.

★ Divided Government

In the forty-eight years between 1952 and 2006, there were twenty-seven congressional or presidential elections. Eighteen of the twenty-seven produced **divided government**—that is, a government in which one party controls the White House and a different party controls one or both houses of Congress. When George W. Bush became president in 2001, it was only the third time since 1969 that the same party controlled the White House and Congress, creating a **unified government**. And it was only the first time since 1953 when the Republicans were in charge. But not long after the Senate convened, one Republican, James Jeffords of Vermont announced that he was an independent and voted with the Democrats. Divided government had returned until an additional Republican was elected to the Senate in 2002. But the Democrats retook control in 2007.

Americans say they don't like divided government. They, or at least the pundits who claim to speak for them, think divided government produces partisan bickering, political paralysis, and policy gridlock. During the 1990 battle between President Bush and a Democratic Congress, one magazine compared it to a movie featuring the Keystone Kops, characters from the silent movies who wildly chased each other around



Mexican President Felipe Calderon speaking at a meeting with the British prime minister.

Divided Government in Action: Six Examples

President George W. Bush and the Democratic-controlled Congress expand federal laws that fund health care for low-income and elderly citizens.

President Bill Clinton and the Republican-controlled Congress overhaul the nation's welfare system and balance the federal budget.

President George H.W. Bush and a Democratic-controlled Congress enact far-reaching federal laws to aid disabled persons.

President Ronald Reagan and the Democratic-controlled Congress reform the federal tax system.

President Richard Nixon and the Democratic-controlled Congress create new batteries of federal environmental policies and programs.

President Dwight D. Eisenhower and the Democratic-controlled Congress establish the interstate highway system.

Source: Eisenhower to Clinton, adapted from Associated Press, "Major Laws Passed in Divided Government," November 9, 2006.

while accomplishing nothing.² In the 1992 campaign, Bush, Clinton, and Ross Perot bemoaned the "stalemate" that had developed in Washington. When Clinton was sworn in as president, many commentators spoke approvingly of the "end of gridlock."

There are two things wrong with these complaints. First, it is not clear that divided government produces a gridlock that is any worse than that which exists with unified government. Second, it is not clear that, even if **gridlock** does exist, it is always, or even usually, a bad thing for the country.

Does Gridlock Matter?

Despite the well-publicized stories about presidential budget proposals being ignored by Congress (Democrats used to describe Reagan's and Bush's budgets as being "dead on arrival"), it is not easy to tell whether divided governments produce fewer or worse policies than unified ones. The scholars who have looked closely at the matter have, in general, concluded that divided governments do about as well as unified ones in passing important laws, conducting important investigations, and ratifying significant treaties.³ Political scientist David Mayhew studied 267 important laws that were enacted between 1946 and 1990. These laws were as likely to be passed when different parties controlled the White House and Congress as when the same party controlled both branches.⁴ For example, divided governments produced the 1946 Marshall Plan to rebuild war-torn Europe and the 1986

Tax Reform Act. The box nearby lists six examples of divided government in action.

Why do divided governments produce about as much important legislation as unified ones? The main reason is that "unified government" is something of a myth. Just because the Republicans control both the presidency and Congress does not mean that the Republican president and the Republican senators and representatives will see things the same way. For one thing, Republicans are themselves divided between conservatives (mainly from the South) and liberals (mainly from the Northeast and Midwest). They disagree about policy almost as much as Republicans and Democrats disagree. For another thing, the Constitution ensures that the president and Congress will be rivals for power and thus rivals in policy-making. That's what the separation of powers and checks and balances are all about.

As a result, periods of unified government often turn out not to be so unified. Democratic president Lyndon Johnson could not get many Democratic members of Congress to support his war policy in Vietnam. Democratic president Jimmy Carter could not get the Democratic-controlled Senate to ratify his strategic arms limitation treaty. Democratic president Bill Clinton could not get the Democratic Congress to go along with his policy on gays in the military or his health proposals; and when the heavily revised

gridlock *The inability of the government to act because rival parties control different parts of the government.*

Clinton budget did pass in 1993, it was by just one vote.

The only time there really is a unified government is when not just the same party but the same *ideological wing* of that party is in effective control of both branches of government. This was true in 1933 when Franklin Roosevelt was president and change-oriented Democrats controlled Congress, and it was true again in 1965 when Lyndon Johnson and liberal Democrats dominated Congress. Both were periods when many major policy initiatives became law: Social Security, business regulations, Medicare, and civil rights legislation. But these periods of ideologically unified government are very rare.

Is Policy Gridlock Bad?

An American president has less ability to decide what laws get passed than does a British prime minister. If you think that the job of a president is to “lead the country,” that weakness will worry you. The only cure for that weakness is either to change the Constitution so that our government resembles the parliamentary system in effect in Great Britain, or always to vote into office members of Congress who not only are of the same party as the president but also agree with him on policy issues.

We suspect that even Americans who hate gridlock and want more leadership aren’t ready to make sweeping constitutional changes or to stop voting for presidents and members of Congress from different parties. This unwillingness suggests that they like the idea of somebody being able to block a policy they don’t like. Since all of us don’t like something, we all have an interest in some degree of gridlock.

And we seem to protect that interest. In a typical presidential election, about one-fourth of all voters will vote for one party’s candidate for president and the other party’s candidate for Congress. As a result, about one-fourth of all congressional districts will be represented in the House by a person who does not belong to the party of the president who carried that district. Some scholars believe that voters split tickets deliberately in order to create divided government and thus magnify the effects of the checks and balances built into our system, but the evidence supporting this belief is not conclusive.

Gridlock, to the extent that it exists, is a necessary consequence of a system of representative democracy. Such a system causes delays, intensifies delibera-

tions, forces compromises, and requires the creation of broad-based coalitions to support most new policies. This system is the opposite of direct democracy. If you believe in direct democracy, you believe that what the people want on some issue should become law with as little fuss and bother as possible. Political gridlocks are like traffic gridlocks—people get overheated, things boil over, nothing moves, and nobody wins except journalists who write about the mess and lobbyists who charge big fees to steer their clients around the tie-up. In a direct democracy, the president would be a traffic cop with broad powers to decide in what direction the traffic should move and to make sure that it moves that way.

But if unified governments are not really unified—if in fact they are split by ideological differences within each party and by the institutional rivalries between the president and Congress—then this change is less important than it may seem. What *is* important is the relative power of the president and Congress. That has changed greatly.

★ The Evolution of the Presidency

In 1787 few issues inspired as much debate or concern among the Framers as the problem of defining the chief executive. The delegates feared anarchy and monarchy in about equal measure. When the Constitutional Convention met, the existing state constitutions gave most, if not all, power to the legislatures. In eight states the governor was actually chosen by the legislature, and in ten states the governor could not serve more than one year. Only in New York, Massachusetts, and Connecticut did governors have much power or serve for any length of time.

Some of the Framers proposed a plural national executive (that is, several people would each hold the executive power in different areas, or they would exercise the power as a committee). Others wanted the executive power checked, as it was in Massachusetts, by a council that would have to approve many of the chief executive’s actions. Alexander Hamilton strongly urged the exact opposite: in a five-hour speech he called for something very much like an elective monarchy, patterned in some respects after the British kind. No one paid much attention to this plan or even, at first, to the more modest (and ultimately successful) suggestion of James Wilson for a single, elected president.

In time, those who won out believed that the governing of a large nation, especially one threatened by foreign enemies, required a single president with significant powers. Their cause was aided, no doubt, by the fact that everybody assumed that George Washington would be the first president, and confidence in him—and in his sense of self-restraint—was widely shared. Even so, several delegates feared that the presidency would become, in the words of Edmund Randolph of Virginia, “the foetus of monarchy.”

Concerns of the Founders

The delegates in Philadelphia, and later the critics of the new Constitution during the debate over its ratification, worried about aspects of the presidency that were quite different from those that concern us today. In 1787–1789 some Americans suspected that the president, by being able to command the state militia, would use the militia to overpower state governments. Others were worried that if the president were allowed to share treaty-making power with the Senate, he would be “directed by minions and favorites” and become a “tool of the Senate.”

But the most frequent concern was over the possibility of presidential reelection: Americans in the late eighteenth century were sufficiently suspicious of human nature and sufficiently experienced in the arts of mischievous government to believe that a president, once elected, would arrange to stay in office in perpetuity by resorting to bribery, intrigue, and force. This might happen, for example, every time the presidential election was thrown into the House of Representatives because no candidate had received a majority of the votes in the electoral college, a situation that most people expected to happen frequently.

In retrospect, these concerns seem misplaced, even foolish. The power over the militia has had little significance; the election has gone to the House only twice (1800 and 1824); and though the Senate dominated the presidency off and on during the second half of the nineteenth century, it has not done so recently. The real sources of the expansion of presidential power—the president’s role in foreign affairs, his ability to shape public opinion, his position as head of the executive branch, and his claims to have certain “inherent” powers by virtue of his office—were hardly predictable in 1787. And not surprisingly. There was nowhere in the world at that time, nor had there been at any time in history, an example of an American-

style presidency. It was a unique and unprecedented institution, and the Framers and their critics can easily be forgiven for not predicting accurately how it would evolve. At a more general level, however, they understood the issue quite clearly. Gouverneur Morris of Pennsylvania put the problem of the presidency this way: “Make him too weak: the Legislature will usurp his powers. Make him too strong: he will usurp on the Legislature.”

The Framers knew very well that the relations between the president and Congress and the manner in which the president is elected were of profound importance, and they debated both at great length. The first plan was for Congress to elect the president—in short, for the system to be quasi-parliamentary. But if that were done, some delegates pointed out, Congress could dominate an honest or lazy president, while a corrupt or scheming president might dominate Congress.

After much discussion it was decided that the president should be chosen directly by voters. But by which voters? The emerging nation was large and diverse. It seemed unlikely that every citizen would be familiar enough with the candidates to cast an informed vote for a president directly. Worse, a direct popular election would give inordinate weight to the large, populous states, and no plan with that outcome had any chance of adoption by the smaller states.

The Electoral College

Thus the **electoral college** was invented, whereby each of the states would select electors in whatever manner it wished. The electors would then meet in each state capital and vote for president and vice president. Many Framers expected that this procedure would lead to each state’s electors’ voting for a favorite son, and thus no candidate would win a majority of the popular vote. In this event, it was decided, the House of Representatives should make the choice, with each state delegation casting one vote.

The plan seemed to meet every test: large states would have their say, but small states would be protected by having a minimum of three electoral votes no matter how tiny their population. The small

electoral college *The people chosen to cast each state’s votes in a presidential election. Each state can cast one electoral vote for each senator and representative it has. The District of Columbia has three electoral votes, even though it cannot elect a representative or senator.*

states together could wield considerable influence in the House, where, it was widely expected, most presidential elections would ultimately be decided. Of course, it did not work out quite this way: the Framers did not foresee the role that political parties would play in producing nationwide support for a slate of national candidates.

Once the manner of electing the president was settled, the question of his powers was much easier to decide. After all, if you believe that the procedures are fair and balanced, then you are more confident in assigning larger powers to the president within this system. Accordingly, the right to make treaties and the right to appoint lesser officials, originally reserved for the Senate, were given to the president “with the advice and consent of the Senate.”

The President's Term of Office

Another issue was put to rest soon thereafter. George Washington, the unanimous choice of the electoral college to be the first president, firmly limited himself to two terms in office (1789–1797), and no president until Franklin D. Roosevelt (1933–1945) dared to run for more (though Ulysses S. Grant tried). In 1951 the Twenty-second Amendment to the Constitution was ratified, formally limiting all subsequent presidents to two terms. The remaining issues concerning the nature of the presidency, and especially the relations between the president and Congress, have been the subject of continuing dispute. The pattern of relationships that we see today is the result of an evolutionary process that has extended over more than two centuries.

The first problem was to establish the legitimacy of the presidency itself: that is, to ensure, if possible, public acceptance of the office, its incumbent, and its powers and to establish an orderly transfer of power from one incumbent to the next.

Today we take this for granted. When George W. Bush was inaugurated in January 2001 as our forty-third president, Bill Clinton, the forty-second, quietly left the White House. In the world today such an uneventful succession is unusual. In many nations a new chief executive comes to power with the aid of military force or as a result of political intrigue; his predecessor often leaves office disgraced, exiled, or dead. At the time that the Constitution was written, the Founders could only hope that an orderly transfer of power from one president to the next would occur.

France had just undergone a bloody revolution; England in the not-too-distant past had beheaded a king; and in Poland the ruler was elected by a process so manifestly corrupt and so open to intrigue that Thomas Jefferson, in what may be the first example of ethnic humor in American politics, was led to refer to the proposed American presidency as a “bad edition of a Polish king.”

Yet by the time Abraham Lincoln found himself at the helm of a nation plunged into a bitter, bloody civil war, fifteen presidents had been elected, served their time, and left office without a hint of force being used to facilitate the process and with the people accepting the process—if not admiring all the presidents. This orderly transfer of authority occurred despite passionate opposition and deeply divisive elections (such as that which brought Jefferson to power). And it did not happen by accident.

The First Presidents

Those who first served as president were among the most prominent men in the new nation, all active either in the movement for independence or in the Founding or in both. Of the first five presidents, four (all but John Adams) served two full terms. Washington and Monroe were not even opposed. The first administration had at the highest levels the leading spokesmen for all of the major viewpoints: Alexander Hamilton was Washington's secretary of the treasury (and was sympathetic to the urban commercial interests), and Thomas Jefferson was secretary of state (and more inclined toward rural, small-town, and farming views). Washington spoke out strongly against political parties, and though parties soon emerged, there was a stigma attached to them: many people believed that it was wrong to take advantage of divisions in the country, to organize deliberately to acquire political office, or to make legislation depend upon party advantage. As it turned out, this hostility to party (or “faction,” as it was more commonly called) was unrealistic: parties are as natural to democracy as churches are to religion.

Establishing the legitimacy of the presidency in the early years was made easier by the fact that the national government had relatively little to do. It had, of course, to establish a sound currency and to settle the debt accrued during the Revolutionary War. The Treasury Department inevitably became the principal federal office, especially under the strong leader-



America has witnessed peaceful transfers of power not only between leaders of different parties (such as Woodrow Wilson and William Howard Taft in 1913), but also after a popular leader has been assassinated (Lyndon Johnson is sworn in after John F. Kennedy's death).

ship of Hamilton. Relations with England and France were important—and difficult—but otherwise government took little time and few resources.

In appointing people to federal office, a general rule of “fitness” emerged: those appointed should have some standing in their communities and be well thought of by their neighbors. Appointments based on partisanship soon arose, but community stature could not be neglected.

The presidency was kept modest. Washington clearly had not sought the office and did not relish the exercise of its then modest powers. He traveled widely so that as many people as possible could see their new president. His efforts to establish a semiregal court etiquette were quickly rebuffed; the presidency was to be kept simple. Congress decided that not until after a president was dead might his likeness appear on a coin or on currency; no president until Eisenhower was given a pension on his retirement.

The president's relations with Congress were correct but not close. Washington appeared before the Senate to ask its advice on a proposed treaty with some Indian tribes. He got none and instead was politely told that the Senate would like to consider the matter in private. He declared that he would be “damned if he ever went there again,” and he never did. Thus ended the responsibility of the Senate to

“advise” the president. Vetoes were sometimes cast by the president, but sparingly, and only when the president believed that the law was not simply unwise but unconstitutional. Washington cast only two vetoes; Jefferson and Adams cast none.

The Jacksonians

At a time roughly corresponding to the presidency of Andrew Jackson (1829–1837), broad changes began to occur in American politics. These changes, together with the personality of Jackson himself, altered the relations between president and Congress and the nature of presidential leadership. As so often happens, few people at the time Jackson took office had much sense of what his presidency would be like. Though he had been a member of the House of Representatives and of the Senate, he was elected as a military hero—and an apparently doddering one at that. Sixty-one years old and seemingly frail, he nonetheless used the powers of his office as no one before him had.

Jackson vetoed twelve acts of Congress, more than all his predecessors combined and more than any subsequent president until Andrew Johnson thirty years later. His vetoes were not simply on constitutional grounds but on policy ones: as the only official elected by the entire voting citizenry, he saw himself as the



President Andrew Jackson thought of himself as the “Tribune of the People,” and he symbolized this by throwing a White House party that anyone could attend. Hundreds of people showed up and ate or carried away most of a 1,400-pound block of cheese.

“Tribune of the People.” None of his vetoes were overridden. He did not initiate many new policies, but he struck out against the ones that he did not like. He did so at a time when the size of the electorate was increasing rapidly, and new states, especially in the West, had entered the Union. (There were then twenty-four states in the Union, nearly twice the original number.)

Jackson demonstrated what could be done by a popular president. He did not shrink from conflict with Congress, and the tension between the two branches of government that was intended by the Framers became intensified by the personalities of those in government: Jackson in the White House, and Henry Clay, Daniel Webster, and John Calhoun in Congress. These powerful figures walked the political stage at a time when bitter sectional conflicts—over slavery and commercial policies—were beginning to split the country. Jackson, though he was opposed to a large and powerful federal government and wished to return somehow to the agrarian simplicities of Jefferson’s time, was nonetheless a believer in a strong and independent presidency. This view, though obscured by nearly a century of subsequent congressional dominance of national politics, was ultimately to triumph—for better or for worse.

The Reemergence of Congress

With the end of Jackson’s second term, Congress quickly reestablished its power, and except for the wartime presidency of Lincoln and brief flashes of presidential power under James Polk (1845–1849) and Grover Cleveland (1885–1889, 1893–1897), the presidency for a hundred years was the subordinate branch of the national government. Of the eight presidents who succeeded Jackson, two (William H. Harrison and Zachary Taylor) died in office, and none of the others served more than one term. Schoolchildren, trying to memorize the list of American presidents, always stumble in this era of the “no-name” presidents. This is hardly a coincidence: Congress was the leading institution, struggling, unsuccessfully, with slavery and sectionalism.

It was also an intensely partisan era, a legacy of Jackson that lasted well into the twentieth century. Public opinion was closely divided. In nine of the seventeen presidential elections between the end of Jackson’s term in 1837 and Theodore Roosevelt’s election in 1904, the winning candidate received less than half the popular vote. Only two candidates (Lincoln in 1864 and Ulysses S. Grant in 1872) received more than 55 percent of the popular vote.

During this long period of congressional—and usually senatorial—dominance of national government, only Lincoln broke new ground for presidential power. Lincoln’s expansive use of that power, like Jackson’s, was totally unexpected. He was first elected in 1860 as a minority president, receiving less than 40 percent of the popular vote in a field of four candidates. Though a member of the new Republican party, he had been a member of the Whig party, a group that had stood for limiting presidential power. He had opposed America’s entry into the Mexican War and had been critical of Jackson’s use of executive authority. But as president during the Civil War, he made unprecedented use of the vague gift of powers in Article II of the Constitution, especially those that he felt were “implied” or “inherent” in the phrase “take care that the laws be faithfully executed” and in the express authorization for him to act as commander in chief. Lincoln raised an army, spent money, blockaded southern ports, temporarily suspended the writ of habeas corpus, and issued the Emancipation Proclamation to free the slaves—all without prior congressional approval. He justified this, as most Americans

How Things Work

The Electoral College

Until November 2000, it was almost impossible to get a student interested in the electoral college. But in the 2000 presidential election Florida's electoral vote hung in the balance for weeks, with Bush finally winning it and (though he had fewer popular votes than Al Gore) the presidency.

Here are the essential facts: Each state gets electoral votes equal to the number of its senators and representatives (the District of Columbia also gets 3, even though it has no representatives in Congress). There are 538 electoral votes. To win, a candidate must receive at least half, or 270.

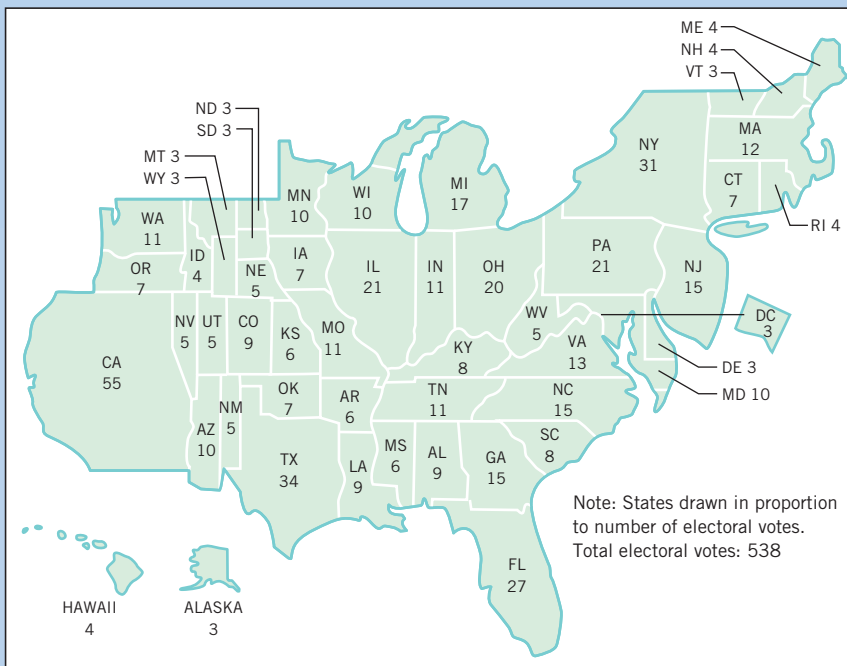
In all but two states, the candidate who wins the most popular votes wins all of the state's electoral votes. Maine and Nebraska have a different system. They allow electoral votes to be split by awarding some votes on the basis of a candidate's statewide total and some on the basis of how the candidate did in each congressional district.

The winning slates of electors assemble in their state capitals about six weeks after the election to cast their ballots. Ordinarily this is a pure formality. Occasionally, however, an elector will vote for a presidential candidate other than the one who carried the state. Such "faithless electors" have appeared in several elections since 1796. The state electoral ballots are opened and counted before a joint session of Congress during the first week of January. The candidate with a majority is declared elected.

If no candidate wins a majority, the House of Representatives chooses the president from among the three leading candidates, with each state casting one vote. By House rules, each state's vote is allotted to the candidate preferred by a majority of the state's House delegation. If there is a tie within a delegation, that state's vote is not counted.

The House has had to decide two presidential contests. In 1800 Thomas Jefferson and Aaron Burr tied

Electoral Votes per State



in the electoral college because of a defect in the language of the Constitution—each state cast two electoral votes, without indicating which was for president and which for vice president. (Burr was supposed to be vice president, and after much maneuvering he was.) This problem was corrected by the Twelfth Amendment, ratified in 1804. The only House decision under the modern system was in 1824, when it chose John Quincy Adams over Andrew Jackson and William H. Crawford, even though Jackson had more electoral votes (and probably more popular votes) than his rivals.

Today the winner-take-all system in effect in forty-eight states makes it possible for a candidate to win at least 270 electoral votes without winning a majority of the popular votes. This happened in 2000, 1888, and 1876, and almost happened in 1960 and 1884. Today a candidate who carries the ten largest states wins 256 electoral votes, only 14 short of a presidential victory.

This means that the candidates have a strong incentive to campaign hard in big states they have a chance of winning. In 2000, Gore worked hard in California, New York, and Pennsylvania but pretty much ignored Texas, where Bush was a shoo-in. Bush campaigned hard in Florida, Illinois, and Ohio, but not so much in New York, where Gore was an easy winner.

But the electoral college can also help small states. South Dakota, for example, has 3 electoral votes (about 0.5 percent of the total), even though it casts

only about 0.3 percent of the popular vote. South Dakota and other small states are thus overrepresented in the electoral college.

Most Americans would like to abolish the electoral college. But doing away with it entirely would have some unforeseen effects. If we relied just on the popular vote, there would have to be a runoff election among the two leading candidates if neither got a majority because third-party candidates won a lot of votes. This would encourage the formation of third parties (we might have a Jesse Jackson party, a Pat Buchanan party, a Pat Robertson party, and a Ralph Nader party). Each third party would then be in a position to negotiate with one of the two major parties between the first election and the runoff about favors it wanted in return for its support. American presidential politics might come to look like the multiparty systems in France and Italy.

There are other changes that could be made. One is for each state to allocate its electoral votes proportional to the popular vote the candidates receive in that state. Voters in Colorado acted on that measure in November 2004, but that proposal failed. If every state did that, several past elections would have been decided in the House of Representatives because no candidate got a majority of the popular vote.

And the electoral college serves a larger purpose: it makes candidates worry about carrying states as well as popular votes, and so heightens the influence of states in national politics.

probably would have, by the emergency conditions created by civil war. In this he acted little differently from Thomas Jefferson, who while president waged undeclared war against various North African pirates.

After Lincoln, Congress reasserted its power and became, during Reconstruction and for many decades thereafter, the principal federal institution. But it had become abundantly clear that a national emergency could equip the president with great powers and that a popular and strong-willed president could expand his powers even without an emergency.

Except for the administrations of Theodore Roosevelt (1901–1909) and Woodrow Wilson (1913–1921), the president was, until the New Deal, at best a negative force—a source of opposition to Congress,

not a source of initiative and leadership for it. Grover Cleveland was a strong personality, but for all his efforts he was able to do little more than veto bills that he did not like. He cast 414 vetoes—more than any other president until Franklin Roosevelt. A frequent target of his vetoes were bills to confer special pensions on Civil War veterans.

Today we are accustomed to thinking that the president formulates a legislative program to which Congress then responds, but until the 1930s the opposite was more the case. Congress ignored the initiatives of such presidents as Grover Cleveland, Rutherford Hayes, Chester Arthur, and Calvin Coolidge. Woodrow Wilson in 1913 was the first president since John Adams to deliver personally the State of the Union address,

and he was one of the first to develop and argue for a presidential legislative program.

Our popular conception of the president as the central figure of national government, devising a legislative program and commanding a large staff of advisers, is very much a product of the modern era and of the enlarged role of government. In the past the presidency became powerful only during a national crisis (the Civil War, World War I) or because of an extraordinary personality (Andrew Jackson, Theodore Roosevelt, Woodrow Wilson). Since the 1930s, however, the presidency has been powerful no matter who occupied the office and whether or not there was a crisis. Because government now plays such an active role in our national life, the president is the natural focus of attention and the titular head of a huge federal administrative system (whether he is the real boss is another matter).

But the popular conception of the president as the central figure of national government belies the realities of present-day legislative-executive relations. During national policy-making from the Eisenhower years through the Reagan administration, Congress, not the president, often took the lead in setting the legislative agenda.⁵ For example, the 1990 Clean Air Act, like the 1970 Clean Air Act before it, was born and bred mainly by congressional, not presidential, action. Indeed, administration officials played almost no role in the legislative process that culminated in these laws.⁶ When President Bush signed the 1990 Clean Air Act or President Clinton signed the 1996 Welfare Reform Act, each took credit for it, but in fact both bills were designed by members of Congress, not by the president.⁷ Likewise, although presidents dominated budget policy-making from the 1920s into the early 1970s, they no longer do. Instead, the “imperatives of the budgetary process have pushed congressional leaders to center stage.”⁸ Thus, as often as not, Congress proposes, the president disposes, and legislative-executive relations involve hard bargaining and struggle between these two branches of government.

★ The Powers of the President

Though the president, unlike a prime minister, cannot command an automatic majority in the legislature, he does have some formidable, albeit vaguely

defined, powers. These are mostly set forth in Article II of the Constitution and are of two sorts: those he can exercise in his own right without formal legislative approval, and those that require the consent of the Senate or of Congress as a whole.

Powers of the President Alone

- Serve as commander in chief of the armed forces
- Commission officers of the armed forces
- Grant reprieves and pardons for federal offenses (except impeachment)
- Convene Congress in special sessions
- Receive ambassadors
- Take care that the laws be faithfully executed
- Wield the “executive power”
- Appoint officials to lesser offices



A military officer carrying “the football,” the briefcase containing the secret codes the president can use to launch a nuclear attack.

Powers of the President That Are Shared with the Senate

- Make treaties
- Appoint ambassadors, judges, and high officials

Powers of the President That Are Shared with Congress as a Whole

- Approve legislation

Taken alone and interpreted narrowly, this list of powers is not very impressive. Obviously the president's authority as commander in chief is important, but literally construed, most of the other constitutional grants seem to provide for little more than a president who is chief clerk of the country. A hundred years after the Founding, that is about how matters appeared to even the most astute observers. In 1884 Woodrow Wilson wrote a book about American politics titled *Congressional Government*, in which he described the business of the president as "usually not much above routine," mostly "*mere administration*." The president might as well be an officer of the civil service. To succeed, he need only obey Congress and stay alive.⁹

But even as Wilson wrote, he was overlooking some examples of enormously powerful presidents, such as Lincoln, and was not sufficiently attentive to the potential for presidential power to be found in the more ambiguous clauses of the Constitution as well as in the political realities of American life. The president's au-

thority as commander in chief has grown—especially, but not only, in wartime—to encompass not simply the direction of the military forces, but also the management of the economy and the direction of foreign affairs as well. A quietly dramatic reminder of the awesome implications of the president's military powers occurs at the precise instant that a new president assumes office. An army officer carrying a locked briefcase moves from the side of the outgoing president to the side of the new one. In the briefcase are the secret codes and orders that permit the president to authorize the launching of American nuclear weapons.

The president's duty to "take care that the laws be faithfully executed" has become one of the most elastic phrases in the Constitution. By interpreting this broadly, Grover Cleveland was able to use federal troops to break a labor strike in the 1890s, and Dwight Eisenhower was able to send troops to help integrate a public school in Little Rock, Arkansas, in 1957.

The greatest source of presidential power, however, is not found in the Constitution at all but in politics and public opinion. Increasingly since the 1930s, Congress has passed laws that confer on the executive branch broad grants of authority to achieve some general goals, leaving it up to the president and his deputies to define the regulations and programs that will actually be put into effect. In Chapter 15 we shall see how this delegation of legislative power to the president has contributed to the growth of the bureaucracy. Moreover, the American people—always

How Things Work

The President: Qualifications and Benefits

Qualifications

- A natural-born citizen (can be born abroad of parents who are American citizens)
- Thirty-five years of age
- A resident of the United States for at least fourteen years (but not necessarily the fourteen years just preceding the election)

Benefits

- A nice house
- A salary of \$400,000 per year (taxable)
- An expense account of \$50,000 per year (tax-free)
- Travel expenses of \$100,000 per year (tax-free)
- A pension, on retirement, equal to the pay of a cabinet member (taxable)
- Staff support and Secret Service protection on leaving the presidency
- A White House staff of 400 to 500 persons
- A place in the country—Camp David
- A personal airplane—Air Force One
- A fine chef

in times of crisis, but increasingly as an everyday matter—look to the president for leadership and hold him responsible for a large and growing portion of our national affairs. The public thinks, wrongly, that the presidency is the “first branch” of government.

★ The Office of the President

It was not until 1857 that the president was allowed to have a private secretary paid for with public funds, and it was not until after the assassination of President McKinley in 1901 that the president was given a Secret Service bodyguard. He was not able to submit a single presidential budget until after 1921, when the Budget and Accounting Act was passed and the Bureau of the Budget (now called the Office of Management and Budget) was created. Grover Cleveland personally answered the White House telephone, and Abraham Lincoln often answered his own mail.

Today, of course, the president has hundreds of people assisting him, and the trappings of power—helicopters, guards, limousines—are plainly visible. The White House staff has grown enormously. (Just how big the staff is, no one knows. Presidents like to pretend that the White House is not the large bureaucracy that it in fact has become.) Add to this the opportunities for presidential appointments to the cabinet, the courts, and various agencies, and the resources at the disposal of the president would appear to be awesome. That conclusion is partly true and partly false, or at least misleading, and for a simple reason. If the president was once helpless for lack of assistance, he now confronts an army of assistants so large that it constitutes a bureaucracy that he has difficulty controlling.

The ability of a presidential assistant to affect the president is governed by the rule of propinquity: in general, power is wielded by people who are in the room when a decision is made. Presidential appointments can thus be classified in terms of their proximity, physical and political, to the president. There are three degrees of propinquity: the White House Office, the Executive Office, and the cabinet.

The White House Office

The president's closest assistants have offices in the White House, usually in the West Wing of that building. Their titles often do not reveal the functions that

they actually perform: “counsel,” “counselor,” “assistant to the president,” “special assistant,” “special consultant,” and so forth. The actual titles vary from one administration to another, but in general the men and women who hold them oversee the political and policy interests of the president. As part of the president's personal staff, these aides do not have to be confirmed by the Senate; the president can hire and fire them at will. In 2001 the Bush White House had four hundred staff members and a budget of \$35.4 million.

There are essentially three ways in which a president can organize his personal staff—through the “pyramid,” “circular,” and “ad hoc” methods. In a **pyramid structure**, used by Eisenhower, Nixon, Reagan, Bush, and (after a while) Clinton, most assistants report through a hierarchy to a chief of staff, who then deals directly with the president. In a **circular structure**, used by Carter, cabinet secretaries and assistants report directly to the president. In an **ad hoc structure**, used for a while by President Clinton, task forces, committees, and informal groups of friends and advisers deal directly with the president. For example, the Clinton administration's health care policy planning was spearheaded not by Health and Human Services secretary Donna E. Shalala, but by First Lady Hillary Rodham Clinton and a White House adviser, Ira Magaziner. Likewise, its initiative to reform the federal bureaucracy (the National Performance Review) was led not by Office of Management and Budget director Leon E. Panetta, but by an adviser to Vice President Gore, Elaine Kamarck.¹⁰

It is common for presidents to mix methods; for example, Franklin Roosevelt alternated between the circular and ad hoc methods in the conduct of his domestic policy and sometimes employed a pyramid structure when dealing with foreign affairs and military policy. Taken individually, each method of organization has advantages and disadvantages. A pyramid structure provides for an orderly flow of information and decisions, but does so at the risk of isolating or misinforming the president. The circular method has

pyramid structure A president's subordinates report to him through a clear chain of command headed by a chief of staff.

circular structure Several of the president's assistants report directly to him.

ad hoc structure Several subordinates, cabinet officers, and committees report directly to the president on different matters.

How Things Work

The Myth and Reality of the White House Office

The Myth

The White House Office was created in the 1930s following recommendations made by the President's Commission on Administrative Management. The principles underlying those recommendations have been endorsed by almost every presidential chief of staff since then. The key ones are:

1. *Small is beautiful.* The presidential staff should be small. At first there were only six assistants.
2. *A passion for anonymity.* The president's personal assistants should stay out of the limelight.
3. *Honest brokers.* The presidential staff should not make decisions for the president; it should only coordinate the flow of information to the president.

The Reality

Increasingly the operations of the White House Office seem to reflect almost the exact opposite of these principles.

1. *Big is better.* The White House staff has grown enormously in size. Hundreds now work there.
2. *Get out front.* Key White House staffers have become household words—Henry Kissinger (under

Nixon and Ford), H. R. Haldeman (under Nixon), Hamilton Jordan (under Carter), Howard Baker (under Reagan), George Stephanopoulos (under Clinton), and Karl Rove (under G.W. Bush).

3. *Be in charge.* Cabinet officers regularly complain that White House staffers are shutting them out and making all the important decisions. Congressional investigations have revealed the power of such White House aides as Haldeman, John Poindexter, and Lieutenant Colonel Oliver North.

Why the Gap Between Myth and Reality?

The answer is—the people and the government. The people expect much more from presidents today; no president can afford to say, "We're too busy here to worry about that." The government is much more complex, and so leadership requires more resources. Even conservatives such as Ronald Reagan have been activist presidents.

Source: Adapted from Samuel Kernell and Samuel L. Popkin, eds., *Chief of Staff* (Berkeley: University of California Press, 1986), 193–232.

the virtue of giving the president a great deal of information, but at the price of confusion and conflict among cabinet secretaries and assistants. An ad hoc structure allows great flexibility, minimizes bureaucratic inertia, and generates ideas and information from disparate channels, but it risks cutting the president off from the government officials who are ultimately responsible for translating presidential decisions into policy proposals and administrative action.

All presidents claim that they are open to many sources of advice, and some presidents try to guarantee that openness by using the circular method of staff organization. President Carter liked to describe his office as a wheel with himself as the hub and his several assistants as spokes. But most presidents discover, as did Carter, that the difficulty of managing

the large White House bureaucracy and of conserving their own limited supply of time and energy makes it necessary for them to rely heavily on one or two key subordinates. Carter, in July 1979, dramatically altered the White House staff organization by elevating Hamilton Jordan to the post of chief of staff, with the job of coordinating the work of the other staff assistants.

At first, President Reagan adopted a compromise between the circle and the pyramid, putting the White House under the direction of three key aides. At the beginning of his second term in 1985, however, the president shifted to a pyramid, placing all his assistants under a single chief of staff. Clinton began with an ad hoc system and then changed to one more like a pyramid. Each assistant has, of course, others working for him or her, sometimes a large number. There

are, at a slightly lower level of status, “special assistants to the president” for various purposes. (Being “special” means, paradoxically, being less important.)

Typically senior White House staff members are drawn from the ranks of the president’s campaign staff—longtime associates in whom he has confidence. A few members, however, will be experts brought in after the campaign: such was the case, for example, with Henry Kissinger, a former Harvard professor who became President Nixon’s assistant for national security affairs. The offices that these men and women occupy are often small and crowded (Kissinger’s was not much bigger than the one that he had while a professor at Harvard), but their occupants willingly put up with any discomfort in exchange for the privilege (and the power) of being *in* the White House. The arrangement of offices—their size, and especially their proximity to the president’s Oval Office—is a good measure of the relative influence of the people in them.

To an outsider, the amount of jockeying among the top staff for access to the president may seem comical or even perverse. The staff attaches enormous significance to whose office is closest to the president’s, who can see him on a daily as opposed to a weekly basis, who can get an appointment with the president and who cannot, and who has a right to see documents and memoranda just before they go to the Oval Office. To be sure, there is ample grist here for Washington political novels. But there is also something important at stake: it is not simply a question of power plays and ego trips. Who can see the president and who sees and “signs off” on memoranda going to the president affect in important ways who influences policy and thus whose goals and beliefs become embedded in policy.

For example, if a memo from a secretary of the treasury who believes in free trade can go directly to the president, the president may be more likely to support free trade (low tariffs). On the other hand, if that memo must be routed through the office of the assistant to the president for political affairs, who is worried about the adverse effects of foreign competition on jobs in the American steel industry because the votes of steelworkers are important to the president’s reelection campaign, then the president may be led to support higher tariffs.

The Executive Office of the President

Agencies in the Executive Office report directly to the president and perform staff services for him but are

not located in the White House itself. Their members may or may not enjoy intimate contact with him; some agencies are rather large bureaucracies. The top positions in these organizations are filled by presidential appointment, but unlike the White House staff positions, these appointments must be confirmed by the Senate.

The principal agencies in the Executive Office are:

- Office of Management and Budget (OMB)
- Director of National Intelligence (DNI)
- Council of Economic Advisers (CEA)
- Office of Personnel Management (OPM)
- Office of the U.S. Trade Representative

Of all the agencies in the Executive Office of the President, perhaps the most important in terms of the president’s need for assistance in administering the federal government is the Office of Management and Budget. First called the Bureau of the Budget when it was created in 1921, it became OMB in 1970 to reflect its broader responsibilities. Today it does considerably more than assemble and analyze the figures that go each year into the national budget that the president submits to Congress. It also studies the organization and operations of the executive branch, devises plans for reorganizing various departments and agencies, develops ways of getting better information about government programs, and reviews proposals that cabinet departments want included in the president’s legislative program.

OMB has a staff of over five hundred people, almost all career civil servants, many of high professional skill and substantial experience.

Traditionally OMB has been a nonpartisan agency—experts serving all presidents, without regard to party or ideology. In recent administrations, however, OMB has played a major role in advocating policies rather than merely analyzing them. David Stockman, President Reagan’s OMB director, was the primary architect of the 1981 and 1985 budget cuts that were proposed by the president and enacted by Congress. Stockman’s proposals were often adopted over the objections of the affected department heads.

cabinet *The heads of the fifteen executive branch departments of the federal government.*

The Cabinet

The **cabinet** is a product of tradition and hope. At one time the heads of the federal departments met

regularly with the president to discuss matters, and some people, especially those critical of strong presidents, would like to see this kind of collegial decision-making reestablished. But in fact this role of the cabinet is largely a fiction. Indeed, the Constitution does not even mention the cabinet (though the Twenty-fifth Amendment implicitly defines it as consisting of “the principal offices of the executive departments”). When Washington tried to get his cabinet members to work together, its two strongest members—Alexander Hamilton and Thomas Jefferson—spent most of their time feuding. The cabinet, as a presidential committee, did not work any better for John Adams or Abraham Lincoln, for Franklin Roosevelt or John Kennedy. Dwight Eisenhower is almost the only modern president who came close to making the cabinet a truly deliberative body: he gave it a large staff, held regular meetings, and listened to opinions expressed there. But even under Eisenhower, the cabinet did not have much influence over presidential decisions, nor did it help him gain more power over the government.

By custom, cabinet officers are the heads of the fifteen major executive departments. These departments, together with the dates of their creation and the approximate number of their employees, are given in Table 14.1. The order of their creation is unimportant except in terms of protocol: where one sits at cabinet meetings is determined by the age of the department that one heads. Thus the secretary of state sits next to the president on one side and the secretary of the treasury next to him on the other. Down at the foot of the table are found the heads of the newer departments.

The president appoints or directly controls vastly more members of his cabinet departments than does the British prime minister. The reason is simple: the president must struggle with Congress for control of these agencies, while the prime minister has no rival branch of government that seeks this power. Presidents get more appointments than do prime ministers to make up for what the separation of powers denies them.

This abundance of political appointments, however, does not give the president ample power over the departments. The secretary of Health and Human Services (HHS) reports to the president and has a few hundred political appointees to assist him or her in responding to the president’s wishes. But the secretary of HHS heads an agency with over 60,000 employees, 11 operating divisions, hundreds of grant-making

Table 14.1 The Cabinet Departments

Department	Created	Approximate Employment (2005)
State	1789	33,808
Treasury	1789	114,194
Defense ^a	1947	670,790
Justice	1789	105,102
Interior	1849	73,599
Agriculture ^b	1889	104,989
Commerce	1913	38,927
Labor	1913	15,599
Health and Human Services ^c	1953	60,944
Housing and Urban Development	1965	10,086
Transportation	1966	55,975
Energy	1977	15,050
Education	1979	4,429
Veterans Affairs	1989	236,363
Homeland Security	2002	149,977

^aFormerly the War Department, created in 1789. Figures are for civilians only.

^bAgriculture Department created in 1862; made part of cabinet in 1889.

^cOriginally Health, Education and Welfare; reorganized in 1979.

Source: *Statistical Abstract of the United States*, 2007, table 483.

programs, and a budget of more than \$460 billion. Likewise, the secretary of Housing and Urban Development (HUD) spends most of his or her time on departmental business and vastly less on talking to the president. It is hardly surprising that the secretary is largely a representative of HUD to the president than his representative to HUD. And no one should be surprised that the secretary of HUD rarely finds much to talk about with the secretary of defense at cabinet meetings.

Having the power to make these appointments does give the president one great advantage: he has a lot of opportunities to reward friends and political supporters. In the Education Department, for example, President Clinton found jobs for onetime mayors, senators, state legislators, and campaign aides.

Independent Agencies, Commissions, and Judgeships

The president also appoints people to four dozen or so agencies and commissions that are not considered

part of the cabinet and that by law often have a quasi-independent status. The difference between an “executive” and an “independent” agency is not precise. In general, it means that the heads of executive agencies serve at the pleasure of the president and can be removed at his discretion. On the other hand, the heads of many independent agencies serve for fixed terms of office and can be removed only “for cause.”

The president can also appoint federal judges, subject to the consent of the Senate. Judges serve for life unless they are removed by impeachment and conviction. The reason for the special barriers to the removal of judges is that they represent an independent branch of government as defined by the Constitution, and limits on presidential removal powers are necessary to preserve that independence.

One new feature of appointing top government officials is the increasing use of “acting” appointments. An acting appointee holds office until the Senate acts on his or her nomination. In 1998 acting officials held one-fifth of all of the Clinton administration’s cabinet-level (or subcabinet-level)* jobs. Some were in office for many months. Many senators feel that this violates their right to consent to appointments and in particular violates the Vacancies Act passed in 1868. That law limits acting appointees to 120 days in office. If the Senate takes no action during those 120 days, the acting official may stay in office until he or she, or someone else, is confirmed for the post. Administration officials defend the practice as necessary given the slow pace of confirmations; senators attack it as an opportunity for a president to fill up his administration with unconfirmed officials.

★ Who Gets Appointed

As we have seen, a president can make a lot of appointments, but he rarely knows more than a few of the people whom he does appoint.

Unlike cabinet members in a parliamentary system, the president’s cabinet officers and their principal deputies usually have not served with the chief executive in the legislature. Instead they come from private business, universities, “think tanks,” foundations, law firms, labor unions, and the ranks of former and present members of Congress as well as past

state and local government officials. A president is fortunate if most cabinet members turn out to agree with him on major policy questions. President Reagan made a special effort to ensure that his cabinet members were ideologically in tune with him, but even so Secretary of State Alexander Haig soon got into a series of quarrels with senior members of the White House staff and had to resign.

The men and women appointed to the cabinet and to the subcabinet will usually have had some prior federal experience. One study of over a thousand such appointments made by five presidents (Franklin Roosevelt through Lyndon Johnson) found that about 85 percent of the cabinet, subcabinet, and independent-agency appointees had some prior federal experience. In fact, most were in government service (at the federal, state, or local levels) just before they received their cabinet or subcabinet appointment.¹¹ Clearly the executive branch is not, in general, run by novices.

Many of these appointees are what Richard Neustadt has called “in-and-outers”: people who alternate between jobs in the federal government and ones in the private sector, especially in law firms and in universities. Donald Rumsfeld, before becoming secretary of defense to President George W. Bush, had been secretary of defense and chief of staff under President Ford and before that a member of Congress. Between his Ford and Bush services, he was an executive in a large pharmaceutical company. This pattern is quite different from that of parliamentary systems, where all the cabinet officers come from the legislature and are typically full-time career politicians.

At one time the cabinet had in it many people with strong political followings of their own—former senators and governors and powerful local party leaders. Under Franklin Roosevelt, Truman, and Kennedy, the postmaster general was the president’s campaign manager. George Washington, Abraham Lincoln, and other presidents had to contend with cabinet members who were powerful figures in their own right: Alexander Hamilton and Thomas Jefferson worked with Washington; Simon Cameron (a Pennsylvania political boss) and Salmon P. Chase (formerly governor of Ohio) worked for—and against—Lincoln. Before 1824 the post of secretary of state was regarded as a steppingstone to the presidency; and after that at least ten persons ran for president who had been either secretary of state or ambassador to a foreign country.¹²

Of late, however, a tendency has developed for presidents to place in their cabinets people known for

*Subcabinet refers to under secretary, deputy secretary, and assistant secretaries in each cabinet department.

How Things Work

Federal Agencies

The following agencies are classified by whether the president has unlimited or limited right of removal.

“Executive” Agencies

Head can be removed at any time.

Action

Arms Control and Disarmament Agency

Commission on Civil Rights

Energy Research and Development Agency

Environmental Protection Agency

Federal Mediation and Conciliation Service

General Services Administration

National Aeronautics and Space Administration

Postal Service

Small Business Administration

All cabinet departments

Executive Office of the President

“Independent” or “Quasi-Independent” Agencies

Members serve for a fixed term.

Federal Reserve Board (14 years)

Consumer Product Safety Commission (6 years)

Equal Employment Opportunity Commission (5 years)

Federal Communications Commission (7 years)

Federal Deposit Insurance Corporation (6 years)

Federal Energy Regulatory Commission (5 years)

Federal Maritime Commission (5 years)

Federal Trade Commission (7 years)

National Labor Relations Board (5 years)

National Science Foundation (6 years)

Securities and Exchange Commission (5 years)

Tennessee Valley Authority (9 years)

their expertise or administrative experience rather than for their political following. This is in part because political parties are now so weak that party leaders can no longer demand a place in the cabinet and in part because presidents want (or think they want) “experts.” A remarkable illustration of this is the number of people with Ph.D.’s who have entered the cabinet. President Nixon, who supposedly did not like Harvard professors, appointed two—Henry Kissinger and Daniel Patrick Moynihan—to important posts; Gerald Ford added a third, John Dunlop.

A president’s desire to appoint experts who do not have independent political power is modified—but not supplanted—by his need to recognize various politically important groups, regions, and organizations. Since Robert Weaver became the first African American to serve in the cabinet (as secretary of HUD under President Johnson), it is clear that it would be quite costly for a president *not* to have one or more blacks in his cabinet. The secretary of labor must be acceptable to the AFL-CIO, the secretary of agriculture to at least some organized farmers. President George W. Bush, like President Clinton, appointed many women and minorities to his cabinet. Colin Powell became Bush’s secretary of state and Condoleezza Rice, also

an African American, his national security adviser and later, his secretary of state.

Because political considerations must be taken into account in making cabinet and agency appointments and because any head of a large organization will tend to adopt the perspective of that organization, there is an inevitable tension—even a rivalry—between the White House staff and the department heads. Staff members see themselves as extensions of the president’s personality and policies; department heads see themselves as repositories of expert knowledge (often knowledge of why something will not work as the president hopes). White House staffers, many of them young men and women in their twenties or early thirties with little executive experience, will call department heads, often persons in their fifties with substantial executive experience, and tell them that “the president wants” this or that or that “the president asked me to tell you” one thing or another. Department heads try to conceal their irritation and then maneuver for some delay so that they can develop their own counterproposals. On the other hand, when department heads call a White House staff person and ask to see the president, unless they are one of the privileged few in whom the president has special confidence,



Secretary of Labor Frances Perkins (left), appointed by President Franklin Roosevelt, was the first woman cabinet member. When Condoleezza Rice was made secretary of state by President Bush, she became the first African American woman to hold that key post.

they are often told that “the president can’t be bothered with that” or “the president doesn’t have time to see you.”

★ Presidential Character

Every president brings to the White House a distinctive personality; the way the White House is organized and run will reflect that personality. Moreover, the public will judge the president not only in terms of what he accomplished, but also in terms of its perception of his character. Thus personality plays a more important role in explaining the presidency than it does in explaining Congress.

Dwight Eisenhower brought an orderly, military style to the White House. He was accustomed to delegating authority and to having careful and complete staff work done for him by trained specialists. Though critics often accused him of having a bumbling, incoherent manner of speaking, in fact much of that was a public disguise—a strategy for avoiding being pinned down in public on matters where he wished to retain freedom of action. His private papers reveal a very different Eisenhower—sharp, precise, deliberate.

John Kennedy brought a very different style to the presidency. He projected the image of a bold, articulate, and amusing leader who liked to surround himself with talented amateurs. Instead of clear, hierarchical lines of authority, there was a pattern of personal rule and an atmosphere of improvisation. Kennedy did not hesitate to call very junior subordinates directly and tell them what to do, bypassing the chain of command.

Lyndon Johnson was a master legislative strategist who had risen to be majority leader of the Senate on the strength of his ability to persuade other politicians in face-to-face encounters. He was a consummate deal maker who, having been in Washington for thirty years before becoming president, knew everybody and everything. As a result he tried to make every decision himself. But the style that served him well in political negotiations did not serve him well in speaking to the country at large, especially when trying to retain public support for the war in Vietnam.

Richard Nixon was a highly intelligent man with a deep knowledge of and interest in foreign policy, coupled with a deep suspicion of the media, his political rivals, and the federal bureaucracy. In contrast to Johnson, he disliked personal confrontations and tended

Trivia

Presidents

Only divorced president	→ Ronald Reagan
Only bachelor president	→ James Buchanan
Three presidents who died on the Fourth of July	→ Thomas Jefferson (1826) John Adams (1826) James Monroe (1831)
The shortest presidential term	→ William Henry Harrison (1 month)
The longest presidential term	→ Franklin D. Roosevelt (12 years and 1 month)
The youngest president when inaugurated	→ Theodore Roosevelt (42)
The oldest president when inaugurated	→ Ronald Reagan (69)
First president born in a hospital	→ Jimmy Carter
First presidential automobile	→ Owned by William Howard Taft
Only former presidents elected to Congress	→ John Quincy Adams (to House) and Andrew Johnson (to Senate)
Only president who never attended school	→ Andrew Johnson

to shield himself behind an elaborate staff system. Distrustful of the cabinet agencies, he tried first to centralize power in the White House and then to put into key cabinet posts former White House aides loyal to him. Like Johnson, his personality made it difficult for him to mobilize popular support. Eventually he

was forced to resign under the threat of impeachment arising out of his role in the Watergate scandal.

Gerald Ford, before being appointed vice president, had spent his political life in Congress and was at home with the give-and-take, discussion-oriented procedures of that body. He was also a genial man who liked talking to people. Thus he preferred the circular to the pyramid system of White House organization. But this meant that many decisions were made in a disorganized fashion in which key people—and sometimes key problems—were not taken into account.

Jimmy Carter was an outsider to Washington and boasted of it. A former Georgia governor, he was determined not to be “captured” by Washington insiders. He also was a voracious reader with a wide range of interests and an appetite for detail. These dispositions led him to try to do many things and to do them personally. Like Ford, he began with a circular structure; unlike Ford, he based his decisions on reading countless memos and asking detailed questions. His advisers finally decided that he was trying to do too much in too great detail, and toward the end of his term he shifted to a pyramid structure.

Ronald Reagan was also an outsider, a former governor of California. But unlike Carter, he wanted to set the broad directions of his administration and leave the details to others. He gave wide latitude to subordinates and to cabinet officers, within the framework of an emphasis on lower taxes, less domestic spending, a military buildup, and a tough line with the Soviet Union. He was a superb leader of public opinion, earning the nickname “The Great Communicator.”

George H.W. Bush lacked Reagan’s speaking skills and was much more of a hands-on manager. Drawing on his extensive experience in the federal government (he had been vice president, director of the CIA, ambassador to the United Nations, representative to China, and a member of the House), Bush made decisions on the basis of personal contacts with key foreign leaders and Washington officials.

Bill Clinton, like Carter, paid a lot of attention to public policy and preferred informal, ad hoc arrangements for running his office. Unlike Carter, he was an effective speaker who could make almost any idea sound plausible. He was elected as a centrist Democrat but immediately pursued liberal policies such as comprehensive health insurance. When those failed and the Republicans won control of Congress in 1994, Clinton became a centrist again. His sexual affairs be-

came the object of major investigations, and he was impeached by the House but acquitted by the Senate.

George W. Bush, the forty-third president, entered office as an outsider from Texas, but he was an outsider with a difference: his father had served as the forty-first president of the United States, his late paternal grandfather had served as a United States senator from Connecticut, and he won the presidency only after the U.S. Supreme Court halted a recount of ballots in Florida, where his brother was governor. During the campaign, he focused almost entirely on domestic issues, especially cutting taxes and reforming education. A deeply religious man, he talked openly about how he had stopped excessive drinking only after he had found God. He ran as a “compassionate conservative” concerned about America’s needy children and families. Bush, who had earned an advanced degree in business administration from Harvard, ran a very tight White House ship, insisting that meetings run on time and that press contacts be strictly controlled. He turned back public doubts about his intellect through self-deprecating humor. Following the terrorist attack on America on September 11, 2001, his agenda shifted almost entirely to foreign and military affairs, the war on terror, and the issue of homeland security.

★ The Power to Persuade

The sketchy constitutional powers given the president, combined with the lack of an assured legislative majority, mean that he must rely heavily on persuasion if he is to accomplish much. Here the Constitution gives him some advantages: he and the vice president are the only officials elected by the whole nation, and he is the ceremonial head of state as well as the chief executive of the government. The president can use his national constituency and ceremonial duties to enlarge his power, but he must do so quickly: the second half of his first term in office will be devoted to running for reelection, especially if he faces opposition for his own party’s nomination (as was the case with Carter and Ford).

The Three Audiences

The president’s persuasive powers are aimed at three audiences. The first, and often the most important, is his Washington, D.C., audience of fellow politicians and leaders. As Richard Neustadt points out in his



President Bush shakes hands with Speaker Nancy Pelosi after his State of the Union address.

book *Presidential Power*, a president’s reputation among his Washington colleagues is of great importance in affecting how much deference his views receive and thus how much power he can wield.¹³ If a president is thought to be “smart,” “sure of himself,” “cool,” “on top of things,” or “shrewd,” and thus “effective,” he *will* be effective. Franklin Roosevelt had that reputation, and so did Lyndon Johnson, at least for his first few years in office. Truman, Ford, and Carter often did not have that reputation, and they lost ground accordingly. Power, like beauty, exists largely in the eye of the beholder.

A second audience is composed of party activists and officeholders outside Washington—the partisan grassroots. These persons want the president to exemplify their principles, trumpet their slogans, appeal to their fears and hopes, and help them get reelected. Since, as we explained in Chapter 9, partisan activists increasingly have an ideological orientation toward national politics, these people will expect “their” president to make fire-and-brimstone speeches that confirm in them a shared sense of purpose and, incidentally, help them raise money from contributors to state and local campaigns.

The third audience is “the public.” But of course that audience is really many publics, each with a different view or set of interests. A president on the campaign trail speaks boldly of what he will accomplish;

a president in office speaks quietly of the problems that must be overcome. Citizens are often irritated at the apparent tendency of officeholders, including the president, to sound mealy-mouthed and equivocal. But it is easy to criticize the cooking when you haven't been the cook. A president learns quickly that his every utterance will be scrutinized closely by the media and by organized groups here and abroad, and his errors of fact, judgment, timing, or even inflection will be immediately and forcefully pointed out. Given the risks of saying too much, it is a wonder that presidents say anything at all.

Presidents have made fewer and fewer impromptu remarks in the years since Franklin Roosevelt held office and have instead relied more and more on prepared speeches from which political errors can be removed in advance. Hoover and Roosevelt held six or seven press conferences each month, but every president from Nixon through Clinton has held barely one a month. Instead modern presidents make formal speeches. A president's use of these speeches is often called the **bully pulpit**, a phrase that means taking advantage of the prestige and visibility of the presidency to try to guide or mobilize the American people.

Popularity and Influence

The object of all this talk is to convert personal popularity into congressional support for the president's legislative programs (and improved chances for reelection). It is not obvious, of course, why Congress should care about a president's popularity. After all, as we saw in Chapter 13, most members of Congress

bully pulpit *The president's use of his prestige and visibility to guide or enthrone the American public.*

are secure in their seats, and few need fear any "party bosses" who might deny them renomination. Moreover, the president cannot ordinarily provide credible electoral rewards or penalties to members of Congress. By working for their defeat in the 1938 congressional election, President Roosevelt attempted to "purge" members of Congress who opposed his program, but he failed. Nor does presidential support help a particular member of Congress: most representatives win reelection anyway, and the few who are in trouble are rarely saved by presidential intervention. When President Reagan campaigned hard for Republican senatorial candidates in 1986, he, too, failed to have much impact.

Table 14.2 Partisan Gains or Losses in Congress in Presidential Election Years

Year	President	Party	Gains or Losses of President's Party In:	
			House	Senate
1932	Roosevelt	Dem.	+90	+9
1936	Roosevelt	Dem.	+12	+7
1940	Roosevelt	Dem.	+7	-3
1944	Roosevelt	Dem.	+24	-2
1948	Truman	Dem.	+75	+9
1952	Eisenhower	Rep.	+22	+1
1956	Eisenhower	Rep.	-3	-1
1960	Kennedy	Dem.	-20	+1
1964	Johnson	Dem.	+37	+1
1968	Nixon	Rep.	+5	+7
1972	Nixon	Rep.	+12	-2
1976	Carter	Dem.	+1	+1
1980	Reagan	Rep.	+33	+12
1984	Reagan	Rep.	+16	-2
1988	Bush	Rep.	-3	-1
1992	Clinton	Dem.	-9	+1
1996	Clinton	Dem.	+9	-2
2000	Bush	Rep.	-3	-4
2004	Bush	Rep.	+4	+4

Sources: Updated from Congressional Quarterly, *Guide to U.S. Elections*, 928; and *Congress and the Nation*, vol. 4 (1973-1976), 28.

For a while scholars thought that congressional candidates might benefit from the president's coattails: they might ride into office on the strength of the popularity of a president of their own party. It is true, as can be seen from Table 14.2, that a winning president will find that his party's strength in Congress increases.

But there are good reasons to doubt whether the pattern observed in Table 14.2 is the result of presidential coattails. For one thing, there are some exceptions. Eisenhower won 57.4 percent of the vote in 1956, but the Republicans lost seats in the House and Senate. Kennedy won in 1960, but the Democrats lost seats in the House and gained but one in the Senate. When Nixon was reelected in 1972 with one of the largest majorities in history, the Republicans lost seats in the Senate.

Careful studies of voter attitudes and of how presidential and congressional candidates fare in the same districts suggest that, whatever may once have been the influence of coattails, their effect has declined in recent years and is quite small today. The weakening

of party loyalty and of party organizations, combined with the enhanced ability of members of Congress to build secure relations with their constituents, has tended to insulate congressional elections from presidential ones. When voters choose as members of Congress people of the same party as an incoming president, they probably do so out of desire for a general change and as an adverse judgment about the outgoing party's performance as a whole, not because they want to supply the new president with members of Congress favorable to him.¹⁴ The big increase in Republican senators and representatives that accompanied the election of Ronald Reagan in 1980 was probably as much a result of the unpopularity of the outgoing president and the circumstances of various local races as it was of Reagan's coattails.

Nonetheless, a president's personal popularity may have a significant effect on how much of his program Congress passes, even if it does not affect the reelection chances of those members of Congress. Though they do not fear a president who threatens to campaign against them (or cherish one who promises to support them), members of Congress do have a sense that it is risky to oppose too adamantly the policies of a popular president. Politicians share a sense of a common fate: they tend to rise or fall together. Statistically a president's popularity, as measured by the Gallup poll (see Figure 14.1), is associated with the proportion of his legislative proposals that are approved by Congress (see Figure 14.2). Other things being equal, the more popular the president, the higher the proportion of his bills that Congress will pass.

But use these figures with caution. How successful a president is with Congress depends not just on the numbers reported here, but on a lot of other factors as well. First, he can be "successful" on a big bill or on a trivial one. If he is successful on a lot of small matters and never on a big one, the measure of presidential victories does not tell us much. Second, a president can keep his victory score high by not taking a position on any controversial measure. (President Carter made his views known on only 22 percent of the House votes, while President Eisenhower made his views known on 56 percent of those votes.) Third, a president can appear successful if a few bills he likes are passed, but most of his legislative program is bottled up in Congress and never comes to a vote. Given these problems, "presidential victories" are hard to measure accurately.

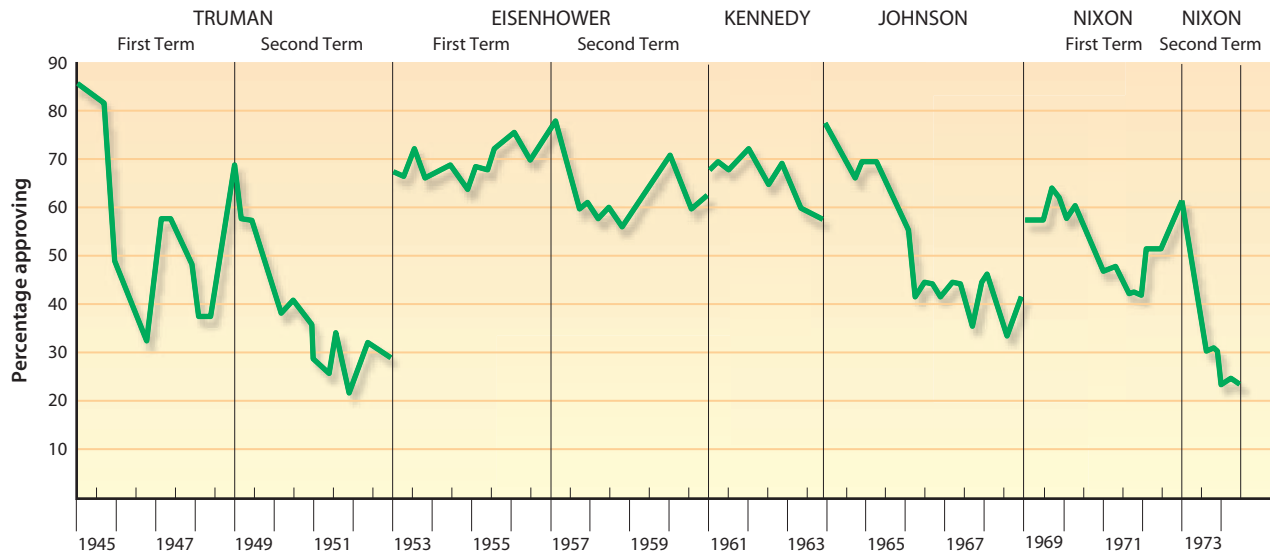
A fourth general caution: presidential popularity is hard to predict and can be greatly influenced by

factors over which nobody, including the president, has much control. For example, when he took office in 2001, President George W. Bush's approval rating was 57 percent, nearly identical to what President Bill Clinton received in his initial rating (58 percent) in 1993. But Bush also had the highest initial *disapproval* rating (25 percent) of any president since polling began. This was undoubtedly partly due to his becoming president on the heels of the Florida vote-count controversy (see Chapter 10). Bush's approval ratings through his first six months were fairly typical for post-1960 presidents. But from the terrorist attack on the United States on September 11, 2001 through mid-2002, his approval ratings never dipped below 70 percent, and the approval ratings he received shortly after the attack (hovering around 90 percent) were the highest ever recorded.

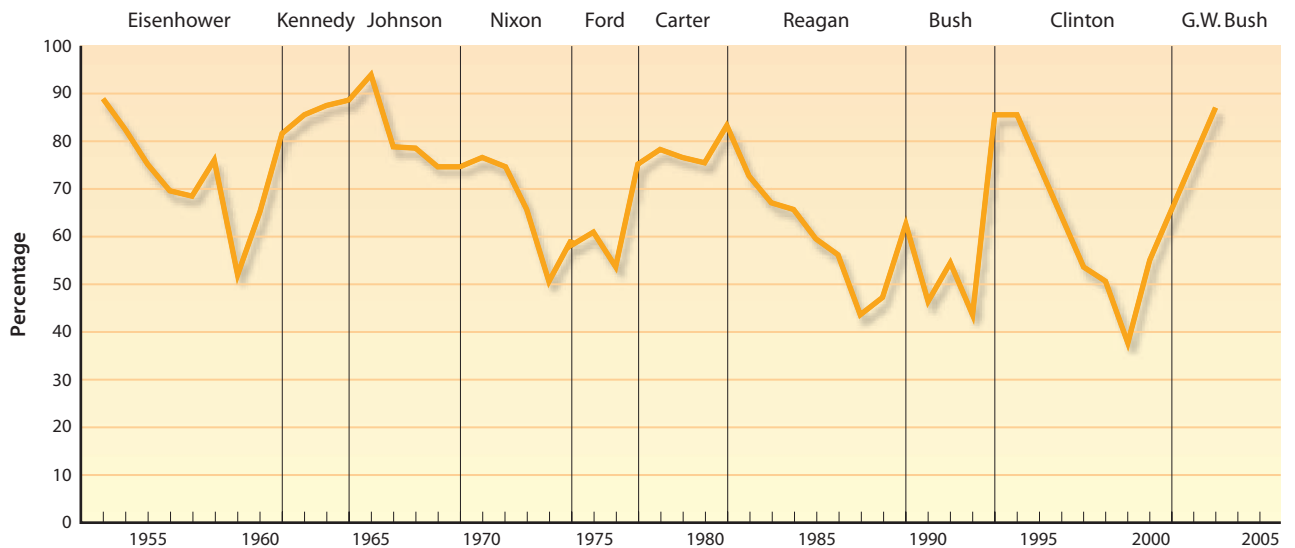
The Decline in Popularity

Though presidential popularity is an asset, its value tends inexorably to decline. As can be seen from Figure 14.1, every president except Eisenhower, Reagan, and Clinton lost popular support between his inauguration and the time that he left office, except when his reelection gave him a brief burst of renewed popularity. Truman was hurt by improprieties among his subordinates and by the protracted Korean War; Johnson was crippled by the increasing unpopularity of the Vietnam War; Nixon was severely damaged by the Watergate scandal; Ford was hurt by having pardoned Nixon for his part in Watergate; Carter was weakened by continuing inflation, staff irregularities, and the Iranian kidnapping of American hostages; George H.W. Bush was harmed by an economic recession. George W. Bush suffered from public criticism of the war in Iraq.

Because a president's popularity tends to be highest right after an election, political commentators like to speak of a "honeymoon," during which, presumably, the president's love affair with the people and with Congress can be consummated. Certainly Roosevelt enjoyed such a honeymoon. In the legendary "first hundred days" of his presidency, from March to June 1933, FDR obtained from a willing Congress a vast array of new laws creating new agencies and authorizing new powers. But those were extraordinary times: the most serious economic depression of this century had put millions out of work, closed banks, impoverished farmers, and ruined the stock market. It would have been

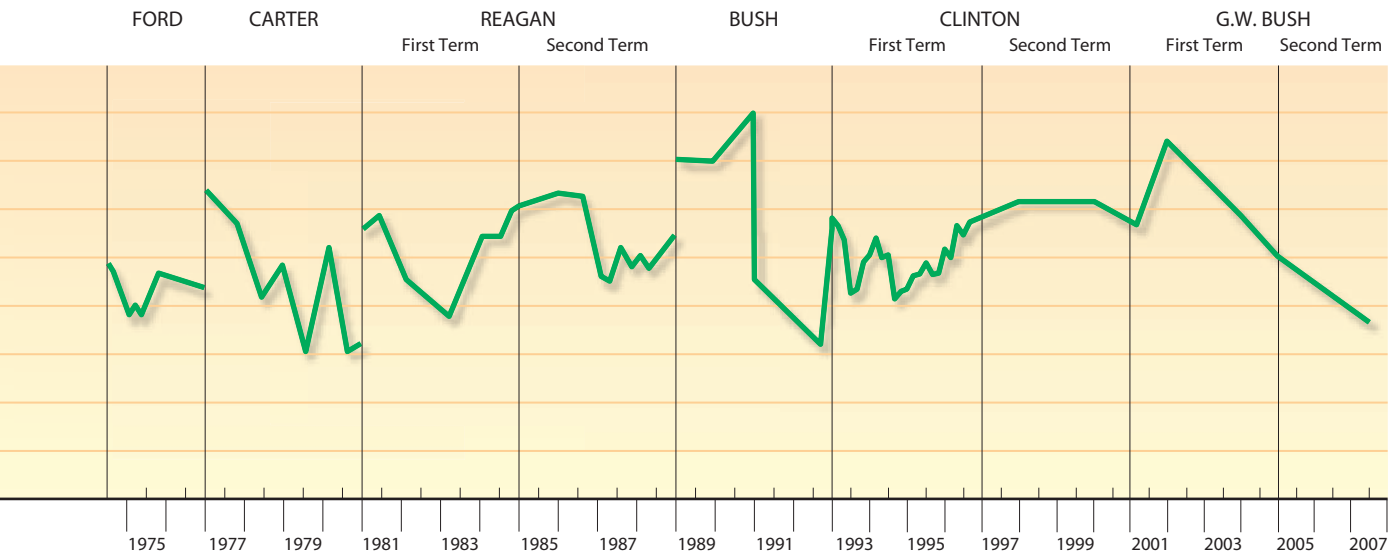
Figure 14.1 Presidential Popularity

Note: Popularity was measured by asking every few months, "Do you approve of the way _____ is handling his job as president?"
 Source: Thomas E. Cronin, *The State of the Presidency* (Boston: Little, Brown, 1975), 110–111. Copyright © 1975 by Little, Brown and Company, Inc. Reprinted by permission. Updated with Gallup poll data, 1976–2004. Reprinted by permission of the Gallup Poll News Service.

Figure 14.2 Presidential Victories on Votes in Congress, 1953–2002

Note: Percentages indicate number of congressional votes supporting the president divided by the total number of votes on which the president has taken a position.

Source: From Harold Stanley and Richard Niemi, *Vital Statistics on American Politics*, 2003–2004 (Washington, D.C.: Congressional Quarterly Press, 2003), Table 6–7.



political suicide for Congress to have blocked, or even delayed, action on measures that appeared designed to help the nation out of the crisis.

Other presidents, serving in more normal times, have not enjoyed such a honeymoon. Truman had little success with what he proposed; Eisenhower proposed little. Kennedy, Nixon, Ford, and Carter had some victories in their first year in office, but nothing that could be called a honeymoon. Only Lyndon Johnson enjoyed a highly productive relationship with Congress; until the Vietnam War sapped his strength, he rarely lost. Reagan began his administration with important victories in his effort to cut expenditures and taxes, but in his second year in office he ran into trouble.

The decay in the reputation of the president and his party in midterm is evident in Table 14.3. Since 1934, in every off-year election but two, the president's party has lost seats in one or both houses of Congress. In 1998 the Democrats won five seats in the House and lost none in the Senate; in 2002 the Republicans gained eight House seats and two in the Senate. The ability of the president to persuade is important but limited. However, he also has a powerful bargaining chip to play: the ability to say no.

Table 14.3 Partisan Gains or Losses in Congress in Off-Year Elections

Year	President	Party	Gains or Losses of President's Party In:	
			House	Senate
1934	Roosevelt	Dem.	+9	+9
1938	Roosevelt	Dem.	-70	-7
1942	Roosevelt	Dem.	-50	-8
1946	Truman	Dem.	-54	-11
1950	Truman	Dem.	-29	-5
1954	Eisenhower	Rep.	-18	-1
1958	Eisenhower	Rep.	-47	-13
1962	Kennedy	Dem.	-5	+2
1966	Johnson	Dem.	-48	-4
1970	Nixon	Rep.	-12	+1
1974	Ford	Rep.	-48	-5
1978	Carter	Dem.	-12	-3
1982	Reagan	Rep.	-26	0
1986	Reagan	Rep.	-5	-8
1990	Bush	Rep.	-9	-1
1994	Clinton	Dem.	-52	-9
1998	Clinton	Dem.	+5	0
2002	G.W. Bush	Rep.	+8	+2
2006	G. W. Bush	Rep.	-32	-6

Source: Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress, 2001–2002* (Washington, D.C.: Congressional Quarterly Press, 2001), 207 (updated).

★ The Power to Say No

The Constitution gives the president the power to veto legislation. In addition, most presidents have asserted the right of “executive privilege,” or the right to withhold information that Congress may want to obtain from the president or his subordinates, and some presidents have tried to impound funds appropriated by Congress. These efforts by the president to say no are not only a way of blocking action but also a way of forcing Congress to bargain with him over the substance of policies.

Veto

If a president disapproves of a bill passed by both houses of Congress, he may veto it in one of two ways. One is by a **veto message**. This is a statement that the president sends to Congress accompanying the bill, within ten days (not counting Sundays) after the bill has been passed. In it he sets forth his reasons for not signing the bill. The other is the **pocket veto**. If the president does not sign the bill within ten days and Congress has adjourned within that time, then the bill will not become law. Obviously a pocket veto can be used only during a certain time of the year—just before Congress adjourns at the end of its second session.

At times, however, presidents have pocket-vetoed a bill just before Congress recessed for a summer vacation or to permit its members to campaign during an off-year election. In 1972 Senator Edward M. Kennedy of Massachusetts protested that this was unconstitutional, since a recess is not the same thing as an adjournment. In a case brought to federal court, Kennedy was upheld, and it is now understood that the pocket veto can be used only just before the life of a given Congress expires.

A bill that is not signed or vetoed within ten days while Congress is still in session becomes law automatically, without the president's approval. A bill that has been returned to Congress with a veto message can be passed over

the president's objections if at least two-thirds of each house votes to override the veto. A bill that has received a pocket veto cannot be brought back to life by Congress (since Congress has adjourned), nor does such a bill carry over to the next session of Congress. If Congress wants to press the matter, it will have to start all over again by passing the bill anew in its next session, and then hope that the president will sign it or, if he does not, that they can override his veto.

The president must either accept or reject the entire bill. Presidents did not have the power, possessed by most governors, to exercise a **line-item veto**, with which the chief executive can approve some provisions of a bill and disapprove others. Congress could take advantage of this by putting items the president did not like into a bill he otherwise favored, forcing him to approve those provisions along with the rest of the bill or reject the whole thing. In 1996 Congress passed a bill, which the president signed into law, that gives the president the power of “enhanced rescission.” This means the president could cancel parts of a spending bill passed by Congress without vetoing the entire bill. The president had five days after signing a bill to send a message to Congress rescinding some parts of what he had signed. These rescissions would take effect unless Congress, by a two-thirds vote, overturned them. Congress could choose which parts of the president's cancellations it wanted to overturn. But the Supreme Court has decided that this law is unconstitutional. The Constitution gives the president no such power to carve up a bill: he must either sign the whole bill, veto the whole bill, or allow it to become law without his signature.¹⁵

Nevertheless, the veto power is a substantial one, because Congress rarely has the votes to override it. From George Washington to Bill Clinton, over 2,500 presidential vetoes were cast; about 4 percent were overridden (see Table 14.4). Cleveland, Franklin Roosevelt, Truman, and Eisenhower made the most extensive use of vetoes, accounting for 65 percent of all vetoes ever cast. George W. Bush did not veto a single bill in his first term. Often the vetoed legislation is revised by Congress and passed in a form suitable to the president. There is no tally of how often this happens, but it is frequent enough so that both branches of government recognize that the veto, or even the threat of it, is part of an elaborate process of political negotiation in which the president has substantial powers.

veto message A message from the president to Congress stating that he will not sign a bill it has passed. Must be produced within ten days of the bill's passage.

pocket veto A bill fails to become law because the president did not sign it within ten days before Congress adjourns.

line-item veto An executive's ability to block a particular provision in a bill passed by the legislature.

Table 14.4 Presidential Vetoes, 1789–2007

	Regular Vetoes	Pocket Vetoes	Total Vetoes	Vetoes Overridden
Washington	2	—	2	—
Madison	5	2	7	—
Monroe	1	—	1	—
Jackson	5	7	12	—
Tyler	6	3	9	1
Polk	2	1	3	—
Pierce	9	—	9	5
Buchanan	4	3	7	—
Lincoln	2	4	6	—
A. Johnson	21	8	29	15
Grant	45	49	94	4
Hayes	12	1	13	1
Arthur	4	8	12	1
Cleveland	304	109	413	2
Harrison	19	25	44	1
Cleveland	43	127	170	5
McKinley	6	36	42	—
T. Roosevelt	42	40	82	1
Taft	30	9	39	1
Wilson	33	11	44	6
Harding	5	1	6	—
Coolidge	20	30	50	4
Hoover	21	16	37	3
F. Roosevelt	372	263	635	9
Truman	180	70	250	12
Eisenhower	73	108	181	2
Kennedy	12	9	21	—
L. Johnson	16	14	30	—
Nixon	26	17	43	7
Ford	48	18	66	12
Carter	13	18	31	2
Reagan	39	39	78	9
Bush	29	15	44	1
Clinton	36	1	37	2
G.W. Bush	1	0	1	0

Source: Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress, 2002–2003* (Washington, D.C.: Congressional Quarterly Press, 2003), 207 (updated).

Executive Privilege

The Constitution says nothing about whether the president is obliged to divulge private communications between himself and his principal advisers, but presidents have acted as if they do have that privilege of confidentiality. The presidential claim is based on two grounds. First, the doctrine of the separation of powers means that one branch of government does not have the right to inquire into the internal workings of

another branch headed by constitutionally named officers. Second, the principles of statecraft and of prudent administration require that the president have the right to obtain confidential and candid advice from subordinates; such advice could not be obtained if it would quickly be exposed to public scrutiny.

For almost two hundred years there was no serious challenge to the claim of presidential confidentiality. The Supreme Court did not require the disclosure of confidential communications to or from the president.¹⁶ Congress was never happy with this claim but until 1973 did not seriously dispute it. Indeed, in 1962 a Senate committee explicitly accepted a claim by President Kennedy that his secretary of defense, Robert S. McNamara, was not obliged to divulge the identity of Defense Department officials who had censored certain speeches by generals and admirals.

In 1974 the Supreme Court for the first time met the issue directly. A federal special prosecutor sought tape recordings of White House conversations between President Nixon and his advisers as part of his investigation of the Watergate scandal. In the case of *United States v. Nixon*, the Supreme Court, by a vote of eight to zero, held that while there may be a sound basis for the claim of executive privilege, especially where sensitive military or diplomatic matters are involved, there is no “absolute unqualified Presidential privilege of immunity from judicial process under all circumstances.”¹⁷ To admit otherwise would be to block the constitutionally defined function of the federal courts to decide criminal cases.

Thus Nixon was ordered to hand over the disputed tapes and papers to a federal judge so that the judge could decide which were relevant to the case at hand and allow those to be introduced into evidence. In the future another president may well persuade the Court that a different set of records or papers is so sensitive as to require protection, especially if there is no allegation of criminal misconduct requiring the production of evidence in court. As a practical matter it seems likely that presidential advisers will be able, except in unusual cases such as Watergate, to continue to give private advice to the president.

In 1997 and 1998 President Clinton was sued while in office by a private person, Paula Jones, who claimed that he had solicited sex from her in ways that hurt her reputation. In defending himself against that and other matters, his lawyers attempted to claim executive privilege for Secret Service officers and government-paid

Landmark Cases



Powers of the President

- **U.S. v. Nixon (1974)** Though the president is entitled to receive confidential advice, he can be required to reveal material related to a criminal prosecution.
- **Nixon v. Fitzgerald (1982)** The president may not be sued while in office.
- **Clinton v. Jones (1997)** The president may be sued for actions taken before he became president.

To explore these landmark cases further, visit the *American Government* web site at college.hmco.com/pic/wilsonAGlle.

lawyers who worked with him, but federal courts held that not only could a president be sued, but these other officials could not claim executive privilege.¹⁸ One unhappy consequence of this episode is that the courts have greatly weakened the number of officials with whom the president can speak in confidence. It is not easy to run an organization when the courts can later compel your associates to testify about everything you said.

Impoundment of Funds

From time to time presidents have refused to spend money appropriated by Congress. Truman did not spend all that Congress wanted spent on the armed forces, and Johnson did not spend all that Congress made available for highway construction. Kennedy refused to spend money appropriated for new weapons systems that he did not like. Indeed, the precedent for impounding funds goes back at least to the administration of Thomas Jefferson.

But what has precedent is not thereby constitutional. The Constitution is silent on whether the president *must* spend the money that Congress appropriates; all it

says is that the president cannot spend money that Congress has *not* appropriated. The major test of presidential power in this respect occurred during the Nixon administration. Nixon wished to reduce federal spending. He proposed in 1972 that Congress give him the power to reduce federal spending so that it would not exceed \$250 billion for the coming year. Congress, under Democratic control, refused. Nixon responded by pocket-vetoing twelve spending bills and then impounding funds appropriated under other laws that he had not vetoed.

Congress in turn responded by passing the Budget Reform Act of 1974, which, among other things, requires the president to spend all appropriated funds unless he first tells Congress what funds he wishes not to spend and Congress, within forty-five days, agrees to delete the items. If he wishes simply to delay spending the money, he need only inform Congress, but Congress then can refuse the delay by passing a resolution requiring the immediate release of the money. Federal courts have upheld the rule that the president must spend, without delay for policy reasons, money that Congress has appropriated.

Signing Statements

Since at least the presidency of James Monroe, the White House has issued statements at the time the president signs a bill that has been passed by Congress. These statements have had several purposes: to express presidential attitudes about the law, to tell the executive branch how to implement it, or to declare that the president thinks that some part of the law is unconstitutional. President Andrew Jackson, for example, issued a statement in 1830 saying that a law designed to build a road from Chicago to Detroit should not cross the Michigan boundary (and so not to get to Chicago). Congress complained, but Jackson's view prevailed and the road did not get to Chicago.

In the twentieth century these statements became common. President Reagan issued 71, President George H.W. Bush signed 141, and President Clinton inked 105. By the late 1980s they were being published in legal documents as part of the legislative history of a bill.¹⁹ By mid-2006, President George W. Bush had signed over 750.

Naturally, members of Congress are upset by this practice. To them, a **signing statement** often blocks the enforcement of a law Congress has passed and so

signing statement

A presidential document that reveals what the president thinks of a new law and how it ought to be enforced.

it is equivalent to an unconstitutional line-item veto. But presidential advisers have defended these documents, arguing (as did an assistant attorney general in the Clinton administration) that they not only clarify how the law should be implemented but allow the president to declare what part of the law is in his view unconstitutional and thus ought not to be enforced at all.²⁰

While the Supreme Court has allowed signing statements to clarify the unclear legislative intent of a law, it has never given a clear verdict about the constitutional significance of such documents.²¹ By 2007, the Democratic Congress was considering a challenge to the practice. The struggle over signing statements is another illustration of what one scholar has called the “invitation to struggle” that the Constitution has created between the president and Congress.²²

★ The President's Program

Imagine that you have just spent three or four years running for president, during which time you have given essentially the same speech over and over again. You have had no time to study the issues in any depth. To reach a large television audience, you have couched your ideas largely in rather simple—if not simple-minded—slogans. Your principal advisers are political aides, not legislative specialists.

You win. You are inaugurated. Now you must *be* a president instead of just talking about it. You must fill hundreds of appointive posts, but you know personally only a handful of the candidates. You must deliver a State of the Union message to Congress only two or three weeks after you are sworn in. It is quite possible that you have never read, much less written, such a message before. You must submit a new budget; the old one is hundreds of pages long, much of it comprehensible only to experts. Foreign governments, as well as the stock market, hang on your every word, interpreting many of your remarks in ways that totally surprise you. What will you do?

The Constitution is not much help. It directs you to report on the state of the union and to recommend “such measures” as you shall judge “necessary and expedient.” Beyond that you are charged to “take care that the laws be faithfully executed.”

At one time, of course, the demands placed on a newly elected president were not very great, because the president was not expected to do very much. The president, on assuming office, might speak of the tar-

iff, or relations with England, or the value of veterans' pensions, or the need for civil service reform, but he was not expected to have something to say (and offer) to everybody. Today he is.

Putting Together a Program

To develop policies on short notice, a president will draw on several sources, each with particular strengths and weaknesses:

- **Interest groups**

Strength: Will have specific plans and ideas.

Weakness: Will have narrow view of the public interest.

- **Aides and campaign advisers**

Strength: Will test new ideas for their political soundness.

Weakness: Will not have many ideas to test, being inexperienced in government.

- **Federal bureaus and agencies**

Strength: Will know what is feasible in terms of governmental realities.

Weakness: Will propose plans that promote own agencies and will not have good information on whether plans will work.

- **Outside, academic, and other specialists and experts**

Strength: Will have many general ideas and criticisms of existing programs.

Weakness: Will not know the details of policy or have good judgment as to what is feasible.

There are essentially two ways for a president to develop a program. One, exemplified by Presidents Carter and Clinton, is to have a policy on almost everything. To do this they worked endless hours and studied countless documents, trying to learn something about, and then state their positions on, a large number of issues. The other method, illustrated by President Reagan, is to concentrate on three or four major initiatives or themes and leave everything else to subordinates.

But even when a president has a governing philosophy, as did Reagan, he cannot risk plunging ahead on his own. He must judge public and congressional reaction to this program before he commits himself fully to it. Therefore, he will often allow parts of his program to be “leaked” to the press, or to be “floated”

as a trial balloon. Reagan's commitment to a 30 percent tax cut and larger military expenditures was so well known that it required no leaking, but he did have to float his ideas on Social Security and certain budget cuts to test popular reaction. His opponents in the bureaucracy did exactly the same thing, hoping for the opposite effect. They leaked controversial parts of the program in an effort to discredit the whole policy. This process of testing the winds by a president and his critics helps explain why so many news stories coming from Washington mention no person by name but only an anonymous "highly placed source."

In addition to the risks of adverse reaction, the president faces three other constraints on his ability to plan a program. One is the sheer limit of his time and attention span. Every president works harder than he has ever worked before. A ninety-hour week is typical. Even so, he has great difficulty keeping up with all the things that he is supposed to know and make decisions about. For example, Congress during an average year passes between four hundred and six hundred bills, each of which the president must sign, veto, or allow to take effect without his signature. Scores of people wish to see him. Hundreds of phone calls must be made to members of Congress and others in order to ask for help, to smooth ruffled feathers, or to get information. He must receive all newly appointed ambassadors and visiting heads of state and in addition have his picture taken with countless people, from a Nobel Prize winner to a child whose likeness will appear on the Easter Seal.

The second constraint is the unexpected crisis. Franklin Roosevelt obviously had to respond to a depression and to the mounting risks of world war. But most presidents get their crises when they least expect them. Consider these crises:

Kennedy

- Failure of Bay of Pigs invasion of Cuba
- Soviets put missiles in Cuba
- China invades India
- Federal troops sent to the South to protect blacks

Johnson

- Vietnam War
- Black riots in major cities
- War between India and Pakistan
- Civil war in Dominican Republic
- Arab-Israeli war
- Civil rights workers murdered in South

Nixon

- Watergate scandal
- Arab-Israeli war
- Value of dollar falls in foreign trade
- Arabs raise the price of oil

Carter

- OMB director Bert Lance accused of improprieties
- Lengthy coal strike
- Seizure of American hostages in Iran
- Soviet invasion of Afghanistan

Reagan

- Poland suppresses Solidarity movement
- U.S. troops sent to Lebanon
- U.S. hostages held in Lebanon
- Civil war in Nicaragua
- Iran-contra crisis

Bush (the elder)

- Soviet Union dissolves
- Iraq invades Kuwait

Clinton

- Civil war continues in Bosnia and other parts of the former Yugoslavia
- Investigation of possible wrongdoing of President and Mrs. Clinton in Whitewater real estate development
- Clinton impeached

Bush (the younger)

- Terrorist attacks on World Trade Center and Pentagon kill close to 3,000 people
- U.S.-led war against terrorists in Afghanistan and Iraq

The third constraint is the fact that the federal government and most federal programs, as well as the federal budget, can only be changed marginally, except in special circumstances. The vast bulk of federal expenditures are beyond control in any given year: the money must be spent whether the president likes it or not. Many federal programs have such strong congressional or public support that they must be left intact or modified only slightly. And this means that most federal employees can count on being secure in their jobs, whatever a president's views on reducing the bureaucracy.

The result of these constraints is that the president, at least in ordinary times, has to be selective

about what he wants. He can be thought of as having a stock of influence and prestige the way that he might have a supply of money. If he wants to get the most “return” on his resources, he must “invest” that influence and prestige carefully in enterprises that promise substantial gains—in public benefits and political support—at reasonable costs. Each president tends to speak in terms of changing everything at once, calling his approach a “New Deal,” a “New Frontier,” a “Great Society,” or the “New Federalism.” But beneath the rhetoric he must identify a few specific proposals on which he wishes to bet his resources, mindful of the need to leave a substantial stock of resources in reserve to handle the inevitable crises and emergencies. In recent decades events have required every president to devote much of his time and resources to two key issues: the state of the economy and foreign affairs. What he manages to do beyond this will depend on his personal views and his sense of what the nation, as well as his reelection, requires.

And it will depend on one other thing: opinion polls. The last president who never used polls was Herbert Hoover. Franklin Roosevelt began making heavy use of them, and every president since has relied on them. Bill Clinton had voters polled about almost everything—where he should go on vacation (the West) and how to deal with Bosnia (no ground troops).

Once, when polls did not exist, politicians often believed that they should do what they thought the public interest required. Now that polls are commonplace, some politicians act on the basis of what their constituents want. Scholars call the first view the trustee approach: do what the public good requires, even if the voters are skeptical. The second view is the delegate model: do what your constituents want you to do.

But there is another way of looking at polls. They may be a device not for picking a policy, but for deciding what language to use in explaining that policy. Choose a policy that helps you get reelected or that satisfies an interest group, but then explain it with poll-tested words. President Clinton wanted to keep affirmative action (described in the chapter titled “Civil Rights”) but knew that most voters disliked it. So he used a poll-tested phrase—“mend it but don’t end it”—and then did nothing to mend it.

Finally, a president’s program can be radically altered by a dramatic event or prolonged crisis. George W. Bush ran as a candidate interested in domestic issues and with little background in foreign affairs, but the terrorist attack of September 11, 2001, on the World Trade Center and the Pentagon dramatically changed



A group of Civilian Conservation Corps workers hired by the government during the Great Depression.

his presidency into one preoccupied with foreign and military policy. He quickly launched a military attack on the Taliban regime in Afghanistan and assembled an international coalition to support it. His approval ratings rose to the highest level yet recorded, but a year later fell sharply.

Attempts to Reorganize

One item on the presidential agenda has been the same for almost every president since Herbert Hoover: reorganizing the executive branch of government. In the wake of the terrorist attack on the United States on September 11, 2001, the president, by executive order, created a new White House Office of Homeland Security, headed by his friend and former Pennsylvania governor, Tom Ridge. In the months that followed, it became clear to all, including the president, that he had given Ridge an impossible job. For one thing, despite its obvious importance, Ridge’s office, like most units with the Executive Office of the President, had only a dozen or so full-time staff, little budgetary authority, and virtually no ability to make and enforce decisions regarding how cabinet agencies operated. Nobody could meaningfully coordinate the literally dozens of administrative units that the administration’s new homeland security blueprint required Ridge’s office to somehow manage.

To address this problem, President Bush called for a reorganization that would create the third-largest cabinet department encompassing twenty-two federal

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permissions restrictions.

agencies, nearly 180,000 employees, and an annual budget of close to \$40 billion. Among the federal agencies placed under the new Department of Homeland Security are the Coast Guard, the Customs Service, the Federal Emergency Management Agency, and the Immigration and Naturalization Service. A law authorizing the new Department of Homeland Security was enacted in November 2002, but it will take years and much effort for the new agency to become fully operational.

Important as it is, the ongoing attempt to reorganize the federal government around homeland security goals is neither the first, nor even the largest, reorganization effort made by a sitting president. With few exceptions every president since 1928 has tried to change the structure of the staff, departments, and agencies that are theoretically subordinate to him. Every president has been appalled by the number of agencies that re-

legislative veto *The authority of Congress to block a presidential action after it has taken place. The Supreme Court has held that Congress does not have this power.*

port to him and by the apparently helter-skelter manner in which they have grown up. But this is only one—and often not the most important—reason for wanting to reorganize. If a president wants to get something done, put new people in charge of a program, or recapture political support for a policy, it is often easier to do so by creating a new agency or reorganizing an old one than by abolishing a program, firing a subordinate, or passing a new law. Reorganization serves many objectives and thus is a recurring theme.

Legally the president can reorganize his personal White House staff anytime that he wishes. To reorganize in any important way the larger Executive Office of the President or any of the executive departments or agencies, however, Congress must first be consulted. For over forty years this consultation usually took the form of submitting to Congress a reorganization plan that would take effect provided that neither the House nor the Senate passed, within sixty days, a concurrent resolution disapproving the plan (such a resolution was called a **legislative veto**). This procedure, first authorized by the Reorganization Act of 1939, could be used to change, but not create or abolish, an executive agency. In 1981 authority under that act expired, and Congress did not renew it. Two years later the Supreme Court declared that all legislative vetoes were unconstitutional (see Chapter 15), and so today any presidential reorganization plan would have to take the form of a regular law, passed by Congress and signed by the president.

What has been said so far may well give the reader the impression that the president is virtually helpless. That is not the case. The *actual* power of the president can only be measured in terms of what he can accomplish. What this chapter has described so far is the office as the president finds it—the burdens, restraints, demands, complexities, and resources that he encounters on entering the Oval Office for the first time. Every president since Truman has commented feelingly on how limited the powers of the president seem from the inside compared to what they appear to be from the outside. Franklin Roosevelt compared his struggles with the bureaucracy to punching a feather bed; Truman wrote that the power of the president was chiefly the power to persuade people to do what they ought to do anyway. After being in office a year or so, Kennedy spoke to interviewers about how much more complex the world appeared than he had first supposed. Johnson and Nixon were broken by the office and the events that happened there.

Yet Franklin Roosevelt helped create the modern presidency, with its vast organizational reach, and directed a massive war effort. Truman ordered two atomic bombs dropped on Japanese cities. Eisenhower sent American troops to Lebanon; Kennedy supported an effort to invade Cuba. Johnson sent troops to the Dominican Republic and to Vietnam; Nixon ordered an invasion of Cambodia; Reagan launched an invasion of Grenada and sponsored an antigovernment insurgent group in Nicaragua; Bush invaded Panama and

sent troops to the Persian Gulf to fight Iraq; Clinton sent troops to Haiti and Bosnia. George W. Bush ordered a U.S. military operation in Afghanistan and Iraq. Obviously Europeans, Russians, Vietnamese, Cambodians, Dominicans, Panamanians, and Iraqis do not think the American president is “helpless.”

★ Presidential Transition

No president but Franklin Roosevelt has ever served more than two terms, and since the ratification of the Twenty-second Amendment in 1951, no president will ever again have the chance. But more than tradition or the Constitution escorts presidents from office. Only about one-third of the presidents since George Washington have been elected to a second term. Of the twenty-seven not reelected, four died in office during their first term. But the remainder either did not seek or (more usually) could not obtain reelection.

Of the eight presidents who died in office, four were assassinated: Lincoln, Garfield, McKinley, and Kennedy. At least six other presidents were the objects of unsuccessful assassination attempts: Jackson, Theodore Roosevelt, Franklin Roosevelt, Truman, Ford, and Reagan. (There may have been attempts on other presidents that never came to public notice; the attempts mentioned here involved public efforts to fire weapons at presidents.)

The presidents who served two or more terms fall into certain periods, such as the Founding (Washington, Jefferson, Madison, Monroe) or wartime (Lincoln, Wilson, Roosevelt), or they happened to be in office during especially tranquil times (Monroe, McKinley, Eisenhower, Clinton), or some combination of the above. When the country was deeply divided, as during the years just before the Civil War and during the period of Reconstruction after it, it was the rare president who was reelected.

The Vice President

Eight times a vice president has become president because of the death of his predecessor. It first happened to John Tyler, who became president in 1841 when William Henry Harrison died peacefully after only one month in office. The question for Tyler and for the country was substantial: was Tyler simply to be the acting president and a kind of caretaker until a new president was elected, or was he to be *president* in every sense of the word? Despite criticism and despite

what might have been the contrary intention of the Framers of the Constitution, Tyler decided on the latter course and was confirmed in that opinion by a decision of Congress. Ever since, the vice president has automatically become president, in title and in powers, when the occupant of the White House has died or resigned.

But if vice presidents frequently acquire office because of death, they rarely acquire it by election. Since the earliest period of the Founding, when John Adams and Thomas Jefferson were each elected president after having first served as vice president under their predecessors, there have only been three occasions when a vice president was later able to win the presidency without his president's having died in office. One was in 1836, when Martin Van Buren was elected president after having served as Andrew Jackson's vice president; the second was in 1968, when Richard Nixon became president after having served as Dwight Eisenhower's vice president eight years earlier; the third was in 1988, when George Bush succeeded Ronald Reagan. Many vice presidents who entered the Oval Office because their predecessors died were subsequently elected to terms in their own right—Theodore Roosevelt, Calvin Coolidge, Harry Truman, and Lyndon Johnson. But no one who wishes to become president should assume that to become vice president first is the best way to get there.

The vice-presidency is just what so many vice presidents have complained about its being: a rather empty job. John Adams described it as “the most insignificant office that ever the invention of man contrived or his imagination conceived,” and most of his successors would have agreed. Thomas Jefferson, almost alone, had a good word to say for it: “The second office of the government is honorable and easy, the first is but a splendid misery.”²³ Daniel Webster rejected a vice-presidential nomination in 1848 with the phrase, “I do not choose to be buried until I am really dead.”²⁴ (Had he taken the job, he would have become president after Zachary Taylor died in office, thereby achieving a remarkable secular resurrection.) For all the good and bad jokes about the vice-presidency, however, candidates still struggle mightily for it. John Nance Garner gave up the speakership of the House to become Franklin Roosevelt's vice president (a job he valued as “not worth a pitcher of warm spit”*), and

*The word he actually used was a good deal stronger than *spit*, but historians are decorous.



President Reagan, moments before he was shot on March 30, 1981, by a would-be assassin. The Twenty-fifth Amendment solves the problem of presidential disability by providing for an orderly transfer of power to the vice president.

Lyndon Johnson gave up the majority leadership of the Senate to become Kennedy's. Truman, Nixon, Humphrey, Mondale, and Gore all left reasonably secure Senate seats for the vice-presidency.

The only official task of the vice president is to preside over the Senate and to vote in case of a tie. Even this is scarcely time-consuming, as the Senate chooses from among its members a president pro tempore, as required by the Constitution, who (along with others) presides in the absence of the vice president. The vice president's leadership powers in the Senate are weak, especially when the vice president is of a different party from the majority of the senators. But on occasion the vice president can become very important. Right after the terrorists attacked the United States in 2001, President Bush was in his airplane while his advisers worried that he might be attacked next. Vice President Cheney was quickly hidden away in a secret, secure location so he could run the government if anything happened to President Bush. And for many months thereafter, Cheney stayed in this location in case he suddenly became president. But absent a crisis, the vice president is, at best, only an adviser to the president.

Problems of Succession

If the president should die in office, the right of the vice president to assume that office has been clear since the time of John Tyler. But two questions remain: What if the president falls seriously ill, but does not die? And if the vice president steps up, who then becomes the new vice president?

The first problem has arisen on a number of occasions. After President James A. Garfield was shot in 1881, he lingered through the summer before he died. President Woodrow Wilson collapsed from a stroke and was a virtual recluse for seven months in 1919 and an invalid for the rest of his term. Eisenhower had three serious illnesses while in office; Reagan was shot during his first term and hospitalized during his second.

The second problem has arisen on eight occasions when the vice president became president owing to the death of the incumbent. In these cases no elected person was available to succeed the new president, should he die in office. For many decades the problem was handled by law. The Succession Act of 1886, for example, designated the secretary of state as next in line for the presidency should the vice president die, followed by the other cabinet officers in order of seniority. But this meant that a vice president who became president could pick his own successor by choosing his own secretary of state. In 1947 the law was changed to make the Speaker of the House and then the president pro tempore of the Senate next in line for the presidency. But that created still other problems: a Speaker or a president pro tempore is likely to be chosen because of seniority, not executive skill, and in any event might well be of the party opposite to that occupying the White House.

Both problems were addressed in 1967 by the Twenty-fifth Amendment to the Constitution. It deals with the disability problem by allowing the vice president to serve as "acting president" whenever the president declares that he is unable to discharge the powers and duties of his office or whenever the vice president and a majority of the cabinet declare that the president is incapacitated. If the president disagrees with the opinion of his vice president and a majority of the cabinet, then Congress decides the issue. A two-thirds majority is necessary to confirm that the president is unable to serve.

The amendment deals with the succession problem by requiring a vice president who assumes the presidency (after a vacancy is created by death or res-

ignation) to nominate a new vice president. This person takes office if the nomination is confirmed by a majority vote of both houses of Congress. When there is no vice president, then the 1947 law governs: next in line are the Speaker, the Senate president, and the fifteen cabinet officers, beginning with the secretary of state.

The disability problem has not arisen since the adoption of the amendment, but the succession problem has. In 1973 Vice President Spiro Agnew resigned, having pleaded no contest to criminal charges. President Nixon nominated Gerald Ford as vice president, and after extensive hearings he was confirmed by both houses of Congress and sworn in. Then on August 9, 1974, Nixon resigned the presidency—the first man to do so—and Ford became president. He nominated as his vice president Nelson Rockefeller, who was confirmed by both houses of Congress—again, after extensive hearings—and was sworn in on December 19, 1974. For the first time in history, the nation had as its two principal executive officers men who had not been elected to either the presidency or the vice-presidency. It is a measure of the legitimacy of the Constitution that this arrangement caused no crisis in public opinion.

Impeachment

There is one other way—besides death, disability, or resignation—by which a president can leave office before his term expires, and that is by impeachment. Not only the president and vice president, but also all “civil officers of the United States” can be removed by being impeached and convicted. As a practical matter civil officers—cabinet secretaries, bureau chiefs, and the like—are not subject to impeachment, because the president can remove them at any time and usually will if their behavior makes them a serious political liability. Federal judges, who serve during “good behavior”^{*} and who are constitutionally independent of the president and Congress, have been the most frequent objects of impeachment.

An **impeachment** is like an indictment in a criminal trial: a set of charges against somebody, voted by (in this case) the House of Representatives. To be removed from office, the impeached officer must be convicted by a two-thirds vote of the Senate, which

^{*}“Good behavior” means a judge can stay in office until he retires or dies, unless he or she is impeached and convicted.

POLITICALLY SPEAKING

Lame Duck



A **lame duck** is a politician whose power has diminished because he or she is about to leave office as a result of electoral defeat or statutory limitation (for example, the president can serve no more than two terms).

The expression was first used in eighteenth-century England, where it meant a “bankrupt businessman.” Soon it was used to refer to “bankrupt” politicians. Perhaps they were called “lame ducks” because they had been shot on the wing and, though still alive, could no longer fly.

A lame duck is not to be confused with a “sitting duck” (somebody who is an easy target).

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sits as a court, is presided over by the Chief Justice, hears the evidence, and makes its decision under whatever rules it wishes to adopt. Sixteen persons have been impeached by the House, and seven have been convicted by the Senate. The last conviction was in 1989, when two federal judges were removed from office.

Only two presidents have ever been impeached—Andrew Johnson in 1868 and Bill Clinton in 1998. Richard Nixon would surely have

impeachment

Charges against a president approved by a majority of the House of Representatives.

lame duck *A person still in office after he or she has lost a bid for reelection.*

been impeached in 1974, had he not resigned after the House Judiciary Committee voted to recommend impeachment.

The Senate did not convict either Johnson or Clinton by the necessary two-thirds vote. The case against Johnson was entirely political—Radical Republicans, who wished to punish the South after the Civil War, were angry at Johnson, a southerner, who had a soft policy toward the South. The argument against him was flimsy.

The case against Clinton was more serious. The House Judiciary Committee, relying on the report of independent counsel Kenneth Starr, charged Clinton with perjury (lying under oath about his sexual affair with Monica Lewinsky), obstruction of justice (trying to block the Starr investigation), and abuse of power (making false written statements to the Judiciary Committee). The vote to impeach was passed by the House along party lines. A majority, but not two-thirds, of the Senate voted to convict.

Why did Clinton survive? There were many factors. The public disliked his private behavior, but did not think it amounted to an impeachable offense. (In fact, right after Lewinsky revealed her sexual affair with him, his standing in opinion polls went up.) The economy was strong, and the nation was at peace. Clinton was a centrist Democrat who did not offend most voters.

The one casualty of the entire episode was the death of the law creating the office of the Independent Counsel. Passed in 1978 by a Congress that was upset by the Watergate crisis, the law directed the attorney general to ask a three-judge panel to appoint an independent counsel whenever a high official is charged with serious misconduct. (In 1993, when the 1978 law expired, President Clinton asked that it be passed again. It was.) Eighteen people were investigated by various independent counsels from 1978 to 1999. In about half the cases, no charges were brought to court.

For a long time Republicans disliked the law because the counsels were investigating them. After Clinton came to office, the counsels started investigating him and his associates, and so the Democrats began to oppose it. In 1999, when the law expired, it was not renewed.

A problem remains, however. How will any high official, including the president, be investigated when the attorney general, who does most investigations, is part of the president's team? One answer is to let Con-

gress do it, but Congress may be controlled by the president's party. No one has yet solved this puzzle.

Some Founders may have thought that impeachment would be used frequently against presidents, but as a practical matter it is so complex and serious an undertaking that we can probably expect it to be reserved in the future only for the gravest forms of presidential misconduct. No one quite knows what a high crime or misdemeanor is, but most scholars agree that the charge must involve something illegal or unconstitutional, not just unpopular. Unless a president or vice president is first impeached and convicted, many experts believe that he is not liable to prosecution as would be an ordinary citizen. (No one is certain, because the question has never arisen.) President Ford's pardon of Richard Nixon meant that he could not be prosecuted under federal law for things that he may have done while in office.

Students may find the occasions of misconduct or disability remote and the details of succession or impeachment tedious. But the problem is not remote—succession has occurred nine times and disability at least twice—and what may appear tedious goes, in fact, to the heart of the presidency. The first and fundamental problem is to make the office legitimate. That was the great task George Washington set himself, and that was the substantial accomplishment of his successors. Despite bitter and sometimes violent partisan and sectional strife, beginning almost immediately after Washington stepped down, presidential succession has always occurred peacefully, without a military coup or a political plot. For centuries, in the bygone times of kings as well as in the present times of dictators and juntas, peaceful succession has been a rare event among the nations of the world. Many of the critics of the Constitution believed in 1787 that peaceful succession would not happen in the United States either: somehow the president would connive to hold office for life or to handpick his successor. Their predictions were wrong, though their fears are understandable.

★ How Powerful Is the President?

Just as members of Congress bemoan their loss of power, so presidents bemoan theirs. Can both be right?

WHAT WOULD YOU DO?

MEMORANDUM

To: Delegate James Nagle

From: Amy Wilson, legal staff

Subject: Six-year presidential term

The proposal to give the president a single six-year term is perhaps the most popular amendment now before the convention. Polls suggest that it is supported by a sizable percentage of the American people.

Arguments for:

1. Today a president no sooner learns the ropes after being elected for the first time than he or she has to start preparing for the next election. A six-year term will give the president a chance to govern for several years after learning how to be president. This will lessen the extent to which political pressures dictate what the president does.
2. Limited to a single term, the president need not cater to special-interest groups or the media in deciding on policy. He or she can concentrate on what is good for the country.
3. Many states have limited their governors to a single term.

Arguments against:

1. It is the need to win reelection that keeps the president (like any politician) attentive to what the people want. A president unable to succeed himself or herself will be tempted to ignore public opinion.
2. Limiting a president to a single term will not free him or her from the need to play to the media or special-interest groups, since the formal powers of the presidency are too weak to permit the incumbent to govern without the aid of Congress and the press.
3. There is no evidence that presidents (such as Dwight Eisenhower) who served a second term knowing that they could not run for reelection did a better or less "political" job in the second term than in the first.

Your decision:

Favor amendment _____ Oppose amendment _____

Six-Year Term for President

Delegates Divided on Big Issue

October 15

EUDORA, KS

Here at the convention called to propose amendments to the United States Constitution, the major issue facing the delegates is the proposal to limit the president to a single six-year term. Proponents of the measure claim . . .

In fact they can. If Congress is less able to control events than it once was, it does not mean that the president is thereby more able to exercise control. The federal government *as a whole* has become more constrained, so it is less able to act decisively. The chief source of this constraint is the greater complexity of the issues with which Washington must deal.

It was one thing to pass the Social Security Act in 1935; it is quite another thing to keep the Social Security system adequately funded. It was one thing for the nation to defend itself when attacked in 1941; it is quite another to maintain a constant military preparedness while simultaneously exploring possibilities for arms control. It was not hard to give pensions to veterans; it seems almost impossible today to find the cure for drug abuse or juvenile crime.

In the face of modern problems, all branches of government, including the presidency, seem both big

and ineffectual. Add to this the much closer and more critical scrutiny of the media and the proliferation of interest groups, and it is small wonder that both presidents and members of Congress feel that they have lost power.

Presidents have come to acquire certain rules of thumb for dealing with their political problems. Among them are these:

- *Move it or lose it.* A president who wants to get something done should do it early in his term, before his political influence erodes.
- *Avoid details.* President Carter's lieutenants regret having tried to do too much. Better to have three or four top priorities and forget the rest.
- *Cabinets don't get much accomplished; people do.* Find capable White House subordinates and give them well-defined responsibility; then watch them closely.²⁵

★ SUMMARY ★

Presidents have greater powers in military and foreign policy than they do in domestic policy. Congress has not used its power to declare war since 1942, but modern presidents at war face many challenges to their powers. President George W. Bush, the war in Iraq, and controversies surrounding his administration's strong stance on presidential powers are only the latest examples. Both with respect to war powers and more generally, there are basic differences between presidents and prime ministers. A U.S. president, chosen by the people and with powers derived from a written constitution, has less power than does a British prime minister, even though the latter depends entirely on the support of his or her party in Parliament. The separation of powers between the executive and legislative branches, the distinguishing feature of the American system, means that the president must deal with a competitor—Congress—in setting policy and even in managing executive agencies.

Presidential power, though still sharply limited, has grown from its constitutional origins as a result of congressional delegation, the increased importance of foreign affairs, and public expectations. But if the president today has more power, more is also demanded of him. As a result how effective he is de-

pends not on any general grant of authority, but on the nature of the issue that he confronts and the extent to which he can mobilize informal sources of power (public opinion, congressional support).

Though the president seemingly controls a vast executive-branch apparatus, in fact he appoints but a small portion of the officials, and the behavior of even these is often beyond his easy control. Moreover, public support, high at the beginning of any new presidency, usually declines as the term proceeds. Consequently each president must conserve his power (and his energy and time), concentrating these scarce resources to deal with a few matters of major importance. Virtually every president since Franklin Roosevelt has tried to enlarge his ability to manage the executive branch—by reorganization, by appointing White House aides, by creating specialized staff agencies—but no president has been satisfied with the results.

The extent to which a president will be weak or powerful will vary with the kind of issue and the circumstances of the moment. It is a mistake to speak of an "imperial presidency" or of an ineffectual one. A president's power is better assessed by considering how he behaves in regard to specific issues.

RECONSIDERING WHO GOVERNS?

1. *Did the Founders expect the presidency to be the most important political institution?*

Most did not. They worried about whether the presidency would be too strong or too weak, but designed a Constitution hoping that Congress would be the most important institution. And it was, with a few exceptions, until the twentieth century. Today the strength of the presidency depends chiefly on two things: the importance of military and foreign affairs, and the president's personal popularity.

2. *How important is the president's character in determining how he governs?*

Very important. Presidents with great personal skills, such as Franklin Roosevelt, Dwight Eisenhower, Ronald Reagan, and Bill Clinton can influence public opinion and that in turn influences Congress. But character is not the whole story. Having a majority of fellow believers in Congress, though rare, is important (as it was for Roosevelt and Lyndon Johnson), and so are unexpected events, such as wars and other crises.

RECONSIDERING TO WHAT ENDS?

1. *Should we abolish the electoral college?*

There are big risks in doing that. If no president were to win a majority of the popular vote (which happens quite often), there would either have to be a runoff election or the House would make the final decision. With an electoral college, small parties would play a bigger role and the United States could politically come to look like France or Italy. And without the college, a presidential campaign might be waged in just a few big states with the candidates ignoring most places.

2. *Is it harder to govern when the presidency and Congress are controlled by different parties?*

Not really. Both the Democratic and Republican parties have legislators who often vote with their party rivals. Unless the president has a big ideological majority in Congress, something that does not happen too often, he can easily lose legislative struggles. Gridlock does not in fact prevent major new pieces of legislation from being passed.

WORLD WIDE WEB RESOURCES

Official White House blog: www.whitehouse.gov

Studies of Presidents:

www.millercenter.virginia.edu/academic/americanpresident

SUGGESTED READINGS

General

Corwin, Edward S. *The President: Office and Powers*. 5th ed. New York: New York University Press, 1985. Historical, constitutional, and legal development of the office.

Jones, Charles O. *Passage to the Presidency* (Washington, D.C.: Brookings Institution, 1998). Insightful account of how four presidents—Nixon, Carter, Reagan, and Clinton—moved from the campaign to the presidency.

Neustadt, Richard E. *Presidential Power: The Politics of Leadership*. Rev. ed. New York: Wiley, 1976. How presidents try to acquire and

hold political power in the competitive world of official Washington, by a man who has been both a scholar and an insider.

Peterson, Mark A. *Legislating Together: The White House and Congress from Eisenhower to Reagan*. Cambridge: Harvard University Press, 1990. Challenges the conventional view that “the president proposes, Congress disposes.” Contains many excellent examples of bargaining and cooperation between Congress and the executive branch.

Polsby, Nelson W., and Aaron Wildavsky. *Presidential Elections*. 10th ed. New York: Chatham House, 2000. Excellent analysis

of how campaigns and the electoral college shape the presidency.

On Franklin D. Roosevelt

Leuchtenberg, William E. *Franklin D. Roosevelt and the New Deal, 1932–1940*. New York: Harper & Row, 1963.

Maney, Richard J. *The Roosevelt Presence*. New York: Twayne, 1992.

On Harry S Truman

Hamby, A. L. *Beyond the New Deal: Harry S Truman and American Liberalism*. New York: Columbia University Press, 1973.

McCullough, David. *Truman*. New York: Simon and Schuster, 1984.

On Dwight D. Eisenhower

Ambrose, Stephen E. *Eisenhower*. New York: Simon and Schuster, 1984.

Greenstein, Fred I. *The Hidden-Hand Presidency: Eisenhower as Leader*. New York: Basic Books, 1982.

On John F. Kennedy

Paper, Lewis J. *The Promise and the Performance: The Leadership of John F. Kennedy*. New York: Crown, 1975.

Parmet, Herbert C. *Jack*. New York: Dial Press, 1980.

On Lyndon B. Johnson

Caro, Robert A. *The Years of Lyndon Johnson*. 3 vols. New York: Alfred Knopf, 1982–2002.

Dallek, Robert. *Lone Star Rising and Flawed Giant*. New York: Oxford University Press, 1991 and 1996.

Kearns, Doris. *Lyndon Johnson and the American Dream*. New York: Harper and Row, 1976.

On Richard M. Nixon

Ambrose, Stephen E. *Nixon*. 3 vols. New York: Simon and Schuster, 1987, 1989, 1991.

On Jimmy Carter

Bourne, Peter G. *Jimmy Carter*. New York: Scribner, 1997.

On Ronald Reagan

Cannon, Lou. *President Reagan*. New York: Simon and Schuster, 1991.

On George H.W. Bush

Parmet, Herbert C. *George Bush*. New York: Scribner, 1997.