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Chapter **1**

Presidents and the Presidency

This chapter looks at the U.S. presidency. It talks about how the U.S. system of government was established. It also discusses the Constitution and the evolution of the presidency from a weak ceremonial post, such as the presidency of James Madison, to the imperial presidency of FDR. Today we find a stalemate between the presidency and Congress, resulting in much bargaining and compromising and the occasional government shutdown. In addition, the chapter covers formal powers the president possesses, such as the power to cast a veto. Finally, the president has been granted or assumed some special, informal powers, especially the power to manipulate public opinion. The discussion of these informal powers rounds out the chapter.

Establishing the First U.S. Government

In 1774, 12 colonies (Georgia refused to attend) agreed to get together and set up a united legislature, or *Continental Congress*, to speak with one voice against British oppression. The Continental Congress turned into a national legislature during the Revolutionary War and stuck around after independence was declared, assuming the functions of a new national government.

In 1781, the Congress passed the *Articles of Confederation*, creating a confederation between the 13 former colonies. After the states agreed on the Articles of Confederation, the Congress renamed itself the *Congress of the Confederation* and became a weak federal legislature — it was without real powers, including the power to tax or the power to create a national army. The real power remained within the 13 states.

The Congress survived until the Constitution created a new form of government in 1789, and the Congress of the United States replaced the Congress of the Confederation.



TECHNICAL
STUFF

A *confederation* is a form of government where power rests at the state level and not at the national level.

Facing problems

The confederation system caused immediate problems for the new country:

- » Without the power to tax, the Congress could not support a large military, which was dangerous with the British, Russian, and Spanish empires still in North America.
- » The war bonds sold to finance the war against Britain presented another problem. With the war over and the national government unable to tax, nobody redeemed the bonds. Many patriotic people who bought war bonds to support the war for independence lost their life savings when they couldn't redeem the bonds. Not surprisingly, people complained.
- » Trade became a problem, with the states treating each other like they were foreign countries. How can a united country be established when its members impose trade restrictions against each other?

Writing a constitution

By 1785, many prominent politicians in the United States were worried. They felt that the new country was in serious trouble and that the new government, created by the Articles of Confederation, was not working. For this purpose, a national meeting in Philadelphia was called to change or revise the Articles of Confederation. This meeting, also referred to as the *Constitutional Convention*, began in May 1787. Its original purpose was just to change the Articles of Confederation, not to write a new Constitution. The convention lasted until September 1787, when the delegates actually overstepped their authority and voted to approve a new constitution for the country.

Instead of revising the Articles of Confederation, the delegates created a brand-new document — the Constitution of the United States. They felt that a revision of the Articles of Confederation would not accomplish the task of creating a strong, united country. So they wrote a brand-new document instead, abolishing the Articles of Confederation and setting up a new form of government. The Constitution called for the following:

- » The creation of a federal republic, where the states and the national/federal government shared powers
- » A bicameral Congress with two chambers — the House of Representatives (selected by the people) and the Senate (equally represented by the states, with each state sending two senators)
- » An executive, or president, elected by an Electoral College every four years
- » A Supreme Court nominated by the president and ratified by the Senate

Drawing up the presidency

During the Constitutional Convention in Philadelphia in 1787, the hottest topic was what kind of executive to have. Some wanted a strong executive, even a king. Others wanted a weak executive at the mercy of Congress. Some even proposed multiple executives, with more than one president serving in the various areas of government.



REMEMBER

James Wilson, a delegate from Pennsylvania, was responsible for the presidency we have today. During the debate, he based the modern presidency on the New York and Massachusetts state constitutions.



TECHNICAL
STUFF

One of the big questions at the Constitutional Convention was whether to create a parliamentary system or a presidential republic. In a *parliamentary system*, the legislature, not the citizens, selects the executive. Chosen by the majority, the executive's party always controls the legislature. In a *presidential republic*, voters choose the president. This can result in a divided government, with one party controlling the legislature and the other the presidency.

A presidential system, such as the form the United States adopted, creates moderate policies, involving lots of compromise, because the executive and Congress have to bargain with each other to be successful. In a parliamentary system, the executive always gets what he or she wants, because it controls the legislature.

Being unique

The system of checks and balances is a feature unique to the United States. The delegates at the convention wanted to make sure that the president wouldn't dominate the new government. So they implemented many checks on his power. Congress and the Supreme Court can check the president in the areas the delegates considered the most important, resulting in this system of checks and balances. These areas included treaty-making, war-making and especially the power to declare war, which was given to Congress. Congress and the Supreme Court further received the power to override a president's veto and to remove him from office if necessary.

THE ELECTORAL COLLEGE

The Electoral College, established by the Constitution, consists of electors who have the power to choose the president and vice president.

The first Electoral College, which met in 1789, consisted of representatives from all the states that ratified the Constitution. Depending on the state, either the people or the state legislatures chose the respective delegates for the Electoral College. In the Electoral College, each delegate cast two ballots. Whoever won the most votes became the president of the United States; the runner-up was named the vice president.

This system led to confusion. In 1800, Thomas Jefferson and Aaron Burr received the same number of votes, even though most electors favored Jefferson for president and Burr for vice president. The electors had to cast two ballots without being able to differentiate between president and vice president. The 12th Amendment fixed the system in 1804 by mandating separate ballots for the president and vice president.

In 1961, the 23rd Amendment allowed the District of Columbia to cast three votes in the Electoral College, even though it doesn't have statehood. Today, the electors in the Electoral College represent all 50 states and the District of Columbia. The electors, in turn, are chosen by their respective state legislatures. (Each party, Democrats and Republicans, draws up a list of electors. Whichever party wins the state in the presidential election gets to use its list in the Electoral College. The only exceptions to this rule are found in Maine and Nebraska, where one electoral vote goes to the winner of each Congressional district in the state and two votes go to the winner of the state itself.) The number of electors representing each state equals the number of members of Congress (members of the House of Representatives plus the two senators) for each state. Today, there are 538 total votes in the Electoral College, and a candidate has to win 270 to become president. If nobody has a majority in the Electoral College, the vote goes into the House of Representatives.

Today, the president is the most powerful politician on earth, but he has to share a lot of his powers with Congress.

Over the next two centuries, the power and influence of the presidency developed and changed.

Granting formal presidential powers

The Constitution, even though a brief document, sets aside Article II to discuss the presidency. Article II outlines the Electoral College and the powers of the president. The Constitution formally mentions the following powers in Section 2 and Section 3 of Article II of the Constitution. The powers are listed in the order found in the Constitution:

- » **Commander in chief of the armed forces:** This power has caused much controversy. Many presidents have interpreted it to mean that they have the power to make war. Congress, on the other hand, has the constitutional power to declare war. The War Powers Act of 1973 (discussed later in this chapter) further contributes to the controversy surrounding this power.
- » **Granting reprieves and pardons:** The president has the power to pardon anyone for federal offenses. The only exception is impeachment. The president cannot pardon someone who has been impeached.
- » **Making treaties:** The president has the power to negotiate treaties with foreign countries. All treaties have to be approved by the Senate with a two-thirds majority.
- » **Appointing Supreme Court Justices and ambassadors:** The president has the power to appoint justices of the U.S. Supreme Court and ambassadors. In both instances, the Senate has to approve his choices.
- » **Convening Congress to special sessions:** In emergency situations, the president has the power to call Congress into a special session.
- » **Receiving ambassadors:** The president has the right to receive foreign ambassadors and other foreign dignitaries to discuss policy with them.
- » **Ensuring that the laws are faithfully executed:** That's all the Constitution says about this power. Today, presidents interpret it as the power to make policy, as outlined in the annual budget the president submits to Congress.

Vetoing legislation

Additional powers of the president are found in Article I, Section 7. Even though Article I deals mainly with Congressional powers, it does discuss the veto power of the president. According to Section 7, the president possesses the power to veto

legislation passed by Congress. He has ten days to veto a bill and has to explain to Congress why he cast the veto. Congress then has the option to override a president's veto. This requires a two-thirds majority in both houses of Congress.

If Congress passes a bill within ten days of adjourning, the president can cast a *pocket veto*. All he has to do is let the bill sit on his desk until Congress adjourns, and the bill has been vetoed. Pocket vetoes cannot be overridden, because Congress has no chance to vote on the veto. Most vetoes stand, or are not overridden by Congress. Less than 4 percent of all vetoes in U.S. history have been overridden.

Interpreting presidential powers

The Constitution is not very specific on presidential powers. Many are vague and open to broad interpretation. For example, does to “faithfully execute the laws” mean that a president just observes Congress and then makes Congressional legislation law? Or can the president make laws himself? As commander in chief, is the president just some kind of super-general reacting to Congress, which has the power to declare war, or is he the supreme war maker in the United States? It is thus left up to the president to define his role.

Different men who have held the office have interpreted their powers differently. For example, in 1861, after President Lincoln took office and before Congress reconvened, Lincoln unilaterally reacted to the attack on Fort Sumter by the Confederacy (see Chapter 10). He defined the role of commander in chief by taking over the war effort himself. In addition, he single-handedly freed the slaves in the Confederacy with the Emancipation Proclamation. He felt his actions were justified by the emergency of the Civil War. Lincoln's predecessor, James Buchanan, however, believed that his powers did not extend to preventing the Southern states from leaving the Union. So he refused to act when the first Southern states left the Union and created the Confederacy.

Examining Presidential Influence on the Presidency

Just as the president is a living, breathing person, the presidency is a living, breathing institution. The men who have so far filled the office have put their own unique stamp on the office, for better or worse. The following sections give you some examples.

During the period from 1789 to 1824, most U.S. presidents were prominent men known to most U.S. citizens. They included many of our founding fathers and others who had served their country valiantly in the Revolutionary War. With the exception of John Adams, each of the first five presidents served two terms, bringing a measure of stability to the young country.

They legitimized the new government, or in other words, they created public support for the new form of government. Even if one disagreed with the new form of government created by the Constitution, how could one oppose George Washington as president? These presidents set the foundation for the United States. However, during this time period, Congress dominated and made most decisions for the United States. The president was considered to be a caretaker, and his job was to implement policies passed by Congress.

Challenging Congress: Andrew Jackson

When Andrew Jackson assumed office in 1829, he believed that he had a mandate from the people and that it was his job to not only implement policies passed by Congress but to make his own. He saw himself as a guardian of the people, with a mission to protect them from the excesses of Congress. He challenged Congress and vetoed major congressional legislation. Jackson actually vetoed more legislation than all of his predecessors combined.

Jackson's interpretation of a powerful president disappeared with him. His successors perceived their role as one of reacting to Congress.

With the exception of Abraham Lincoln, Teddy Roosevelt, and Woodrow Wilson, all presidents for the next century subordinated themselves to Congress. Congress made policy for the United States, and the presidents passively endorsed it.

Creating the imperial presidency: Franklin Roosevelt

With the Great Depression hitting the country hard in 1929 and World War II (WWII) starting in Europe in 1939, the U.S. public looked for strong leadership.



REMEMBER

They found it in Franklin Delano Roosevelt. Starting with his election in 1932, FDR single-handedly created the imperial presidency. The term *imperial presidency* was the title of a book by historian Arthur M. Schlesinger, Jr., published in 1973. In the book, Schlesinger argues that the presidency has become too powerful and has usurped powers from Congress. The term stuck and is still used today.

FDR was responsible for the New Deal programs, which greatly enhanced the powers of the presidency by establishing a large federal bureaucracy over which the president presides. Roosevelt put a massive welfare state in place (see Chapter 16) and had government take an active role in the economy. FDR made it the business of the president to take care of the U.S. public.

Foreign policy also came to the forefront when FDR took over in 1933. He moved the United States to support the Allies during WWII. During the war, he met with Allied leaders and hammered out major agreements. The subsequent Cold War further involved the United States in global affairs.

The trend of the president dominating foreign policy continued, and presidents today are the foreign policy leaders in the United States. By the time Lyndon Johnson assumed the presidency in 1963, Congress was reacting to the president, who now made both domestic and foreign policy for the country.

Dethroning the imperial presidency: Richard Nixon

In 1974, Richard Nixon destroyed the imperial presidency with the Watergate scandal and its aftermath. Congress saw the executive position weakened and took this chance to restore some of the power it had lost to the president.

The most visible changes Congress imposed were in the areas of foreign policy and budget policies, when Congress passed the War Powers Act in 1973 over President Nixon's veto and the Budget Reform Act in 1974. These acts brought Congress back into the realms of war-making and budgeting.



TECHNICAL
STUFF

The War Powers Act of 1973 was a direct challenge to the president and the president's powers to commit U.S. troops into combat. The act severely restricted the president by calling for the following:

- » The president has to inform Congress in writing within 48 hours after he commits troops into a hostile situation.
- » Within 60 days after committing troops into a hostile situation, Congress has to declare war or authorize continuous commitment. This gives Congress the power to recall the troops.
- » Congress, at any time, can pass a *concurrent resolution* (a resolution passed by both houses of Congress) to recall the troops. The president cannot veto this resolution.

Suddenly Congress had the power to recall troops that a president committed into a hostile situation. It didn't have to stand idly by while a president fought a war. Both institutions, Congress and the president, again shared war-making powers.



REMEMBER

Ironically, every president affected by the act — beginning with Nixon and including Presidents Obama and Trump — has claimed that the War Powers Act is unconstitutional and has refused to be bound by its terms. The Supreme Court has so far refused to rule on the constitutionality of the act.

The Budget Reform Act of 1974 is another example of how Congress reasserted itself. Presidents had given themselves the power to refuse to spend money appropriated by Congress for certain programs. Most presidents, beginning with Jefferson, used it frequently.

This power was absolute until the Nixon era. In 1974, Congress passed the Budget Reform Act, which stated that the president can refuse to spend or delay the spending of money, but he has to tell Congress about it. Congress then has the option to pass a resolution calling for the spending of the money. After the resolution passes, the president has to spend the money. Suddenly, Congress could force a president to spend money allocated for programs the president opposed.

Restoring the imperial presidency: George W. Bush

George W. Bush was able to restore the imperial presidency after the terrorist attacks on the United States on September 11, 2001. With the country in shock, he acted swiftly and with bipartisan congressional support launched attacks on Afghanistan in 2001 and then Iraq in 2003. In the name of fighting terrorism, the Bush administration authorized warrantless wiretaps, the kidnappings of suspected terrorists, and interrogation techniques such as waterboarding. These measures were explained to the public as necessary to keep the country safe. Congress stayed quiet, and Bush's successor, Barack Obama, would enjoy similar discretion in foreign policy when it came to the fight against terrorism.

Bush's successors, Presidents Obama and Trump, continue the imperial presidency. A good example of the imperial presidency today is the frequent use of executive orders. Executive orders are a nice way to circumvent Congress and can only be repealed by a president.



TECHNICAL
STUFF

The power to issue executive orders has been used by all presidents with the exception of William Henry Harrison (1841). An executive order is a directive by the president ordering the federal government to carry out a certain task. A president can modify executive orders or even make exceptions to them. And, only a president can cancel an executive order. Some of the more infamous executive

orders issued by presidents include executive order 9066 issued by President Roosevelt, which resulted in the internment of Japanese Americans during WWII, and the more recent executive order 13769 issued by President Trump, which prohibited entry to the United States to citizens of seven Muslim countries.

President Roosevelt issued the most executive orders, 3,522. President Trump so far has issued 120 executive orders.

Perfecting the Power to Shape Public Opinion

The greatest power a U.S. president has is not found in the Constitution. It is the power to persuade and convince the U.S. public. If the president can get the public behind him, he becomes unstoppable. Congress cannot and will not oppose him if he can show Congress that the public supports him on a certain issue. For this reason, the power to shape public opinion is a great one.

Persuading the people

Theodore Roosevelt was the first U.S. president to take advantage of the power of public opinion. He used the presidency as a *bully pulpit* — a forum to use his influence to promote his causes — and preached to the U.S. public in an attempt to gather public support. When Congress began to stifle his progressive reforms (see Chapter 13), he toured the United States and attempted to convince the public of the integrity of his programs. With the public behind him, Congress had a tough time not agreeing to his agenda.

Woodrow Wilson, a political scientist, recognized this power and continued in Roosevelt's tradition. He, too, traveled around the country to rally support for his policies. In addition, Wilson established the tradition of holding regular press conferences, and addressed Congress directly by giving his State of the Union address in person to Congress. Wilson transformed the State of the Union address into the public spectacle it still is today. He set the precedent of using the media to disseminate his speeches to the U.S. public.

Making use of the media

With the invention of the radio, and later television, the power to persuade, or shape public opinion, gained new importance. Radio made it possible to reach the U.S. public easily, without ever leaving the White House.

The first president to take advantage of this was Franklin Roosevelt in the 1930s. A week after presenting his first inaugural address, FDR began addressing the U.S. public directly over the radio with his famous fireside chats, which he used to explain his policies and foster trust and confidence in the public. Roosevelt continued this practice throughout his presidency, delivering a total of 27 fireside chats.

John F. Kennedy used television for similar purposes. He became our first television president. Kennedy and his advisors had figured that the best way to reach the public was through television appearances heavily laden with political messages. Nothing was more successful in gaining the support of the U.S. public than a well-timed, well-written, and well-delivered speech.

Kennedy was also the first president to allow his press conferences to be covered on live television. (Eisenhower had his press conferences taped and reserved the right to edit them before they were broadcast.) Kennedy delivered 64 live press conferences before he was assassinated.

Today, using television to reach the public is common. Inaugural addresses, State of the Union addresses, and press conferences are all designed to reach out to the U.S. public and convince people that the president's policies merit their support. Clearly, a well-written and well-delivered speech can sway public opinion in a president's favor. This in turn facilitates his dealings with Congress.

While television is still the major tool to communicate with a majority of Americans, social media has become more prevalent. It was first widely used by President Obama, who started an AMA (ask me anything) thread on Reddit to target young and minority voters. The strategy was so successful in both the 2008 and 2012 presidential elections that it has been copied by every candidate running for higher office. Who could imagine President Trump not using Twitter? Today, campaigns use social media, such as Twitter, Facebook, and even Instagram and Snapchat, to target specific groups of voters. Studies have shown that the use of social media can increase voter turnout and impact political opinions, especially for millennials (18 to 24). Older voters are more immune to social media messages.

With social media being so successful and so much cheaper compared to television, it would not be surprising to see it overtake television as the major campaign tool in the future.

Performing Many Roles: Today's President

Today the president performs many roles in society. The president has become the preeminent politician in the United States. Some of his roles include:

- » **Head of state:** The president symbolizes the United States. Other countries judge the United States by what kind of president the U.S. public elects.
- » **Commander in chief:** The president heads the U.S. military. The public looks to him to commit troops into combat. The public also holds him accountable for the successes or failures of military operations.
- » **Chief foreign policy maker:** The president is expected to make foreign policy, meet foreign leaders, and negotiate treaties. The public holds him responsible for successes and failures in foreign policy.
- » **Chief executive:** The president is in charge of the federal bureaucracy, which includes the cabinet departments, the Office of Management and Budget, and the military — more than 4 million people altogether.
- » **Chief legislator:** Today, the president is responsible for most major legislation. He proposes the budget and uses his veto power to shape policy. The president acts, and Congress usually reacts to his policies.
- » **Crisis manager:** Whenever crisis strikes the country, the U.S. public looks to the president to act. After the terrorist attacks on the United States in September 2001, the public expected the president, not Congress, to react. It was George W. Bush and his advisors who explained to the public and Congress what had happened, as well as what measures the government would take.
- » **Leader of his party:** The public, as well as party supporters, look at the president as the leader of his party. If the president does well, the public will usually reward his party in the elections. If he performs poorly, the public will usually punish his party, especially in *off-year* (non-presidential) elections.

Today, the president is the chief politician in the United States. However, he still has to share his powers with Congress on many occasions, and Congress can keep his power in check, if necessary.