**Chapter 10** **The Presidency**

I.      Who Can Become President?

Article II, Section 1, of the Constitution sets forth the qualifications to be president. The two major limitations are a minimum age (35) and being a natural-born citizen (which eliminates naturalized citizens). While these minimal requirements would seem to allow most people the opportunity to run, only a few individuals have had a realistic chance. Of the 43 persons who have served as president, all have been white males and through 2004 only one, John F. Kennedy, was not a Protestant or Unitarian. A majority of the presidents have been lawyers and many have been wealthy.

II.         The Process of Becoming President

Once a candidate has received a nomination from his or her party, the candidate must win a majority of the votes cast in the electoral college. Since electors are decided in most states through a plurality system, it is possible for a candidate to lose the popular vote but still win the election, as has been the case four times, most recently in 2000. When more than two candidates have run for president, it is possible for one to win with less than 50 percent of the popular vote. It is also possible for no candidate to receive a majority of the votes cast in the electoral college, in which case the House elects the president by voting state-by-state for a candidate from the top three electoral vote getters.

III.       The Many Roles of the President

                  Over time, the institution of the presidency has evolved into numerous formal and informal roles.

A.    Head of State. One role is ceremonial head of state. As head of state the president is afforded a status of symbolic royalty and performs largely ceremonial duties. In most countries the head of state is not the leader of government, but is a separate position, such as the queen in Britain or the president in Germany.

B.    Chief Executive. The president also functions as the chief executive. In this position, the president is leader of government in the executive branch. This position requires that the president administer the laws of the country. Signing statements are written declarations regarding a law’s enforcement made by presidents when signing a bill into law. Often these statements note the president’s concern about the constitutionality of a bill. George W. Bush has used them more than all previous presidents combined.

1.     The Powers of Appointment and Removal. The president is responsible for selecting high-ranking, unelected officers of the government. As a result of the civil service system, the number of political appointments is a small part of the total number of government employees—somewhat more than 6,000 positions. The president’s power to remove officials who are not up to snuff is not explicitly granted by the Constitution, but instead was bolstered by a Supreme Court ruling of 1926 that allows the president to remove anyone he or she has appointed.

2.     The Power to Grant Reprieves and Pardons. Key concepts: reprieve, a formal postponement of the execution of a sentence imposed by a court of law, and pardon, a release from the punishment for or legal consequences of a crime. A pardon can be granted by the president before or after a conviction. At times reprieves and pardons are controversial.

C.    Commander in Chief. Through this power, control of the armed forces rests in civilian—rather than military—hands.

1.     Wartime Powers. The founders had George Washington in mind when they assigned control of the military to the president. This role has become a position that has more power and responsibility than any other.

2.     The War Powers Resolution. The War Powers Resolution of 1973 requires the president to report to Congress on the use of force when the president commits troops without congressional approval. Congress can require the president to withdraw forces.

D.    Chief Diplomat. As chief diplomat the president has the responsibility for setting the direction of foreign policy.

1.     Diplomatic Recognition. The president determines the governments that the United States will recognize as legitimate. The United States refused to recognize the governments of the Soviet Union and of China for decades after these communist governments came to power. At issue today is whether the U.S. should recognize Iran to facilitate diplomatic relations, which were suspended as a result of a hostage crisis in 1981 when Iranians took over the U.S. Embassy in Iran and held hostages for 444 days.

2.     Proposal and Ratification of Treaties. The president has the sole power to negotiate treaties. Two-thirds of the Senate must approve of a treaty before it goes into effect. Even if the Senate ratifies a treaty, it will not be valid unless the president then approves the Senate version of the treaty.

3.     Executive Agreements. The president can also make international agreements with the heads of foreign governments. These executive agreements do not require the approval of the Senate, but they also do not bind future presidents as treaties do.

E.     Chief Legislator. Some of the powers the president has as chief legislator are laid out in the Constitution. For example, the president gives a State of the Union message to Congress each year. Frequently this speech is used to outline the president’s legislative agenda.

1.     Getting Legislation Passed. The president attempts to persuade Congress to pass presidential proposals. If the president is from the same party that has control of both houses of Congress, it is easier for him to work with Congress on his legislative agenda. When the opposition party controls Congress, the president has a more difficult time gaining the enactment of his proposals.

2.     Saying No to Legislation. If Congress decides to ignore the president’s agenda and pursue their own legislation, the president may attempt to stop legislation by use of the veto, which can kill a bill (in the case of a pocket veto) or send it back to Congress for changes. George W. Bush did not use his veto power against his Republican Congress until 2006, when he vetoed legislation dealing with stem-cell research. Since Democrats took control of Congress in 2007, Bush has threatened to veto a number of proposed laws.

3.     The Line-Item Veto. In 1996 Congress enacted legislation that allowed the president to use the line-item veto on bills of revenue. In 1998, the Supreme Court ruled the line-item veto unconstitutional.

4.     Congress’s Power to Override Presidential Vetoes. When the president vetoes a bill, it is possible for Congress to override the veto with a two-thirds vote in both chambers. Overall, only about 7 percent of vetoes have been over-ridden.

F.     Other Presidential Powers. These include powers that Congress has bestowed on the president by statute (statutory powers) and those that are considered inherent powers. Inherent powers are those powers the head of government needs to fulfill his duties, as prescribed vaguely in the Constitution. An example of inherent powers is the emergency powers used by the president in times of war. Critics suggest that Congress has yielded some of its rightful powers to the president. In current times, President George W. Bush has argued that expanding the powers of the president is necessary to fight the war on terrorism.

IV.       The President as Party Chief and Superpolitician

A.    The President as Chief of Party. As the powerful leader of a political party, the president chooses the national committee chair. In the past, patronage was a reward presidents could bestow on party members, but the power of patronage has decreased with the establishment of the civil service. Increasingly, the president has acted as chief campaigner and chief fundraiser for the party. Typically, candidates for Congress and even state offices rely on the president’s ability to generate contributions to help fund their campaigns. The president also is expected to “go on the stump” and campaign for politicians of his party who are up for election. Presidents also have the power to reward loyal supporters with government funding (“pork”).

B.    The President’s Power to Persuade. Richard Neustadt observed almost fifty years ago that ultimately presidential success comes down to “the power to persuade,” since the Constitution gives Congress most of the authority in the U.S. political system. The targets of this persuasion are usually Congress and the American people. Some scholars have noted, though, that presidents can take direct action in pursuit of policies using presidential tools such as executive orders.

C.    Constituencies and Public Approval.

1.     Presidential Constituencies. The president serves many, including the general public (even nonvoters) and the supporters of the president’s party. The Washington community is an important constituency that monitors the president’s power and influence on a daily basis.

2.     Public Approval. How much success the president has is, in part, influenced and indicated by the public support for the president as measured in public opinion polls. The experiences of President Bush underscore the impact of popular approval on a president’s prospects. He had some of the highest approval ratings in history after September 11, 2001, only to dwindle to around 30 percent support in mid-2006.

3.     “Going Public.” When the president presents an idea to Congress, he may also “go public” in an attempt to generate popular support for his proposal.

V.         The Special Uses of Presidential Power

A.    Emergency Powers. These can be used during periods of national crisis. The United States Supreme Court identified these powers in the case of United States v. Curtis-Wright Export Corporation in 1936.

B.    Executive Orders. An executive order is a rule or regulation issued by the president that has the effect of law. Executive orders can implement and give administrative effect to provisions in the Constitution, treaties, and statutes. Also: the Federal Register, a publication of the U.S. government that prints executive orders, rules, and regulations.

C.    Executive Privilege. This is the right of the president, or a member of his administration, to withhold information from or refuse to appear before a legislative committee. This right is based on the constitutional doctrine of the separation of powers. Critics argue it can be used to shield actions of the executive branch from public scrutiny.

1.     Limiting Executive Privilege. There are limits to this type of claim as were demonstrated in the case of United States v. Nixon in 1974, which held that executive privilege cannot be used to withhold evidence to be used in criminal proceedings.

2.     Clinton’s Attempted Use of Executive Privilege. While under investigation for allegedly lying about a sexual affair, President Clinton attempted to claim executive privilege in a number of instances. The courts rejected the argument, following the precedent of United States v. Nixon.

3.     Executive Privilege in the Bush Administration. President George W. Bush has also claimed executive privilege occasionally. In his first term he used it to keep the head of the newly established Office of Homeland Security from testifying before Congress and also used it to resist congressional questions about the actions of his administration’s energy policy task force.

VI.       Abuses of Executive Power and Impeachment

Article I, Section 2, gives the House the sole power of impeachment. If a majority of the members of the House vote to impeach an officer of the United States, the Senate will conduct a trial. If two-thirds of the Senators vote for conviction the officer is removed from office. There have been two presidential impeachments in the history of the United States and no president has even also been convicted (and thus removed from office). Andrew Johnson was impeached by the House but the Senate did not vote to convict. President Nixon resigned his position before a vote on impeachment by the House in 1974. President Clinton was impeached by the House on charges or perjury and obstruction of justice; he also was not convicted by the Senate.

VII.     The Executive Organization

The structural organization of the executive branch was not outlined in detail by the Founders. All the Constitution provides for is a president and a vice president. The remaining structure was left to the discretion of the president and Congress. This lack of constitutional rigidity has allowed for a flexible expansion of the executive branch. The greatest growth in the executive branch occurred in the twentieth century.

A.    The Cabinet. The cabinet is also not laid out by name in the Constitution.

1.     Members of the Cabinet. The fourteen department secretaries and the attorney general meet to receive directives from the president, provide the president with information from their areas of specialization, and to advise the president on matters of state. The president may appoint other top officials to the cabinet, such as the vice president, the head of the National Security Agency or the director of the Office of Management and Budget. See Table 11-1. The president may also rely on the advice from close friends who do not hold a seat in government. These advisors are called the kitchen cabinet.

2.     Presidential Use of Cabinets. Some presidents have made more use of the cabinet as an advisory body than others have. Because departmental heads are often more responsive to their own departments, their interests can conflict with the interests of the president.

B.    The Executive Office of the President. This is made up of a variety of agencies that operate directly under the president, including the following:

       White House Office

       Office of Administration

       Council of Economic Advisers

       Council on Environmental Quality

       National Security Council

       Office of Management and Budget

       Office of National Drug Control Policy

       Office of Science and Technology Policy

       Office of the United States Trade Representative

       President’s Foreign Intelligence Advisory Board

1.     The White House Office. This includes the legal counsel to the president, secretary, press secretary, appointments secretary, and the chief of staff. Members of this office are highly political and may be former campaign officials. Their duties mainly are to protect the president’s political interests. Also, the White House Military Office provides communications, transportation, medical care, and food services to the president and the White House staff.

2.     The Office of Management and Budget. The OMB prepares the president’s budget for Congress’s approval. In principle, the OMB has broad fiscal powers because all agencies must submit their budgets to OMB for approval. It is not clear that it can affect the greater scope of the federal budget, though, and may be  more important as a clearinghouse for legislative proposals initiated by executive agencies.

3.     The National Security Council. This agency comprises the president’s key foreign and defense policy advisers. It includes the president, the vice president, the secretaries of state and defense, and the president’s national security adviser, in addition to other informal members.

VIII.   The Vice Presidency

The only formal duty of the vice president set out in the Constitution is to preside over the Senate.

A.    The Vice President’s Job.

1.     Strengthening the Ticket. Traditionally the presidential candidate selects a vice-presidential candidate who would strengthen the ticket. This usually meant the presidential candidate would select someone from a different geographical area and with different constituency strengths. Sometimes candidates select a running mate with a different philosophical perspective.

2.     Supporting the President. Once elected, the vice president is relegated to performing the tasks assigned by the president, which traditionally have been minor. In recent administrations, however, vice presidents have served as important presidential advisers.

B.    Presidential Succession. While the vice president has few formal obligations, there is one major responsibility: replacing the president if the president resigns, dies, or is incapable of performing the duties of president. On nine occasions the vice president has replaced the president. Other than Nixon’s resignation, all have been due to the death of the president. When the vice president replaces the president, he becomes the new president with all of the same powers and duties as if he had been elected. One major flaw with this system was that once the vice president became president there existed a vacancy in the vice presidency. On the first seven occasions when a vice president became president there was no way for the president to select a vice president. After President Kennedy was assassinated and Vice President Johnson became the new president, Congress began to work on an amendment that would eliminate this problem.

C.    The Twenty-Fifth Amendment. Ratified in 1967, the Twenty-Fifth Amendment would be used twice in the following seven years. One of the more controversial provisions in the Twenty-Fifth Amendment concerns the ability of the president to perform the duties of his office. If the vice president and a majority of the principal officers of the executive departments indicate to the leaders of Congress that the president is not capable of performing the duties of the office, the vice president shall assume power as the acting president.

D.    When the Vice Presidency Becomes Vacant. The Twenty-Fifth Amendment states that a vice president replacing a president can nominate a new vice president who must be confirmed by a majority of both houses of Congress. See Table 11-3 for a full list of the line of presidential succession, which was established by the Succession Act of 1947.

IX.        Features

A.    What If ...There Were No Executive Privilege? Executive privilege is the right of executive officials to withhold information from or refuse to appear before the legislature or judiciary. Executive privilege is enjoyed by the president and by those officials accorded that right by the president. Usually presidential administrations use executive privilege to safeguard national security secrets. If there were no executive privilege, presidents would know that all of their words, documents, and actions could be made public. Such a scenario would make it difficult for the current president to wage war on terrorism as he has thus far, and could lead government officials to resort to “informal” or secret meetings.

B.    Beyond Our Borders. Heads of Government are Not Always Directly Elected. In Parliamentary systems of government, including Great Britain and Canada, the head of government is chosen, not directly elected by the people.

C.    Which Side Are You On? Should the United States Negotiate with Terrrorist States? The president of the United States is the nation’s chief diplomat. Because governments that sponsor terrorism do not have the same rules or values, it is not possible to feel they will abide by any agreements or promises they make with the United States. Negotiation with terrorists or terrorist sponsoring countries will give them legitimacy.

D.    Politics and the Presidency. Elections of Change. Change has been a popular campaign theme for a long time but true change is difficult to create. Both Democrats and Republicans have promised change in presidential and congressional elections but few real changes have been accomplished.

E.     Politics and the Cybersphere. Scrubbing the White House Web Site Squeaky Clean. The president’s Web site is a good source for information, such as press releases, press conferences, and interviews. A criticism of President Bush’s Web site is that it often is scrubbed of dated material and not always updated with new information.

F.     Why Should You Care About the Presidency? Every day, the White House receives several thousand letters, phone calls, and other communications. Though presidents sometimes claim that they don’t look to opinion polls to set policies, they must still pay attention to the public opinion. Those who wish to articulate their opinions directly to the White House can send letters (which almost certainly will be responded to by a staffer), call the switchboard or comment line, or fire off an email.