The Presidency

What happened historically to transform the president from the “chief clerk” of the government (the president was not expected to initiate or guide national policy) in the 18th and the 19th century to a formidable politician – the imperial presidency - whose preferences must be taken into account?
Framers and the Presidency

The Framers intentionally designed the presidency to allow its occupant to rise to demands for quick and concerted action during times of national crisis.

- Rejected a plural executive.
- Created a focal point for coordinating collective action.

Two presidencies: Domestic and Foreign Affairs. Leadership gravitates toward the office during moments of national urgency.

- President best situated to propose a coordinated response.

The President and the Constitution

President’s duties/authority found in Article II.

Constitutional powers ambiguous and limited, yet president is considered quite powerful.

“No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.”
Fortunately, Jessie Ventura, Carl Weathers, and the dude who played “Billy” – could all be elected.

The Historical Presidency

Trick in designing an energetic presidency lies in avoiding a Napoleon.
- Napoleon would be someone who would use the temporary advantages conferred by a national crisis to permanently alter the constitutional order.

During the republic’s first century, presidents typically assumed a small role, thus in step with the Framers’ expectations.

They did not play a leadership role in domestic policy formulation, engaged in smaller administrative tasks.

Thus their accomplishments were limited to their responses to wars, rebellions, or other national crises.

A clerk and a commander….
The Era of Cabinet Government

Department secretaries played an important role during this period.

When a president had a question about a policy, needed clarification on complaints, or needed advice on whether to sign or veto a bill he consulted his cabinet.

The relationship between a president and his cabinet at this time was one of reciprocity, not loyalty.

Cabinet members helped the president achieve his political goals and, through the cabinet appointment, he gave them opportunities to pursue theirs.

The Modern Cabinet

The modern cabinet has lost much of its luster as an attractive office; it only has limited political clout.

Control over policy and even of department personnel has gravitated to the White House.

Cabinet tenure today is not a stepping stone to a more powerful political position but rather a suitable conclusion to a career in public service.
Historical Presidency

Presidential elections were the focal point for the national parties’ efforts. Winning the presidency usually meant the party took over Congress as well.

But when it came to policy-making, Congress dominated the attention.

So what does the nineteenth-century presidency say about the modern one? If the Constitution does thrust command authority on the office, most of the first century’s occupants of the office failed to notice.

But: one leadership dimension that did already stand out, however, was the capacity of the presidency to serve as a focal point for coordination (during presidential elections; coattails) and mobilization (war).

The Modern Presidency

National government grew dramatically during the 20th century.

Became global power with reluctance after WWI
- Presidents had to give more attention to foreign relations.

Greater responsibilities domestically:
- Federal bureaucracy grew and policies had to be administered.
- The president’s statutory authority increased

Divided government, where the president’s party does not control one or both chambers of Congress, has increased leading to:
- Greater reliance on president’s constitutional and unilateral powers, e.g. veto, executive orders, centralized administration
Commander in Chief

The Constitution: president is commander in chief of the nation’s armed forces.

- Founders had some difficulty giving one individual control over the military.
- Checked the president’s powers by making it so ONLY CONGRESS can declare war.

BUT, Congress’s exclusive power to declare war has become hollow.

Idea that presidents have the military at their disposal (at least in the short run) remains unchallenged.
- First-mover advantage. Forces Congress and the Courts to react.

For example, Lincoln suspended the writ of habeas corpus that prevented the Union Army from detaining civilians suspected of spying. He does not consult Congress.

Habeas Corpus

In 1861, Lincoln suspended habeas corpus and declares martial law in certain states.

John Merryman is arrested and charged with treason and being a commissioned lieutenant in an organization intending armed hostility toward the government. In *Ex Parte Merryman* (1861), Chief Justice Roger Taney writing for the Court, declares the President can not suspend habeas corpus. Lincoln ignores the ruling.

In 1864, Lambdin Milligan was persuading men to not join the Union army. He was arrested and tried under a military tribunal, convicted and sentenced to hang. In *Ex Parte Milligan* (1866), the Supreme Court ruled application of military tribunals to citizens when civilian courts are still operating is unconstitutional.

What did Lincoln think?
**Commander in Chief**


- Requires that the president inform Congress within forty-eight hours of committing troops abroad in a military action.
- Moreover, the operation must end within sixty days unless Congress approves an extension.
- BUT, Neither the law’s constitutionality nor its effectiveness in limiting the president’s authority has been tested.
- Presidents continue to commit the military without informing Congress:
  - Grenada
  - Somalia
  - Yugoslavia
  - Libya

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**Head of State**

The President is the Leader in foreign affairs:
- Lesson from the Articles of Confederation
- Seen as presidential prerogative since President Washington

Washington interpreted the provision “to receive Ambassadors,” to mean that he alone had the authority to recognize new governments and receive its ministers.

But this has been controversial at times, e.g. Truman & recognition of Israel (1948)
Head of State

The most important limitation on the president’s leadership in foreign affairs is the requirement that a two-thirds majority of the Senate ratify treaties.

- Rejected WWI peace treaty.
- Wilson's League of Nations.

Not as limiting a check today due to the use of executive agreements.

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Head of State

To avoid treaty rejections by the Senate, Presidents negotiate executive agreements:

- Exempt from Senate ratification
- Simply statements of understanding between the administration and a foreign government
- Unlike a treaty, an executive agreement cannot supersede U.S. law, and it remains “in force” as long as the parties find their interests well served by it.
- Congress can pass a law to remove them; courts can judge them in violation of the Constitution.

Now the primary instruments for conducting relationships with other countries.

- President Lyndon Johnson created a number of executive agreements giving foreign aid funds to countries that kept token forces in Vietnam.
Chief Executive

Article II of the Constitution: “the executive power shall be vested in a president of the united states of America.”

• Does not define this power.

Not until Section 2 does it confer any real administrative power -- appointment of government officers.

• Long on generalities; short on details

Lack of administrative power for the president suggested it would be difficult for presidents to gain control over public policy.

Congressional oversight of executive agencies also hampered the president.

Chief Executive

As government grew, however, this oversight became very difficult for Congress. Thus Congress delegated this responsibility to the president (at a time when there was unified government).

By delegating to the president and the appointed executive branch the discretion to decide how best to implement and adjust policy to achieve its objectives, Congress shares its lawmakers with the president. Why delegate?

(1) Programmatic necessity. They disagree over the specifics, so they intentional keep the language vague to avoid alienating potential bill supporters.

(2) Sincere policy need. They lack the expertise to make an informed, specific policy choice.

(3) Political advantage. They know a policy will cause problems so they pass the buck to the executive.
Chief Executive

The Supreme Court ruled 5-4 that for-profit corporations were exempt from a law its owners religiously objected to. The case, *Burwell v. Hobby Lobby* (2014) struck down “the contraceptive mandate, a regulation adopted by the US Department of Health and Human Services (HHS) under the Affordable Care Act (ACA) requiring employers to cover certain contraceptives for their female employees.”

When Congress passed the law in 2010, they allowed the administration to determine whether employers would be required to provide contraception to female employees under the law.

The court held that the law violated the Religious Freedom Restoration Act of 1993.

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Chief Executive

As attractive as delegation may be, it always has costs associated with it.

Agents may shift policy in an undesirable direction.

When that agent is the president, it is difficult to “fire” the agent. Difficult when the president chooses to administer a program in a direction different from the one Congress intended.

One must monitor agents’ performance to ensure that they are vigorously pursuing the tasks delegated.

Monitoring is difficult and costly: “Fire Alarms, not Police Patrols.”
Chief Executive

Executive orders are formal instructions from the president.

- Used in managing the federal government.
- Has the force of law until the president or a successor retracts it, Congress nullifies it, or a federal court rules it unconstitutional.
- Were not cataloged until 1907.
- Most arise from the authority and responsibilities explicitly delegated to the president by law.
- Used most frequently to establish an executive branch agency, modify bureaucratic rules or actions, change decision-making procedures, and give substance and force to statutes.

A smaller class of executive orders is based not on some explicit congressional delegation but on the presidents’ assertions of authority implicit in the Constitution’s mandate that the president

- “Take Care that the Laws be faithfully executed” (take care clause)

Chief Executive

The formulation and presentation of the annual budget to Congress is one of the president’s most important clerical tasks.

- Offers presidents an opportunity to set the spending priorities of the federal government.
- Represents the president’s “opening bid” on how much will be spent for what and where the money will come from.

Authority comes from the delegation of duty from Congress – 1921 Budgeting and Accounting Act.

Until the 1920s, agencies sent their budget requests directly to House Appropriations, who worked on them and then sent them to the Senate for consideration.
Chief Executive

Through delegation Congress has “pushed” work (and authority) onto the presidency.
- Development of the institutionalized presidency, a set of offices and staff created to assist the president.
- Also to help the president control the flow of information.

Efforts to centralize the administration
- Theodore Roosevelt – gag rule. Meant to assert control over the administration 1902 issued executive order prohibiting all federal employees from communicating with Congress.
- Extended by Taft
- Franklin Roosevelt – central clearance. Required that all department communications to Congress that could affect future budgets first be cleared as consistent with presidential policy by the Bureau of the Budget (precursor of the Office of Management and Budget)
- Reagan – new rules need to go to OMB for a cost-benefit analysis

The President as a Legislator

The Constitution gives presidents only a modest role in the legislative arena.
- May call Congress into special session.
- Veto laws (Article I).
- Must report “from time to time” to Congress with State of the Union address.

Yet modern presidents attempt to direct American policy by promoting a legislative agenda.

They must use their few constitutional tools as well as their ability to mobilize public support and their partisan allies in Congress.
Unified versus Divided Control of Government

During the past half century, unified party control has occurred less frequently than divided government.

How do presidents deal with this situation?

- Pull decisions into the White House.
- Carefully screen appointees to federal agencies.
- Utilize the veto.
- Go public (engage in intensive public relations to promote their policies to voters).

The President as a Legislator

Perhaps the president’s most formidable tool in dealing with Congress is the veto.

- Constitution defines the veto precisely.
- Used relatively rarely – most used by Gerald Ford. In the past fifty years, the average is fewer than ten vetoes a year.

The veto allows the president to block congressional action but does not allow the president to substitute his own policy preferences.
Veto Bargaining

The veto offers presidents a clear, self-enforcing means of asserting their preferences.

The threat of a veto is a potent one as well.

– Presidents can use the threat to manipulate Congress’s expectations about the likely result of alternative legislative packages, thereby inserting his policy preferences into legislation at an early stage of the process.

The President as a Legislator

"I have my veto pen drawn and ready for any tax increase that Congress might even think of sending up. And I have only one thing to say to the tax increasers. Go ahead-- make my day."

--Ronald Reagan, to the American Business Conference, 1985
Modern Presidents as Legislators

Another major tool: mobilizing public opinion

- State of the Union address…Until the 20th century, presidents routinely delivered their “State of the Union” to Congress via courier, where it was read to an inattentive audience.
- Today it is a “prime-time” opportunity for presidents to mold public opinion and steer the legislative agenda on Capitol Hill.

Today, Congress gives the president’s legislative proposals serious consideration. Lawmakers expect the president to advise them about problems with current policy and administration and to recommend adjustments to improve performance.

Because of the president’s role administering the laws, a major role in the legislative process is ensured.
- 90 percent of presidents’ initiatives are considered by some congressional committee or subcommittee.

A Unilateral President?

A unitary president is one who tries to extend their influence unilaterally by utilizing certain procedural tools like executive orders, executive agreements, signing statements, recess appointments and vetoes.

The president takes advantage of first mover status, forcing Congress and the Courts to react. Utilizes ambiguities in the Constitution.
A Unilateral President?

Positives – Can be beneficial for Congress (ex: military base closings).

President can move faster, work more efficiently due to the lower transaction costs.

Say one needed to end the corrupt trade federation’s embargo of their home planet and was frustrated by bureaucratic delays. A unilateral executive could deal with such a situation quickly and efficiently.

A Unilateral President?

Negatives – Power can be abused and is very difficult to get back.

It becomes difficult to get out of wars, to respond to executive orders or agreements or to reign in the usage of recess appointments or signing statements.

In short, one day you’re giving the administration the ability to respond to the struggling economy and the next thing you know, they’re blowing up Alderaan.
Conclusion

Questions?

Enjoy the rest of your day!