

# THE PRESIDENCY

Because it was still fighting a war against King George III at the time the Articles of Confederation were drawn up, the Continental Congress was exceedingly wary of executive authority and didn't provide for it in the Articles. The framers of the Constitution, on the other hand, appreciated the need for an executive but debated whether it should be in the hands of a multi-person board or a single individual. They eventually decided on a president to serve a four-year term, and made sure through the formation of the electoral college that presidential selection was as far removed from the people as possible. Since that time, the presidency has evolved considerably further than the delegates at the Federal Convention could have imagined.

Under many parliamentary systems, the chief of state and the chief executive are different people. In Great Britain, the monarch is the chief of state but the prime minister is the chief executive. The president plays both roles, and the distinction between them is not always clear-cut. When accepting the credentials of a new ambassador to the United States or lighting the national Christmas tree, the president is acting as the chief of state. A lavish banquet for a visiting dignitary may bear all the trappings of a state affair, but is actually part of the president's responsibility as the nation's chief diplomat.

## Presidential Authority

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In addition to seeing that all laws are faithfully executed and having the right to pardon individuals convicted of federal crimes (except impeachment), the authority granted to the president under the Constitution covers three broad areas: foreign policy, legislative authority, and appointive powers.

### Foreign Policy

Ever since George Washington announced American neutrality in the war between Great Britain and France, the president has been responsible for articulating and implementing the foreign policy of the United States. There are numerous tools that the president can employ in U.S. relations with other countries such as the threat or use of military force, or the promise of foreign aid. He or she also can work through intergovernmental organizations such as the United Nations, or use personal diplomacy and persuasion.

The president negotiates treaties with other nations, but such international agreements do not go into effect until the Senate approves them through a two-thirds vote. Although the Senate usually goes along with the administration, there have been notable exceptions. The Senate rejected the Treaty of Versailles that ended World War I because it included the Covenant of the League of Nations that, according to many in Congress, weakened American freedom of action. As a result, the United States never became a member of the League of Nations and signed separate treaties with Germany and the other Central Powers.

The president isn't the only one who can make treaties, however. The Secretary of State, which was the first cabinet position created in 1789, has responsibility here as well, along with the coordination and supervision of the diplomatic efforts of the United States. The president appoints ambassadors and other officials, in addition to the Secretary of State, to carry out American foreign policy.

The president's authority in foreign policy grew as the United States transformed itself from a minor player in world affairs to the only super power since the collapse of the Soviet Union. The chief executive also receives ambassadors from other countries, confers diplomatic recognition, and is the commander-in-chief of the armed services. As the commander-in-chief, the president can commit American troops overseas, confer commissions on military officers, and head the National Guard when called to serve the United States.

The close link between the military and the conduct of foreign policy is clear. At the end of the Vietnam War, however, Congress became extremely wary of the president's ability to commit American troops to hot spots around the world. With the presidency weakened by the Watergate scandal, Congress passed the **War Powers Act (1973)** to limit presidential power as commander-in-chief. The legislation is discussed at greater length later in the chapter.

## Legislative Authority

Despite the separation of powers, the president has significant legislative authority under the Constitution. In fact, the president is often called the nation's chief legislator. Much, but by no means all, that Congress does during a term focuses on the legislation that the president wants to enact. The State of the Union address each January is an outline of the administration's legislative agenda for the coming session. In addition, the president can call the House and the Senate into special session, and can adjourn both houses if they cannot agree on an adjournment time.

In the recent past, presidential programs put before Congress defined administrations. Franklin Roosevelt's New Deal, John F. Kennedy's New Frontier, and Lyndon Johnson's Great Society are examples. The success a president has in moving legislation through Congress depends on several factors. It is an easier job if the same party controls both the White House and Congress; in recent years, however, divided government has been the rule. The president's own political skill is obviously important. Lyndon Johnson, who was Senate majority leader before becoming Kennedy's vice-president, was a master at working Congress. Bill Clinton's relationship with Congress during his first term was miserable, but he learned from his mistakes. The president can use the prestige of the office to encourage members of Congress to support his policies or use the "bully pulpit" to mobilize public opinion behind a legislative initiative.

The most important legislative power the president has is the veto. A bill becomes law if it is signed by the president within 10 days after it passed both houses of Congress. Through the veto, the bill is sent back to Congress along with the reasons for its rejection. Congress can override the veto (meaning the bill goes into effect despite the president's objections) by a two-thirds vote in the House and the Senate. Because Congress rarely can muster the necessary votes, the presidential veto or even the threat of a veto is a powerful tool for shaping national

policy. Every president knows that only around 4% of vetoes are overridden. If the president neither signs nor vetoes a bill within the 10 days, it becomes law. The president has another option. If the president takes no action on a bill and Congress adjourns during that 10-day period, the bill is dead. This is known as a **pocket veto**. Congress does not have the opportunity to override a pocket veto because it is no longer in session. Supporters of the bill have to reintroduce it in the next session, and start the legislative process all over again.

## Appointive Powers

The president appoints a broad range of federal officials, including justices of the Supreme Court, subject to the approval of the Senate. The Constitution also provides a way around a recalcitrant Senate; the president can fill “all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session [of Congress].”

Both presidents Bush and Clinton turned to the expedient of a **recess appointment** when the Republican-controlled Senate balked at acting on several nominees for high government positions. The appointment power allows a president to have an administration that supports his policies and programs. All presidents appreciate that the selection of a Supreme Court justice is their most important appointment. Their selection can shape the direction of the Court for years to come.

## Inherent Powers

Under the doctrine of **inherent powers**, the president can infer additional powers from the provisions of the Constitution. For example, Thomas Jefferson initially believed that a constitutional amendment was necessary to buy the Louisiana Territory from France, but went ahead with the purchase after he was convinced it was justified under his ability to enter into treaties.

Many presidents claim **executive privilege**. This means that the president decides when information developed within the Executive Branch must be kept confidential, and not released to either the Congress or the courts. The basis of an executive privilege claim is two-fold: separation of powers and the need to protect diplomatic and military secrets; a somewhat broader concept holds that confidentiality of the advice given the president must be maintained or else candid appraisals would not be rendered. While recognizing the need for executive privilege in certain instances, the Supreme Court ruled in *United States v. Nixon* (1973) that the president did not have an absolute right to refuse to turn over evidence sought by the judiciary. The case involved tape recordings of White House conversations between the president and his aides that Nixon did not want to turn over to the special prosecutor during the Watergate scandal.

There are also functions that the president performs that are not clearly spelled out in the Constitution or that the framers never envisioned. For instance, one of the key functions of the president is to serve as the head of his party. In this capacity, he helps raise money, campaigns for candidates for state and federal office, and appoints the chair of the national committee that runs the day-to-day operations of the party.

The founding fathers were opposed to political parties. James Madison criticized what he called “factions” in *The Federalist No. 10*, and President George Washington warned against “the baneful effects of the spirit of party” in his Farewell Address to the nation in 1796. Today, a president can expect some, but not unqualified support from members of his own party in Congress. Members are ultimately responsible to voters in their district for political survival, and must decide whether following the president is an advantage or not. Political scientists often refer to a president’s coattails — the ability of the president or the party’s candidate for president to get representatives and senators elected. Studies show, however, that the congressional gains of the party that takes the White House are rather modest. In **midterm elections**, those held between presidential elections, the president’s party invariably loses seats — the Democrats lost control of both the House and the Senate under Bill Clinton in 1994. Along the same lines, every president enjoys a brief time after the inauguration when relations with Congress, the public, and the media are usually very good. This is known as the “honeymoon period,” and reflects the sense of a new beginning after a hard-fought election campaign.

Congress, moreover, has given presidents additional power through legislation, which the Supreme Court has sometimes rejected and at other times endorsed. The Budget and Accounting Act of 1921, for example, gave the president the authority to establish the annual budgets for all federal agencies. It created the Bureau of the Budget, which became the Office of Management and Budget in 1970, to assist the White House with this new function. Congress also gave the president the power to negotiate trade agreements that reduce or modify tariff rates for a limited period of time. These are called **congressional-executive agreements**, and only require a majority vote in both houses of Congress to go into effect, not a two-thirds vote of the Senate. The North American Free Trade Agreement (1993) is a good example.

Congressional-executive agreements, which deal with the president’s so-called **fast-track trade authority**, should not be confused with simple **executive agreements**. These are understandings that presidents routinely enter into with others heads of state, ranging from mundane matters like customs regulations to serious issues like arms control. Executive agreements do not require any congressional action to go into effect.

The **Line-Item Veto Act** (1996) allowed the president to selectively cancel portions of a bill without vetoing the entire bill. It provided a means to cut federal spending and reduce the deficit. The Supreme Court in *Clinton v. City of New York* (1998) found the law unconstitutional because the president was given the opportunity to “amend” legislation.

What Congress gives, it can also take away. The best-known example of Congress attempting to limit the power of the president is the 1973 **War Powers Act**. With the experience of the Vietnam War fresh in everyone’s mind, the ability of a president to commit American troops to combat was limited to sixty days without congressional approval. The War Powers Act was passed over President Nixon’s veto, and the Supreme Court has never fully examined it. The history of American military action since 1973 suggests that the War Powers Act has not unduly hampered American foreign or military policy.

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## The Organization of the Executive Branch

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The Constitution clearly envisioned that the Executive Branch would consist of more than just the president. It refers to “the principal officers in each of the executive departments,” and holds out the possibility that the “Heads of Departments” may appoint other officials. In carrying out executive functions, the president relies on the following:

- The White House Office
- The agencies that comprise the Executive Office of the President
- The Cabinet

### The White House Office

The closest advisors to the president comprise the White House Office. As the president’s personal staff, they do not require confirmation by the Senate and serve at the pleasure of the president. Many have a long relationship with the president and/or played an important role during his election campaign. They include the following:

- The chief of staff, who is responsible for the overall operations of the White House Office
- The national security advisor, who briefs the president on a daily basis on the world situation
- The chief domestic policy advisor, who coordinates the administration’s programs both within the Executive Branch and Congress
- The communications director/press secretary, who is the spokesperson for the president and the administration and meets with the White House press corps daily

In addition, there are numerous special assistants, counselors, and assistants to the president that deal with a broad range of political and legislative issues. The West Wing houses offices for key personnel on the White House staff, just a few steps away from the Oval Office. The vice-president and his/her staff also have offices in the West Wing.

### The Executive Office of the President

The Executive Office of the President (EOP) was created by Franklin Roosevelt in 1939 to help him oversee the myriad of federal agencies and programs created as part of the New Deal. Today, the EOP is an umbrella organization for a variety of administrative agencies, the most important of which are the **Office of Management and Budget (OMB)**, the **National Security Council (NSC)**, and the **Council of Economic Advisers (CEA)**. Unlike the White House staff, appointments to EOP agencies do require confirmation by the Senate.

Executive Office of the President	
<i>Agency</i>	<i>Function</i>
Office of Management & Budget	Primary responsibility is to prepare the administration's budget proposal; in addition, the OMB evaluates the operation of federal programs, reviews legislative proposals from the cabinet departments, and reviews the rules/regulations proposed by federal agencies.
National Security Council	The statutory members of the NSC include the president, vice president, and the secretaries of defense and state. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence (CIA) are the statutory military and intelligence advisers, respectively. The Secretary of the Treasury, the U.S. Representative to the United Nations, and the National Security Advisor are among those invited to all meetings. The Council is the principal forum for discussing national security and foreign policy, and is responsible for coordinating policies with various other federal agencies.
Council of Economic Advisers	Provides assistance and advice to the president in preparing the annual economic report; it also collects and disseminates information on economic policy and trends and recommends policies to the president.

The Office of National Aids Policy, the Office of National Drug Control Policy, the Office of the U.S. Trade Representative, and the Office of Personnel Management are also part of the EOP.

## The Cabinet

The Cabinet has grown from three departments under George Washington — State, War (now Defense), and Treasury — to fourteen today. The administration and Congress are currently (2002) considering adding a fifteenth — the Department of Homeland Security. That growth not only reflects the fact that the scope of the government's responsibilities have changed, but also reflects successful lobbying by interest groups — farmers in the case of the Department of Agriculture; workers and the early unions in the case of the Department of Labor. The creation of a new executive department says that an issue is important to the country.

The Cabinet	
<i>Department</i>	<i>Comment</i>
Secretary of State (1789)	The main foreign affairs agency of the federal government; the secretary is the president's chief foreign policy advisor.
Secretary of the Treasury (1789)	Responsible for developing domestic and international financial, economic, and tax policy; the secretary is a key economic advisor to the president.

<b>Department</b>	<b>Comment</b>
Secretary of Defense (1789)	Maintains and directs the military and defense policy of the United States; originally was the Secretary of War. The position of Secretary of Defense was created in 1947 for the National Military Establishment, and the Defense Department was formally established in 1949.
Attorney General (1789)	The Office of the Attorney General was created in 1789, but the Department of Justice, which the attorney general heads, was not established until 1870.
Secretary of the Interior (1849)	Responsible for the protection and management of the nation's natural and cultural resources, including the national parks and territories; federal-Native American relations are under its jurisdiction.
Secretary of Agriculture (1862)	Develops American agricultural policy, including farm income maintenance programs and expanding markets for American farm products; food safety is also a responsibility.
Secretary of Commerce (1903)	Created as Department of Commerce and Labor in 1903 with separate departments established in 1913. Promotes international trade, economic development, and technological innovation; Patent Office and Bureau of the Census are under its umbrella.
Secretary of Labor (1913)	Enforces federal labor laws, improves working conditions, and promotes opportunities for workers through training and full employment.
Secretary of Health and Human Services (1953)	The Department of Health, Education, and Welfare (HEW) was created in 1953; when the education functions were transferred to the new Department of Education in 1979, the Department was renamed Health and Human Services.
Secretary of Housing and Urban Development (1965)	Focuses on national housing needs, fair housing policies, insures mortgages, and provides federal housing subsidies.
Secretary of Transportation (1966)	Oversees national transportation policy, including safety regarding airlines, railroads, federal highways, and maritime traffic.
Secretary of Energy (1977)	Develops national energy policy, promotes energy source diversity, and is a source of information on energy technology.
Secretary of Education (1979)	Establishes policy, administers, and coordinates federal aid to education at all levels.
Secretary of Veterans Affairs (1989)	Established in 1930 as the Veterans Administration, operates medical care, disability, and pension programs for veterans and their families.

In addition to the president, vice-president, and the cabinet secretaries, there are other federal officials entitled to attend cabinet meetings. The heads of federal agencies that hold cabinet rank at the direction of the president include the following:

- The administrator of the Environmental Protection Agency
- The U.S. Trade Representative
- The chief of the Office of Homeland Security

With 14-plus members, the cabinet is too large to be an effective policy-making body. The cabinet secretaries are, however, the link between the administration and their departments. They are expected to carry out the president's policies in their areas and manage their own bureaucracies in an efficient and effective manner. But they are also subject to other pressures — Congress determines their budgets and functions in the role of overseer, career civil servants within the departments have their own institutional culture, and interest groups are always trying to move policy in one direction or another.

Cabinet members are the most visible appointments that a president makes. Several factors are taken into account in selecting a nominee:

- The nominee's professional qualifications and experience for the job are obviously critical, as are the views of a candidate on the issues with which the department is concerned. A president who campaigned on a strong environmental platform is unlikely to consider someone for the Secretary of Energy who advocates extensive off-shore drilling for oil or building a natural gas pipeline through a wilderness preserve.
- The nominee's relationship with important constituent groups influences his or her chances as a cabinet choice. A nominee for Secretary of Labor or the Secretary of Veterans Affairs must have support from organized labor and veterans groups, respectively. Also, almost invariably, people that the president names to the cabinet share the same party affiliation as he.
- The cabinet candidate should reflect the diversity of the country. Both President Clinton and Bush appointed women and members of minority groups to key cabinet positions.

The White House Office, the Executive Office of the President, and the cabinet do not exhaust the Executive Branch. Each executive department employs tens of thousands of workers in various agencies and bureaus. The Justice Department, for example, includes the Federal Bureau of Investigation, the Immigration and Naturalization Service, and Drug Enforcement Administration. In addition, there are **independent executive agencies** such as the Environmental Protection Agency and the National Aeronautics and Space Administration (NASA), and **independent regulatory agencies** such as the Federal Energy Regulatory Commission. Both independent executive and regulatory agencies are discussed in the chapter on the bureaucracy.

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## The Vice President, Presidential Succession, and Impeachment

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Under the Constitution, the vice-president presides over the Senate and casts a vote in the event of a tie. Although John Adams called the vice-presidency “. . . the most insignificant office that ever the invention of man contrived or his imagination conceived,” the fact remains that fourteen vice-presidents have become president either through death (natural or otherwise), resignation, or winning the office in their own right. The election route to the White House is not an easy one. In the twentieth century, only two vice-presidents succeeded: Richard Nixon and George Bush, and Nixon lost to John Kennedy the first time around. As Al Gore learned in 2000, it is difficult for a vice-president to escape the shadow of his predecessor.

All presidential candidates claim that their choice of a running mate is dictated by the ability of that person to assume the nation’s highest office. Over the last quarter of a century, vice-presidents have complemented the strengths of the top of the ticket. Jimmy Carter, a one-term governor from Georgia who ran as a Washington outsider, selected Senator Walter Mondale, who had considerable experience in Congress. Ronald Reagan’s lack of expertise in foreign policy was balanced—to an extent—by George Bush, who had served as ambassador to China and as director of the CIA. To be sure, the president determines the responsibilities given to the vice-president. Al Gore was a close advisor to President Clinton, and an important voice for the administration on environmental issues. Although there was much comment on the fact that Vice President Cheney became less visible after the events of September 11, 2001, there is little doubt that he is a major policy maker in the Bush Administration.

The Presidential Succession Act of 1947 established the order of succession after the vice-president. If the vice-president cannot serve, the office falls to the Speaker of the House, followed by the president pro tempore of the Senate, and then the cabinet secretaries in the order in which their departments were created—for instance, the Secretary of State is first. There are several shortcomings with this system. The Speaker of the House and the president pro tempore may well be from a different party than the president in this era of divided government, and the president pro tempore may be elderly since the position is based on seniority. Moreover, the law did not address a vacancy in the vice presidency. The Twenty-fifth Amendment resolved the issue of a vice-presidential vacancy.

When a vacancy occurs, the president selects a nominee for the office who a majority of both houses of Congress must confirm. This procedure has been used twice to date—the selection of Gerald Ford by President Nixon following the resignation of Spiro Agnew, and Ford’s selection of Nelson Rockefeller when Nixon left office and became president. The amendment also addresses the matter of presidential disability.

The vice-president serves as acting president when the president declares that he cannot discharge the duties of the office. This section might be invoked, for example, if the president undergoes surgery. The vice president and a majority of the cabinet can also declare that a president is incapable of exercising his authority, and, in such an event, the vice president becomes acting president. If the president challenges this action, Congress must ultimately decide by a two-thirds vote if indeed the president is unable to serve.

The Constitution provides a means of removing a president from office by impeachment in the House of Representatives and conviction at trial in the Senate for “treason, bribery, or other high crimes and misdemeanors.” Impeachment is the process to determine whether there is enough evidence to bring the president to trial; it is very similar to an indictment. The investigation of the charges is the responsibility of the House Judiciary Committee, which issues Articles of Impeachment to the full House if warranted. Richard Nixon resigned in 1974 before the full House acted on the Articles of Impeachment. At the Senate trial, which is presided over by the chief justice of the Supreme Court, members of the House represent the “prosecution” while the president has his own lawyers. The Senate needs a two-thirds vote on any of the Articles of Impeachment to convict the president. At the trial of President Clinton (1999), the Senate rejected the charge of perjury before the grand jury and split on the charge of obstruction of justice.

## Sample Multiple-Choice Questions

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1. The period immediately after a new president is inaugurated is known as the *honeymoon* because
  - A. other nations do not challenge the United States
  - B. the president’s popularity is at its highest level
  - C. there is no in-fighting between members of the president’s staff
  - D. the president has not vetoed any legislation
  - E. partisanship in Congress is high
2. All of the following are powers granted to the president under the Constitution EXCEPT:
  - A. negotiate treaties with other nations
  - B. nominate justices to the Supreme Court
  - C. present legislation to Congress
  - D. serve as the leader of a political party
  - E. call Congress into special session
3. Examples of Congress delegating additional powers to the president include the
  - I. legislative veto
  - II. line item veto
  - III. War Powers Act
  - IV. Budgeting and Accounting Act
  - A. II only
  - B. I and III only
  - C. II and IV only
  - D. IV only
  - E. I and II only
4. The responsibilities of the vice president in an administration are determined by
  - A. the provisions of the Constitution
  - B. the relationship between the president and vice president
  - C. polls indicating the popularity of the vice president
  - D. the size of the election victory
  - E. whether the president’s party also controls Congress