

THE PRESIDENCY: THE PERSONAL BRANCH

I. INTRO

- a. President Bush's decision to have the NSA eavesdrop on potential terrorist conversations created controversy in how far the president and executive branch can go to protect our country from foreign enemies. Both the judicial and legislative branches challenged the president. Congress extended the authority after Congressional hearings
- b. Shows the power of the presidency
- c. The framers were very concerned with giving the chief executive too much power

II. THE STRUCTURE AND POWERS OF THE PRESIDENCY

a. INTRO

- i. Framers wanted president to dispatch threats, but worried they would become too powerful
- ii. Wanted president to steer clear of parties and factions, enforce laws of Congress, handle communications with foreign governments and put down disorders
- iii. President was a powerful check to legislative action and essential to administration of government
- iv. Hamilton in Federalist #70 explains the presidency in detail

b. AN ESSENTIAL DIFFERENCE

- i. Different than the United Kingdom, in the U.S., the three branches of government are independent of each other with a system of checks and balances against the abuse of power

c. INITIAL DECISIONS

- i. Framers' 1st decision was most important- single executive; increase the risk of tyranny in return for efficiency
- ii. If the framers wanted Congress to choose the presidency from its members, that would be a PARLIAMENTARY SYSTEM of government
- iii. Delegates rejected direct election in favor of the electoral college
- iv. Also gave him 4 year term of office; silent on number of terms until 1951 where 22nd Amendment gave maximum of 2 terms
- v. Also created the VP in case president left office during term; gave VP power to break ties in Senate; no other Constitutional duties
- vi. Qualifications for president and VP
 1. At least 35
 2. Natural born citizen
 3. Resident of U.S. previous 14 years

d. RUNNING FOR OFFICE

- i. Originally, the candidate who received the second most electoral votes would become VP;
 1. Created a Constitutional crisis in 1800 with Adams and Jefferson (Federalist and Anti-federalist)
 2. Under 12th Amendment in 1804, electors were able to cast separate votes for president and VP, encouraging people to run together under a PRESIDENTIAL TICKET

e. PRESIDENTIAL POWERS

- i. Article II vests the executive power in the president; this VESTING CLAUSE allows the president to argue that after a bill is signed into law, he controls everything that subsequently happens through the executive branch

- ii. In regards to foreign threats and day-to-day operation of the government, Article II establishes the president's authority in:
 - 1. Commander in Chief of army and navy
 - a. Congress can declare war
 - b. Congress can appropriate money for war; limits presidential power
 - c. Presidents have interpreted war powers more broadly where they can order troops into battle
 - 2. Diplomat in Chief
 - a. Chief negotiator of TREATIES binding agreement between U.S. and one or more foreign nations that require mutual action and a common goal; must be approved by 2/3 of Senate
 - b. President can make EXECUTIVE AGREEMENTS with other nations; does not need Senate approval; most are made public but some are secret
 - c. Presidents can also make CONGRESSIONAL-EXECUTIVE AGREEMENTS - same concept as treaties but require majority approval in both houses
 - 3. Manager in Chief
 - a. In charge of day to day operation of federal departments and agencies
 - b. Appoint ambassadors, judges, and all other officers of the United States, including heads of the executive offices, with the advise and consent of the Senate
 - 4. Additional Executive Powers

- a. APPOINTMENT POWER – As above, ambassadors, judges, other offices of executive branch; simple majority of 51 votes
 - i. Key is ability to shape judicial power in future; ideology is crucial to appointments
 - ii. Power to make RECESS APPOINTMENTS when Congress is in recess
 - 1. Use to appoint controversial nominees when Congress is in recess
- b. VETO POWER – Approve law passed by Congress or issue veto; override requires 2/3 of both houses
 - i. Power of veto lies in the difficulty in overriding it
 - ii. Veto power is only credible if used. George Bush didn't use any veto power
- c. PARDON POWER- traced to England; most delicate power
 - i. Very controversial
- d. TAKE CARE POWER – responsible for implementing the laws Congress enacts – TAKE CARE CLAUSE of Article II
 - i. Use this clause to claim INHERENT POWER of protecting the nation
- e. POWER TO INFORM AND CONVENE CONGRESS

- i. STATE OF THE UNION ADDRESS falls under this responsibility
- ii. Power to convene Congress in extraordinary circumstances; after 9/11

5. PRESIDENTIAL SUCCESSION

- a. 22ND Amendment notes president must leave office after 2 terms
- b. 25th Amendment; presidents can be temporarily removed for illness or disability by VP or majority of Congress or Cabinet
- c. VP, Speaker of House, President Pro Tempore, Secretary of State, Sec of Treasury, Defense and down the line
- d. IMPEACHMENT – majority of House impeaches for high crimes and misdemeanors; Chief Justice oversees trial in Senate- 2/3 to convict
 - i. Only Andrew Johnson and Clinton; Nixon would have had he not resigned

III. CONTROVERSIES IN PRESIDENTIAL POWER

a. THE WAR POWER-

- i. Article I of the Constitution gives Congress the power to declare war, but Article II gives the president power to wage war as Commander In Chief
- ii. When presidents have requested congressional approval, they have asked for broad resolutions of support

- iii. Presidents defend the power because they have more sources of information, some of them classified to respond quickly to military threats
- iv. Some scholars and presidents believe that Congress has abdicated its responsibility
- v. Congress tried to reassert its authority in the War Powers Resolution in 1973 regarding the Vietnam War; President can commit armed forces only
 - 1. After declaration of war by Congress
 - 2. By specific statutory authorization
 - 3. In a national emergency created by attack on U.S. or its forces
 - a. Required to report to Congress after 48 hours
 - b. Unless Congress declares war, troop withdrawal after 60 days

b. THE POWER TO INVOKE EXECUTIVE PRIVILEGE

- i. Power to keep secrets to protect national security or confidential White House conversations about public policy
- ii. Experts argue executive privilege has no Constitutional basis
- iii. Most scholars, Congress and judicial members believe the president has the implicit right to executive privilege
- iv. Supreme Court upheld executive privilege during the Watergate scandal
- v. Continually tested, especially in divided government

c. THE POWER TO ISSUE EXECUTIVE ORDERS

- i. President executes the laws and directs the federal departments many times through EXECUTIVE ORDERS, which are formal directives that are as strong as laws; have been upheld by courts as long

as they don't conflict with the Constitution or Federal law

- ii. Bush created an executive order which created the Office of Homeland Security

d. BUDGET AND SPENDING POWER

- i. Congress is charged with appropriating money, but the president is responsible for actually spending it
- ii. Congress enacted in 1974 the Congressional Budget and Impoundment Control Act which significantly curtailed the ability of the president's use of IMPOUNDMENT or refusal to spend appropriations that had been passed into law
- iii. Congress voted in 1996 to give the president the ability of LINE ITEM VETO but the Supreme Court struck it down and indicated it would require an amendment to the Constitution; many states have line item vetoes allowed in their state constitutions

e. USE OF UNILATERAL POWERS

- i. President controls much of the information from federal departments and agencies
- ii. Presidents can use SIGNING STATEMENTS to express the opposition to the bill they are signing into law. They believe it is either unconstitutional or too vague to be put into practice

IV. THE EVOLUTION OF PRESIDENTIAL POWER

a. INTRO

- i. Steady, but uneven, growth
- ii. Large expansion after Great Depression
- iii. GEORGE WASHINGTON'S IMPACT
 - 1. He understood that people needed to have confidence in government, a sense of

continuity in the past, and a time of calm,
free of emergencies and crises

2. Set important precedents

- a. Established legitimacy and basic authority of office
- b. Negotiated first treaty, appointed judges and ambassadors, vetoed legislation and signed first laws
- c. Most important might have been retiring after 2 terms

iv. THE FIRST MODERN PRESIDENCY

1. More powerful than framers ever imagined
2. FDR 1st modern president that greatly expanded powers
 - a. 4 terms
 - b. New Deal and greatly expanding government's role in the economy
 - c. President during WWII
 - d. Personal relationship with U.S. through fireside chats

V. MANAGING THE PRESIDENCY

a. Need for "inner circle" of loyal and close advisers

b. THE WHITE HOUSE STAFF

- i. Work in the West Wing of the White House
- ii. Intensely loyal to the president
- iii. FDR and LBJ created a competitive environment for the staff; "survival of the fittest"
- iv. JFK, Carter and Clinton took a collegial approach to the staffers
- v. Bush, Eisenhower and Nixon took a hierarchical approach to the staffers

vi. WHITE HOUSE BUREAUCRACY

1. About 400 staffers today

2. The CHIEF OF STAFF, one of the president's most loyal assistants, heads the staff, which also includes the president's chief lawyer, speechwriters, legislative liaison staff, and press secretary
3. Two types of staffers
 - a. Political- help run for reelection, control national party, and shape images
 - b. Policy- shape president's foreign and domestic policies

vii. THE EXECUTIVE OFFICE OF THE PRESIDENT

1. Created in 1939 give president more help in running the federal departments and agencies
2. Review figure 12-1 on page 341 for all the agencies involved
3. OFFICE OF MANAGEMENT AND BUDGET (OMB) is the central presidential staff agency.
 - a. Advises the president about the hundreds of government agencies
 - b. Improve the planning, management, and statistical work of the agencies
 - c. Prepares the budget, which creates its own power and influence

VI. THE CABINET

- a. Unusual institution; not specifically mentioned in the Constitution, but been around since 1789
- b. DEFINING THE CABINET
 - i. First major job of the president
 - ii. Includes the president, VP and 15 heads of executive departments

- iii. Loosely organized body
- iv. Some cabinet members are “captured” by their departments, especially the members of domestic policy matters

c. THE VICE PRESIDENCY

- i. For most of history, not a critical job; sometimes even dismissed as a joke
- ii. Sometimes used to “balance the ticket”
- iii. Dick Cheney was one of the most trusted and advised VPs

VII. THE PRESIDENT’S JOB

a. INTRO

- i. Want commander in chief, national morale builder, leader in foreign and domestic policy, crisis manager and role model, and able to relate to the common man

b. PRESIDENTS AS MORALE BUILDERS

- i. Project a sense of national unity and authority as country’s chief ceremonial leader
- ii. By their actions, they can arouse a sense of hope or despair, honor or dishonor
- iii. Self-confidence is crucial

c. PRESIDENTS AS AGENDA SETTERS

- i. Responsible for proposing initiatives
- ii. ECONOMIC POLICY- Since the New Deal, presidents goal is low unemployment, steady moderate growth, low taxes and low inflation
- iii. SOCIAL POLICY – The art of knowing what the masses want.
 - 1. They respond to the public demand for changes in society; civil rights movement; feminist movement
- iv. NATIONAL SECURITY POLICY – President provides the special need for speed and unity in

dealing with other nations. Supreme Court upheld this philosophy in 1936: U.S. vs. Curtiss-Wright; “exclusive power of the president as the sole organ of the federal government in international relations”

1. Congress sometimes balances the power of the president

d. PRESIDENTS AS PERSUADERS

- i. Spend most of their time persuading people
- ii. Presidents need ability to communicate with people;
- iii. Presidents have reduced the number of press conferences in the past 5 decades
- iv. Presidents, through modern technology and instant news, can “go public” which means getting directly to the public to support their agenda

VIII. CONGRESS AND THE PRESIDENCY

a. INTRO

- i. Contentious relationship
- ii. Tend to agree when White House and Congress are same party
- iii. More likely to fight at end of 1st term and throughout 2nd term

b. WHY PRESIDENTS AND CONGRESS DISAGREE

- i. Term limits on president vs. no term limits for Congressmen/ always thinking about getting reelected

ii. COMPETING CONSTITUENCIES

1. Congress represents state or local constituencies, while president represents nation as a whole

iii. COMPETING CALENDARS

1. Due to term limits on president, president wants laws enacted much faster than Congress; loads up Congress with initiatives

iv. COMPETING CAMPAIGNS

1. Many Congress people run local campaigns with relatively no political party support, while the president runs a national campaign with a great amount of political party support
2. Many times local candidates will not want the help of the president if he is unpopular or against the local candidate's constituency.

c. INFLUENCING CONGRESS

- i. Historically strong influence over Congress with the presidential agenda through the State of the Union Address or other means to communicate to public and Congress
- ii. Ability to persuade is crucial to be effective president
 1. Scored by PRESIDENTIAL SUPPORT SCORE; Bush started at 70% and ended with 38%
 2. Much depends on how together agendas are between president and Congress

iii. PRESIDENTIAL MANDATES

1. If won election by strong majority, incoming president believes he has a MANDATE to change priorities in agenda
 - a. Reagan to lower taxes and strong national defense
 - b. Obama in change and more government influence on economy

iv. PUBLIC APPROVAL

1. Generally falls over time

2. Much depends on amount of POLITICAL CAPITAL a president has and how he spends it
 - a. Obama on health care spent significant political capital
 - b. Bush had strong political capital after 9/11
 3. Presidents get RALLY POINTS in public approval after major crises like 9/11 or Oklahoma City bombing
 - a. Bush LOST rally points in Katrina
- v. REPUTATION
1. High public approval when they know least about the job (start) and low public approval when they know most about the job (end)
 2. Strong belief that the reputation has eroded in the presidential office due to scandals.

IX. JUDGING PRESIDENTS

- a. History tends to judge wars as the most significant test of a president's leadership
 - i. Lincoln and FDR positive; LBJ negative
- b. History not only one; Reagan and end of Cold War, Teddy Roosevelt and rise of U.S. internationally
- c. Corruption and inability to deal with economic problems are sure paths to presidential failure
- d. Difficult to assess where Bush will be; currently average
- e. Takes many years after leaving office to really determine how successful the president was in office