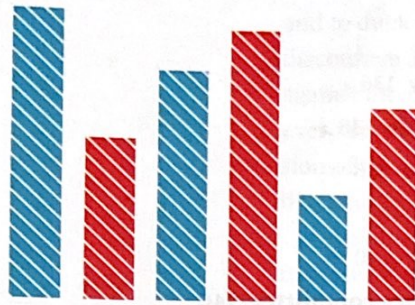




THE PRESIDENCY

Soon after taking office in 2017, President Donald Trump issued dozens of executive orders, including decrees strengthening immigration enforcement and imposing a partial ban on travel from several Middle Eastern countries. These particular orders caused a national furor, with angry critics declaring that the president had no authority to act unilaterally on these issues. Several federal courts ruled against the president's travel ban. The Supreme Court, however, ruled in favor of a scaled-back version. However, Trump's other orders during this period, which included changes in federal regulatory policy, government contracting, education policy, and financial policy, went unchallenged and simply became the law of the land.

In his use of executive orders and other unilateral decrees, President Trump followed squarely in the footsteps of his predecessors. Presidents often see their legislative agendas blocked by Congress but are able to turn to executive orders and presidential "memoranda" to bypass the legislative process. Especially in times of war or other emergencies, Americans look for effective governance, particularly from the executive, and are less concerned with representative processes. Later, when the emergency has passed, presidents often find ways to retain the powers they secured during the crisis.

Presidential power begins with Article II of the Constitution, but does it end there? The framers of the Constitution believed that a chief executive was necessary to give the nation effective governance. The framers thought that Congress, a representative body, needed time to hear many points of view and might be too slow to exercise decisive leadership when it was urgently required. The president, they hoped, would give the nation more efficient and effective governance.



Yet the framers knew the risk and worried about what they saw as the tendency of executives to engage in “ambitious intrigues” to enhance their power and prerogatives. The framers hoped that this threat would be reduced by the constitutional system of checks and balances. In recent decades, however, presidents have greatly enhanced the power of the office and built an institution that the framers would hardly recognize.

In this chapter we examine the foundations of the American presidency and assess the origins and character of presidential power today. National emergencies are one source of presidential power, but presidents are also empowered by their ability to control and expand the institutional resources of the office. The courts, to be sure, can sometimes check presidential power, but, as we will see, they rarely do so. And, of course, through its general legislative powers, legislative investigations, and budgetary powers, Congress often opposes and thwarts the president. Nevertheless, presidential power has grown.

A strong presidency may be necessary for effective governance, especially in a time when the nation is threatened by foreign foes and internal disputes. The growth of presidential power, however, may have troubling implications for representative government.

The power of the presidency has grown far beyond what the framers of the Constitution envisioned. Whereas scholars once compared “strong” and “weak” presidents, today every president is strong, because of the powers of the office.

- **What factors have contributed to the growth of presidential power, and what are the implications for representative government?**

After reading this chapter, you should be able to . . .

- Identify the expressed powers that the Constitution specifically grants to the president
- Explain how additional presidential powers have been delegated by Congress and claimed by presidents
- Summarize how the presidency as an institution has changed over the course of American history
- Describe the resources and tools that modern presidents use to govern
- Evaluate whether a strong presidency is at odds with representative government

THE CONSTITUTIONAL ORIGINS AND POWERS OF THE PRESIDENCY

The presidency was established by Article II of the Constitution, which states, “The executive power shall be vested in a President of the United States of America.” It goes on to describe the manner in which the president is to be chosen and to define the basic powers of the presidency. By granting executive power to a single official—the president—the framers were emphatically rejecting proposals for collective leadership of the executive branch, most of which aimed to avoid concentration of power in the hands of one individual. Most of the framers were anxious to provide for “energy” in the executive and to have a president capable of taking quick and aggressive action. They believed that a powerful executive would help protect the nation’s international interests and promote the federal government’s interests relative to those of the states.

Immediately *after* its first sentence, Article II, Section 1, defines the manner in which the president is to be chosen. This odd sequence says something about the difficulty that the delegates to the Constitutional Convention were having over how to give power to the executive and at the same time balance that power with limitations. This conflict reflected the twin struggles etched in the memories of the Founding generation—against the powerful executive authority exercised by King George III over colonial America, and the low energy of the newly independent American government under the Articles of Confederation.

Some delegates wanted the president to be selected by, and thus responsible to, Congress; others preferred that the president be elected directly by the people. Direct popular elections would create a more independent and more powerful presidency. But by adopting a system of indirect election through an Electoral College, in which the electors would be selected by the state legislatures

(and close elections would be resolved in the House of Representatives), the framers hoped to establish a strong presidency responsible to state and national legislators rather than directly to the electorate.

Sections 2 and 3 of Article II outline the powers and duties of the president. These sections identify two sources of presidential power. One source is the specific language of the Constitution. For example, the Constitution states that the president is authorized to make treaties, grant pardons, and nominate judges and other public officials. These specifically defined powers, called the **expressed powers** of the office, cannot be revoked by Congress or any other agency without an amendment to the Constitution. Other expressed powers include the power to receive ambassadors and to command the nation's military forces.

In addition to establishing the president's expressed powers, Article II declares that the president "shall take Care that the Laws be faithfully executed." Since the laws are enacted by Congress, this language implies that Congress is to delegate to the president the power to implement or execute its decisions. Powers given to the president by Congress are called **delegated powers**. As it delegates power to the executive branch, Congress substantially enhances the importance of the presidency. For example, if Congress determines that air quality should be improved, it might delegate to the executive branch the power to determine the best means of improvement, as well as the power to implement the process. These decisions about how to clean the air are likely to have an enormous impact on businesses, organizations, and individuals throughout the nation.

In most cases, Congress delegates power to executive agencies rather than directly to the president. This allows Congress to take advantage of its continuing influence over those agencies (through its power of the purse, for example). As we will see, however, contemporary presidents have found ways to capture a good deal of this delegated power for themselves.

Presidents have claimed a third source of institutional power beyond expressed and delegated powers: **inherent powers**. These powers are not specified in the Constitution or the law but are said to stem from "the rights, duties and obligations of the presidency."¹ They are most often asserted by presidents in times of war or national emergency. For example, after the fall of Fort Sumter and the outbreak of the Civil War, President Abraham Lincoln issued a series of executive orders for which he had no clear legal basis. Without even calling Congress into session, Lincoln combined the state militias into a national volunteer force, called for 40,000 new volunteers, enlarged the regular army and navy, diverted \$2 million from other sources to military needs, instituted censorship of the U.S. mail, ordered a blockade of southern ports, suspended the writ of *habeas corpus* in the border states, and ordered the arrest by military police of individuals whom Lincoln deemed guilty of treasonous actions.² Lincoln claimed that these extraordinary measures were justified by the president's inherent power to protect the nation.³

In this section, we examine the major expressed, delegated, and inherent powers of presidency.

expressed powers

Powers that the Constitution explicitly grants to the federal government.

delegated powers

Constitutional powers that are assigned to one branch of the government but exercised by another branch with the permission of the first.

inherent powers

Powers claimed by a president that are not expressed in the Constitution but are said to stem from "the rights, duties and obligations of the presidency."

commander in chief

The president's role as commander of the national military and of the state National Guard units (when they are called into service).

Though the constitutional power to declare war is given to Congress, the past 60 years have seen the president become the most dominant figure in military affairs. Thus, the public's dissatisfaction with the handling of the war in Afghanistan has been charged mostly against the presidents who oversaw it: George W. Bush and Barack Obama.

Expressed Powers

The president's expressed powers, as defined by Sections 2 and 3 of Article II, fall into several categories, including military, judicial, diplomatic, executive, and legislative powers.

Military and Domestic Defense Power. The president's military powers are among the most important that the chief executive exercises. The position of **commander in chief** makes the president the highest military officer in the United States, with control of the entire military establishment. The president is also the head of the nation's intelligence hierarchy, which includes not only the Central Intelligence Agency (CIA) but also the National Security Council (NSC), the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), and other security agencies.

The president's military powers include the use of force within the United States. Although Article IV, Section 4, provides that the "United States shall [protect] . . . every State . . . against Invasion . . . and . . . domestic Violence," Congress has made the use of domestic force an explicit presidential power through statutes directing the president, as commander in chief, to discharge these obligations.⁴ The Constitution limits this power by providing that a state legislature (or governor when the legislature is not in session) must request federal troops before the president can send them into the state to provide public order. However, presidents are not obligated to deploy national troops merely because the state legislature or governor makes such a request. And more important, presidents may deploy troops without a specific request if they consider it necessary to maintain an essential national service, to enforce a federal judicial order, or to protect federally guaranteed civil rights.

One historic example was the decision by President Dwight D. Eisenhower in 1957 to send troops into Little Rock, Arkansas, to enforce court orders to integrate



Little Rock's Central High School. He did so only after failed negotiations with the state's governor, who had posted the Arkansas National Guard at the school entrance to prevent the admission of nine black students. However, in most instances of domestic disorder—whether from human or natural causes—presidents exercise unilateral power by declaring a “state of emergency,” thereby making available federal grants, insurance, and direct assistance, as well as troops. President George W. Bush sent various military units to the Gulf Coast in response to Hurricanes Katrina and Rita in 2005, and President Obama sent the Coast Guard and teams from other agencies after the BP *Deepwater Horizon* explosion and oil spill in the Gulf of Mexico in 2010.

Military emergencies related to international threats have also expanded the domestic powers of the executive branch. This was true during World Wars I and II and during the ongoing “war on terrorism” as well. Within a month of the September 11 attacks, the White House drafted and Congress enacted the Patriot Act, expanding the power of government agencies to engage in domestic surveillance activities, including electronic surveillance, and restricting judicial review of such efforts.

The following year, Congress created the Department of Homeland Security, combining offices from 22 federal agencies into one huge, new Cabinet department responsible for protecting the nation from attack. The White House drafted the reorganization plan, but Congress weighed in to make certain that the new agency's workers had civil service and union protections.

in brief

Expressed Powers of the Presidency

The Constitution defines certain specific powers of the presidency. These expressed powers fall into the following categories.

1. **Military.** Article II, Section 2, provides for the power as “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”
2. **Judicial.** Article II, Section 2, also provides the power to “grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”
3. **Diplomatic.** Article II, Section 3, provides the power to “receive Ambassadors and other public Ministers.”
4. **Executive.** Article II, Section 3, authorizes the president to see to it that all laws are faithfully executed; Section 2 gives the chief executive the power to appoint, remove, and supervise all executive officers and to appoint all federal judges.
5. **Legislative.** Article I, Section 7, and Article II, Section 3, give the president the power to participate authoritatively in the legislative process.

President Obama signed a four-year extension of the Patriot Act in 2011. In 2015, Congress passed and Obama signed the USA Freedom Act, renewing expiring sections of the Patriot Act but scaling back the domestic surveillance authority of the NSA.

Judicial Power. The presidential power to grant reprieves, pardons, and amnesties, as well as to “commute” or reduce the severity of sentences, literally gives the president the power of life and death over individuals. Presidents may use this power on behalf of a particular individual, as did Gerald Ford when he pardoned Richard Nixon in 1974 “for all offenses against the United States which he . . . has committed or may have committed.” Or they may use it on a large scale, as Jimmy Carter did in 1977 when he declared an amnesty for all Vietnam War draft evaders.

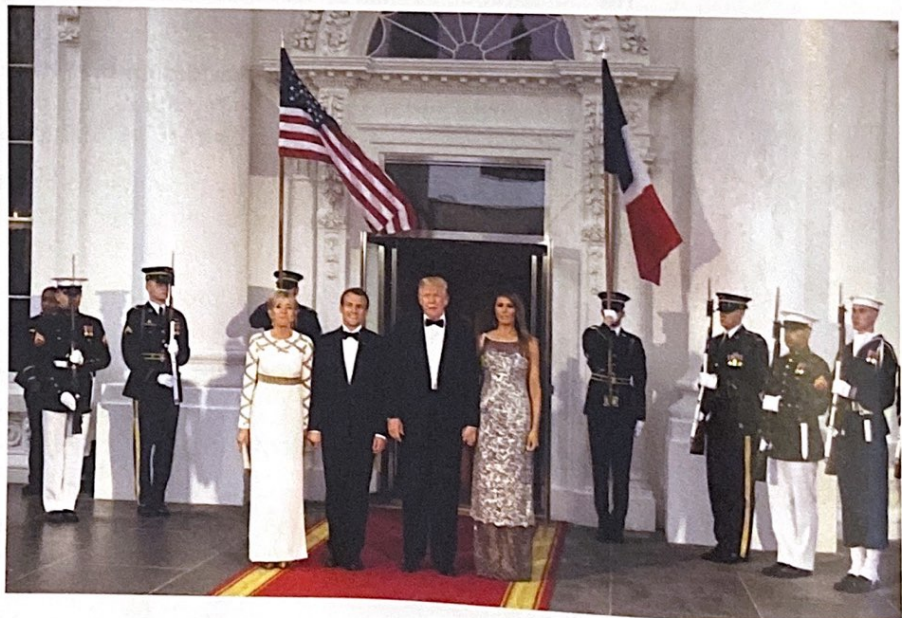
Diplomatic Power. The president is America’s chief representative in dealings with other nations. As “head of state,” the president has the power to make treaties for the United States (with the advice and consent of the Senate). When President George Washington received Edmond Genêt as the formal emissary of the revolutionary government of France in 1793, he transformed the power to “receive Ambassadors and other public Ministers” into the power to “recognize” other countries. That power gives the president the authority to review the claims of any new ruling groups to determine whether they indeed control the territory and population of their country, such that they can commit it to treaties and other agreements.

In recent years, presidents have increasingly used executive agreements to conduct foreign policy.⁵ An **executive agreement** is like a treaty because it is a contract between two countries, but it is different because it does not require a

executive agreement

An agreement between the president and another country that has the force of a treaty but does not require the Senate’s “advice and consent.”

The president is the United States’ chief representative in dealings with other nations. In 2018, President Trump and Melania Trump hosted French President Emmanuel Macron and his wife at an official state dinner at the White House.



two-thirds vote of approval by the Senate. Ordinarily, executive agreements are used to carry out commitments already made in treaties or to address relatively minor matters. But when presidents have decided to use an executive agreement in place of a treaty, Congress has generally not objected.

Executive Power. The most important basis of the president's power as chief executive is found in the sections of Article II stating that the president must see that all the laws are faithfully executed and that the president will appoint all executive officers and all federal judges. These constitutional provisions focus executive power and legal responsibility on the president. The famous sign on President Truman's desk, "The buck stops here," was not merely an assertion of Truman's personal sense of responsibility. It acknowledged his acceptance of the legal and constitutional responsibility of the president.

The president's executive power is not absolute; many presidential appointments, including ambassadors, cabinet officers and other high-level administrators, and federal judges, are subject to a majority approval by the Senate. But these appointments are made at the discretion of the president. (See Analyzing the Evidence in Chapter 7, pp. 208–9, for more on the president's power to appoint executive branch officials.)

Another component of the president's power as chief executive is **executive privilege**, the claim that confidential communications between a president and close advisers should not be revealed without the president's consent. Presidents have made this claim ever since George Washington refused a request from the House of Representatives to deliver documents concerning negotiations of an important treaty. Washington refused (successfully) on the grounds, first, that the House was not constitutionally part of the treaty-making process and, second, that diplomatic negotiations required secrecy.

Executive privilege became a part of the "checks and balances" between the president and Congress, and presidents have usually succeeded when invoking it. Although many presidents have claimed executive privilege, the concept was not tested in the courts until the Watergate affair of the early 1970s, when President Nixon refused congressional demands that he turn over secret White House tapes that congressional investigators thought would establish his involvement in illegal activities. In *United States v. Nixon*, the Supreme Court ordered Nixon to turn over the tapes.⁶ The president complied with the order and resigned from office to avoid impeachment and conviction.

United States v. Nixon is often seen as a blow to presidential power, but actually the Court's ruling recognized for the first time the validity of executive privilege, although it held that the claim did not apply in this instance. Subsequent presidents have cited *United States v. Nixon* in support of their claims of executive privilege. Thus, in 2012 the Obama administration cited executive privilege in refusing to comply with a subpoena from the House of Representatives for documents related to "Operation Fast and Furious," a Justice Department program to combat drug trafficking.

executive privilege

The claim that confidential communications between a president and close advisers should not be revealed without the president's consent.

veto

The president's constitutional power to reject acts of Congress.

pocket veto

A veto that occurs automatically when Congress adjourns during the 10 days that a president has to approve a bill and the president takes no action on it.

line-item veto

The power of the president to veto specific provisions (lines) of a bill passed by the legislature (declared unconstitutional by the Supreme Court in 1998).

Legislative Power. Two constitutional provisions are the primary sources of the president's power in the legislative arena. Article II, Section 3, provides that the president "shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." This first legislative power has been important, especially since Franklin Delano Roosevelt began to use it to propose specific action in Congress. Roosevelt established the presidency as the primary initiator of legislation.

The second of the president's legislative powers is the **veto**, assigned by Article I, Section 7—the president's constitutional power to reject acts of Congress. This power alone makes the president the most important single legislative leader. No bill vetoed by the president can become law unless both the House and the Senate override the veto by a two-thirds vote. In the case of a **pocket veto**, Congress does not even have the option of overriding the veto, but must reintroduce the bill in the next session.

The president may exercise a pocket veto when presented with a bill during the last 10 days of a congressional session. Usually, if a president does not sign a bill within 10 days, it automatically becomes law. But this is true only while Congress is in session. If a president chooses not to sign a bill presented within the last 10 days that Congress is in session, then the 10-day limit expires while Congress is out of session, and instead of becoming law, the bill is vetoed. Figure 6.1 illustrates the president's veto options.

In 1996, Congress added the **line-item veto**, giving the president the power to strike specific spending items from appropriations bills passed by Congress, unless a two-thirds vote of both the House and the Senate reenacted them. In 1997, President Clinton used this power 11 times to strike 82 items from the federal budget. But in 1998 the Supreme Court ruled that the Constitution does not authorize the line-item veto power.⁷ Only a constitutional amendment would give this power to the president.

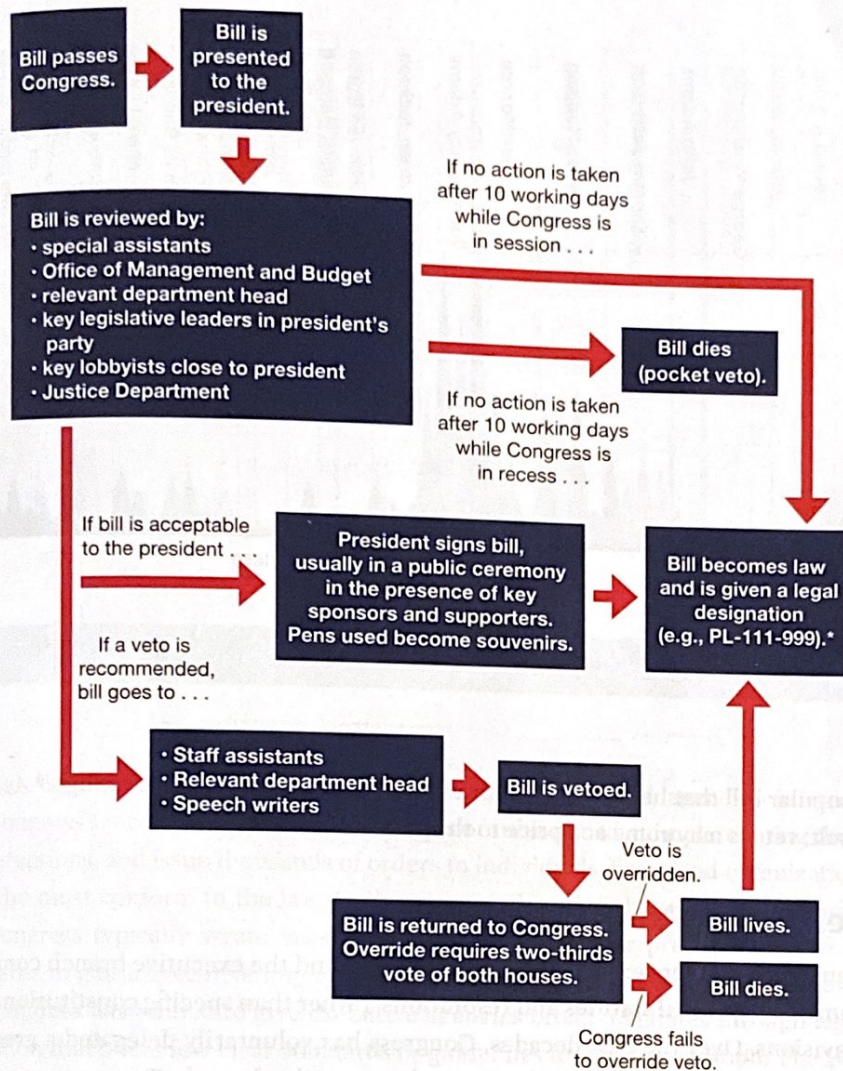
The Games Presidents Play: The Veto. Use of the veto varies according to the political situation that each president confronts. In President Obama's first term, with Democratic control of both the House and the Senate, he vetoed only two bills. In his second term, during which his party did not control the House and controlled the Senate for only one Congress, Republicans pursued the strategy of obstruction, and very little legislation was produced. Obama's vetoes nevertheless increased to the low double digits.

In general, presidents have used the veto to equalize or upset the balance of power with Congress. The politics surrounding the veto is complicated, and it is usually part of an intricate bargaining process between the president and Congress, involving threats of vetoes, repassage of legislation, and second vetoes.⁸ As the Timeplot on pp. 168–9 shows, divided government does not necessarily result in more vetoes.

Although presidents veto only a small percentage of laws that are passed by Congress, in many cases the *threat* of a veto is sufficient to make members of

figure 6.1

THE VETO PROCESS



*PL stands for *public law*; 111 is the Congress (for example, the 111th Congress was in session in 2009-10); 999 is the number of the law.

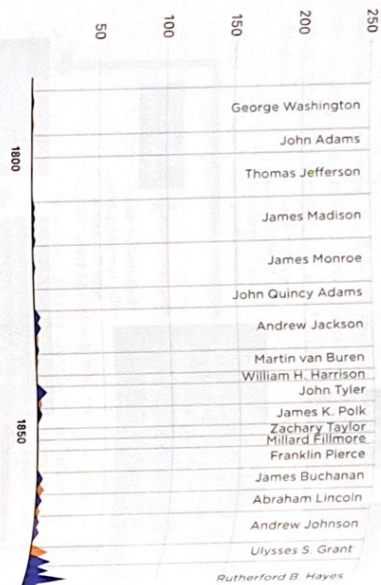
Congress alter the content of a bill so that it's more to a president's liking. Thus the veto power can be influential even when the veto pen rests in its inkwell. The Policy Principle box on p. 170 describes how President Obama's threat to veto influenced Congress's actions on policy.

What about the relationship between mass public support for the president and use of the veto? At least for the modern presidency, a crucial resource for the president in negotiating with Congress has been public approval as measured by opinion polls.⁹ In some situations, members of Congress pass a bill not because they want to change policy but because they want to force the president to veto

PRESIDENTIAL VETOES, 1789-2018

UNIFIED GOVERNMENT:
The president's party controlled both chambers during this session of Congress

DIVIDED GOVERNMENT:
The president's party controlled one or neither chamber during this session of Congress

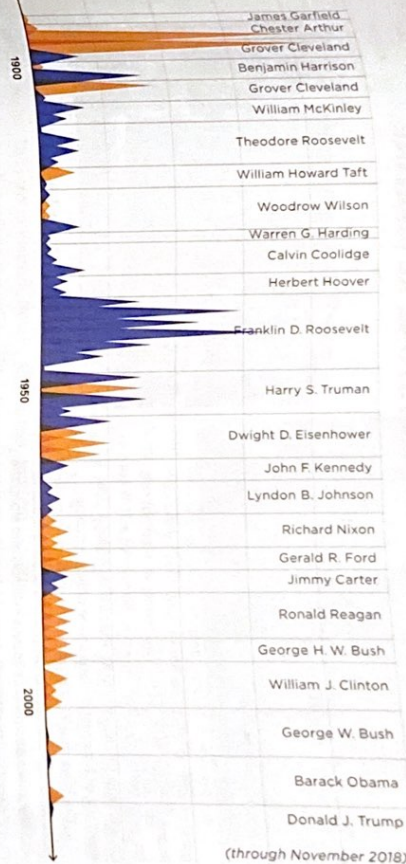


a popular bill that he disagrees with in order to hurt his approval ratings.¹⁹ As a result, vetoes may come at a price to the president.

Delegated Powers

Many of the powers exercised by the president and the executive branch come from congressional statutes and resolutions, rather than specific constitutional provisions. Over the past decades, Congress has voluntarily delegated a great deal of its own legislative authority to the executive branch. To some extent, this delegation is a consequence of the expansion of governmental activity since the New Deal.

Given the vast range of the federal government's responsibilities, Congress cannot execute and administer all the programs it creates and the laws it enacts. It must turn to the hundreds of departments and agencies in the executive branch or, when necessary, create new agencies to implement its goals. Thus, for example, in 1970, when Congress enacted legislation designed to improve the nation's air and water quality, it assigned the task of implementing its goals to the new Environmental Protection Agency (EPA) created by Nixon's executive order. Congress gave the EPA substantial power to set and enforce air- and water-quality standards.



As they implement congressional legislation, federal agencies interpret Congress's intentions, establish thousands of rules aimed at implementing those intentions, and issue thousands of orders to individuals, firms, and organizations who must conform to the law. In the nineteenth and early twentieth centuries, Congress typically wrote laws that provided fairly clear principles and standards to guide executive implementation. At least since the New Deal, however, Congress has tended to give executive agencies broad mandates through legislation that offers few clear standards or guidelines for implementation. The 1972 Consumer Product Safety Act, for example, authorizes the Consumer Product Safety Commission to reduce unreasonable risk of injury from household products but offers no suggestions of what constitutes reasonable and unreasonable risks or how these are to be reduced.

Inherent Powers

A number of presidential powers are neither expressed explicitly in the Constitution nor delegated by Congress. They are said to be "inherent" powers of a nation's chief executive. The inherent powers claimed by American presidents include powers related to war and protecting the nation, as well as powers related to legislative initiative.

War and Inherent Presidential Power. The Constitution gives Congress the power to declare war. Presidents, however, have gone a long way toward capturing this power for themselves. Congress has not declared war since December 1941, yet since then, American military forces have engaged in numerous campaigns throughout the world under the orders of the president.

When North Korean forces invaded South Korea in June 1950, Congress was prepared to declare war, but President Harry S. Truman decided not to ask for congressional action. Instead, Truman asserted the principle that the president and not Congress could decide when and where to deploy America's military might. He and in the face of the emergency, Congress went along with the president's decision. It passed a resolution approving the president's actions, and this became the pattern for future congressional-presidential relations in the military realm. The wars in Vietnam, Bosnia, Afghanistan, and Iraq, as well as a host of smaller-scale conflicts, were all fought without declarations of war.

In 1973, Congress responded to unilateral presidential action by passing the **War Powers Resolution** over President Nixon's veto. This resolution reasserted Congress's power to declare war, required the president to inform Congress of any planned military campaign, and stipulated that forces must be withdrawn within 60 days in the absence of a specific congressional authorization for their continued deployment.

Presidents, however, have generally ignored the War Powers Resolution, claiming inherent executive power to protect the nation. Thus, for example, President George W. Bush responded to the 2001 attacks by Islamic terrorists by organizing a major military campaign to overthrow the Taliban regime in Afghanistan, which had sheltered the terrorists. In 2003, Bush ordered a major American campaign against Iraq, which he accused of posing a threat to the United States. In both instances, Congress passed resolutions approving the president's actions; the War Powers Resolution was barely mentioned on Capitol Hill and was ignored by the White House.

However, tensions stemming from the separation of powers between the president and Congress have not ended. Congress can use its spending powers and investigative powers to restrain the executive. For these reasons, presidents often try to secure congressional approval before they act. Thus, in 2013, with public opinion running against him, President Obama sought authorization from Congress for an air strike on Syria as punishment for its use of chemical weapons, in part to implicate Congress in the action and thereby share accountability. Throughout 2015 and 2016, the president and Congress negotiated over a congressional "authorization for the use of military force" against



On September 20, 2001, President George W. Bush addressed Congress and the public with a speech declaring a "war on terror." Congress passed a resolution approving the military campaign in Afghanistan (and, in 2002, the invasion of Iraq), but Bush insisted he did not need congressional authorization to go to war.

War Powers Resolution

A 1973 resolution by Congress declaring that the president can send troops into action abroad only if Congress authorizes the action or if U.S. troops are already under attack or seriously threatened.

legislative initiative

The president's inherent power to bring a policy agenda before Congress.

executive order

A rule or regulation issued by the president that has the effect of law.

the Islamic State of Iraq and Syria (ISIS) and debated the legal rationale for a continuing American military effort without such authorization.

Legislative Initiative. Although it is not explicitly stated, the Constitution provides the president with the power of **legislative initiative**, which the framers clearly saw as one of the keys to executive power. *Legislative initiative* refers to the ability to formulate proposals for important policies. The president, as one individual with a great deal of staff assistance, is able to initiate decisive action more frequently than Congress, whose many members have to deliberate before taking action. Thus it is easier for the president to develop and promote a policy agenda—the set of policies and issues that receive serious attention from the government. Congress is under no constitutional obligation to take up proposals from the president. With some important exceptions, however, Congress counts on the president to set the policy agenda.

For example, in 2009, soon after taking office, President Obama presented Congress with a record-breaking \$3 trillion budget proposal that included a host of new programs in such areas as health and human services, transportation, housing, and education. Obama told Congress that he would soon be requesting several hundred billion more for the financial bailout to rescue U.S. banks and revive the nation's credit markets during the Great Recession. Not only was Congress responsive to the president's initiatives, but lawmakers also expected the president to take the lead in responding to the United States' financial emergency and other problems.

The president's initiative does not end with policy making that involves Congress and the "making of laws" in the ordinary sense of the phrase. The president has still another legislative role (in all but name) within the executive branch: the power to issue **executive orders**. The executive order is first and foremost a management tool, the power that virtually any CEO has to make "company policy." Most executive orders of the president provide for the reorganization of structures and procedures or otherwise direct the affairs of the executive branch. In modern times, however, executive orders have not been "merely administrative," but rather have had the broader effects of legislation—rules with actual policy content—despite avoiding the formal legislative process. We will discuss this tool further in the next two sections.

THE RISE OF PRESIDENTIAL GOVERNMENT

Most of the influence of the modern presidency comes from the powers granted by the Constitution and the laws made by Congress. Presidential power is institutional. Thus, any person properly sworn in as president will possess all of the power held by the strongest presidents in American history. But what variables account for a president's success in exercising these powers? Why are some

presidents considered great successes, others colossal failures, and most something in between? The answer relates broadly to the concept of presidential power. Is that power a reflection more of the president's personal attributes or of the political situations that a president encounters?

For many decades, political scientists believed that presidential power depended on personal attributes,¹¹ but recently scholars have argued that presidential power should be analyzed in terms of the strategic interactions that a president has with other political actors. A bit of historical review will be helpful in understanding how the presidency has risen to its current level of influence.

The Legislative Epoch, 1800–1933

In 1885, a then-obscure political science professor named Woodrow Wilson titled his general textbook *Congressional Government* because American government was just that—government by Congress. There is ample evidence that Wilson's description of the national government was consistent with the intentions of the framers. Within the system of three separate and competing branches, the Constitution clearly makes Congress the preeminent branch.

In the early nineteenth century, some observers saw the president as little more than America's chief clerk. Indeed, most historians agree that between Thomas Jefferson and the beginning of the twentieth century, Andrew Jackson and Abraham Lincoln were the only exceptions to a series of weak presidents. Both Jackson and Lincoln are considered great presidents because they used their power in momentous ways. But it is important in the history of the presidency that neither of them left his powers as an institutional legacy to his successors. That is to say, once Jackson and Lincoln left office, the presidency reverted to its weaker status.

One reason that so few great men became presidents in the nineteenth century is that there was rarely room for greatness in such a weak office.¹² As Chapter 3 indicated, the national government of that period was not particularly powerful. Another reason is that during this period, the presidency was not closely linked to major national political and social forces. Federalism had fragmented political interests and directed the energies of interest groups toward state and local governments, where most key decisions were made.

The presidency was strengthened somewhat in the 1830s with the introduction of the national convention system of nominating presidential candidates. Until then, presidential candidates had been nominated by their party's members of Congress. The national nominating convention arose in order to provide some representation for a party's voters who lived in districts where they weren't numerous enough to elect a member of Congress. It was seen as a victory for democracy against the congressional elite, and it gave the presidency a base of power independent of Congress. This independence did not transform the presidency into the office we recognize today, though, because Congress was long able to keep tight reins on the president's power. The real turning point came during the administration of Franklin Delano Roosevelt.

The New Deal and the Presidency

The first 100 days of the Roosevelt administration in 1933 have no parallel in U.S. history. The policies proposed by Roosevelt and adopted by Congress during this period dramatically changed the size and character of the national government. But this period was only the beginning. The president's constitutional obligation to see "that the laws be faithfully executed" became, during Roosevelt's presidency, virtually a responsibility to shape the laws before executing them.

An Expanded Role for the National Government. The New Deal included policies never before tried on a large scale by the national government; it began intervening into economic life in ways that had hitherto been reserved to the states. For example, in the throes of the Great Depression, the Roosevelt administration created the Works Progress Administration, seeking to put the able-bodied back to work; the federal government became the nation's largest employer at this time. The Social Security Act, to give another example, sought to improve the economic condition of the most impoverished segment of the population: the elderly. In other words, the national government discovered that it could directly regulate individuals, as well as provide roads and other services.

The new programs were such dramatic departures from the traditional policies of the national government that their constitutionality was in doubt, and the Supreme Court did, in fact, declare several of them unconstitutional. In 1937, however, a game-changing case—*National Labor Relations Board v. Jones & Laughlin Steel Corporation*—challenged the federal government's authority to regulate relations between businesses and labor unions. The Court's decision affirmed a federal role in regulation of the national economy.¹³ Since the end of the New Deal, the Court has never again seriously questioned the legitimacy of interventions of the national government in the economy or society.

Delegation of Power. The most important constitutional effect of Congress's actions and the Supreme Court's approval of those actions during the New Deal was the enhancement of presidential power. Most major acts of Congress in this period involved significant exercises of control over the economy, but few of them specified the actual controls to be used. Instead, Congress authorized the president, or in some cases a new agency, to determine what the controls would be. Although some of the new agencies were independent commissions responsible to Congress, most of the new agencies and programs were placed in the executive branch directly under presidential authority.

The growth of the national government through acts delegating legislative power tilted the American political system away from a Congress-centered government toward a president-centered government, which has become an established fact of American life.

PRESIDENTIAL GOVERNMENT

Presidents control a variety of formal and informal resources that enable them to govern. Indeed, without these resources, presidents would lack the tools needed to make much use of the power and responsibility given to them by the Constitution and by Congress. Let's first consider the president's formal or official resources (Figure 6.2) and then turn to the more informal ones that affect a president's capacity to govern—in particular, a base of popular support.

Formal Resources of Presidential Power

The formal resources of presidential power include the Cabinet, the White House staff, the Executive Office of the President, and the vice presidency.

The Cabinet. In the American system of government, the **Cabinet** refers to the heads of all the major federal government departments. The Cabinet has only a limited constitutional status. Unlike that of Great Britain or of many other parliamentary countries, where the cabinet *is* the government, the American Cabinet makes no decisions as a group. Each Cabinet appointment must be approved by the Senate, but the person appointed is not responsible to the Senate or to Congress at large.

Presidents typically rely on specialist bodies for policy areas of great national significance, like national security, that often draw on Cabinet personnel. The **National Security Council (NSC)**, established by law in 1947, is composed of the president, the vice president, the secretary of state, the secretary of defense, and other officials invited by the president. It has its own staff of foreign policy specialists run by the special assistant to the president for national security affairs. Presidents have varied in their reliance on the NSC. However, one generalization can be made: presidents have increasingly preferred the White House staff to the Cabinet as their means of managing the gigantic executive branch.

The White House Staff. The White House staff is composed mainly of analysts and advisers. Although many of the top White House staffers carry the title *special assistant* for a particular task or sector, the kinds of advice they are supposed to give are generally broader and more political than those that come from the Cabinet departments or from the Executive Office of the President.

The White House staff is a crucial information source and management tool for the president. But it may also insulate the president from other sources of information. Managing this trade-off between in-house expertise and access to independent outside opinion is a major challenge for the president. Sometimes it is botched, as when President George W. Bush depended too heavily on his staff for information about weapons of mass destruction (WMD) in Iraq, leading him to erroneous conclusions.¹⁴

Cabinet

The heads of the major departments of the federal government.

National Security Council (NSC)

A presidential foreign policy advisory council made up of the president, the vice president, the secretary of state, the secretary of defense, and other officials invited by the president.

The Executive Office of the President. Created in 1939, the Executive Office of the President (EOP) consists of the permanent agencies that perform defined management tasks for the president. The most important and largest EOP agency is the Office of Management and Budget (OMB). Its roles in preparing the national budget, designing the president's legislative proposals, reporting on agency activities, and overseeing regulatory proposals make OMB personnel part of virtually every presidential responsibility. The status and power of the OMB within the EOP has grown in importance from president to president, particularly as it has taken on a greater role in setting the budget guidelines for agencies, as well as for Congress.

The Vice Presidency. The Constitution created the vice presidency for two purposes: the vice president (1) succeeds the president in the case of a vacancy and (2) presides over the Senate, casting the tiebreaking vote when necessary.¹⁵ The main value of the vice presidency for the president is electoral. Traditionally, a presidential candidate's most important rules for choosing a running mate are (preferably a large one) that would otherwise probably not support the ticket and, if possible, should appeal to a subsection of the party differing from the presidential nominee's. For example, it is doubtful that John F. Kennedy would have won in 1960 without the contribution his vice presidential candidate, Lyndon Johnson, made in carrying Texas.

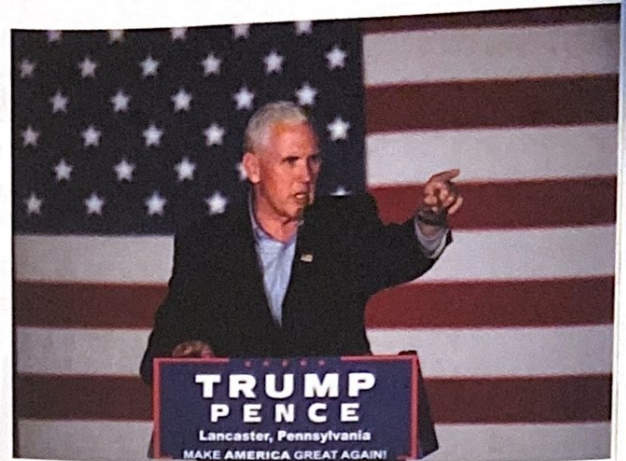
In 2016, Donald Trump chose Governor Mike Pence of Indiana as his running mate. A devout Christian, Pence increased Trump's electoral appeal among social conservatives, and as a midwesterner he aided Trump's successful campaign forays into Michigan, Wisconsin, Ohio, and Pennsylvania.

As the executive branch has grown in size and complexity, most recent presidents have sought to use their vice presidents as a management resource after the election. The presidency of George W. Bush resulted in unprecedented power and responsibility for his vice president, Dick Cheney. For the Obama administration, Vice President Joe Biden played important roles as a liaison to Congress and a sounding board on foreign affairs.

The Contemporary Bases of Presidential Power

Generally, presidents can expand their power in three ways: party, popular mobilization, and administration.

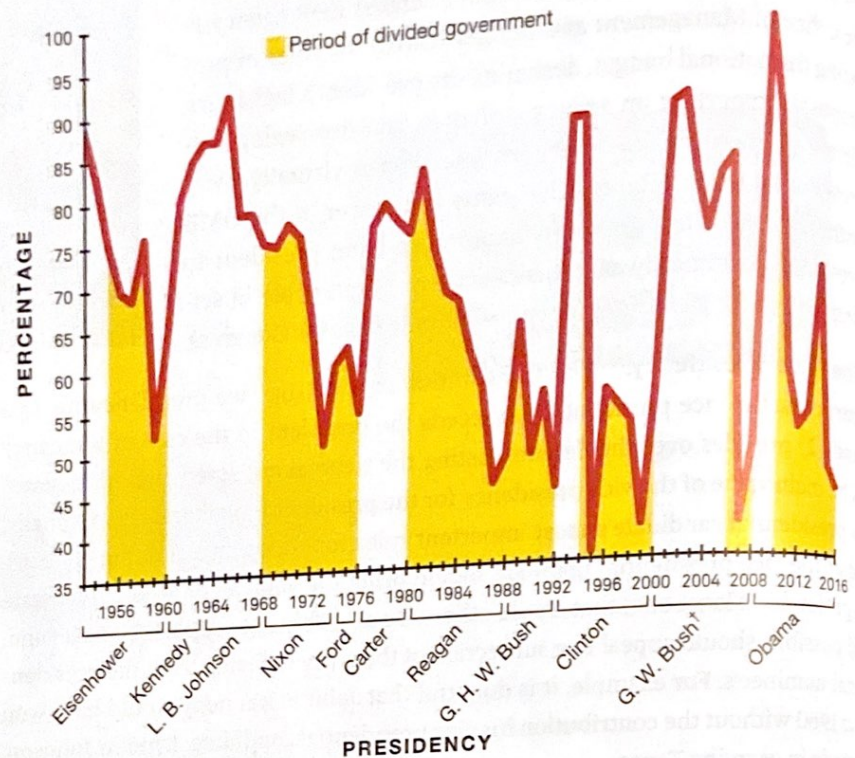
Party as a Source of Power. Presidents may construct or strengthen national party institutions in order to influence the legislative process and implement their programs. All presidents have relied on the members and leaders of their own party to promote their legislative agendas. But the president does not control the party, whose members have considerable autonomy. Moreover, in the U.S.



Presidential candidates often choose their vice presidential running mates to gain a specific electoral advantage. Mike Pence helped improve Donald Trump's electoral appeal among social conservatives and establishment Republicans.

figure 6.3

THE PRESIDENTIAL BATTING AVERAGE,* 1953-2016



*Percentage of congressional votes in which the president took the position supported by Congress.
 †In 2001, the government was divided for only part of the year.

NOTE: Percentages are based on votes on which presidents took a position.
 SOURCES: *Congressional Quarterly Weekly Report*, January 3, 2011, pp. 18-24; and authors' update.

system of separated powers, the president's party may be in the minority in Congress and unable to do much for the chief executive's programs (Figure 6.3). Consequently, although the president's party is valuable, it has not been a fully reliable presidential tool.

The more unified the president's party is behind the president's legislative proposals, the more unified the opposition party is also likely to be. The president often poses as being above partisanship to win "bipartisan" support in Congress. But a bipartisan strategy may make it more difficult to build the party loyalty and discipline that would maximize the value of congressional support from the president's own party. This is a dilemma for every president, particularly one with an opposition-controlled Congress.

Going Public. Presidents may also mobilize the public to create a mass base of support for their agendas. Popular mobilization as a technique of presidential power has its historical roots in the presidencies of Theodore Roosevelt and Woodrow Wilson and has become a weapon in the political arsenals of most presidents since the mid-twentieth century. During the nineteenth

century, it was considered inappropriate for presidents to engage in personal campaigning on their own behalf or in support of programs and policies. When Andrew Johnson broke this unwritten rule and made a series of speeches vehemently seeking public support for his Reconstruction program, even some of Johnson's most ardent supporters were shocked at what they saw as his lack of decorum.

Franklin Delano Roosevelt was exceptionally effective in appealing to the public.¹⁶ Like Theodore Roosevelt and Wilson, he often embarked on speaking trips around the nation to promote his programs. In addition, Roosevelt made limited but important use of the new electronic medium, the radio, to reach millions of Americans. In his famous "fireside chats," the president, or at least his voice, came into living rooms across the country to discuss programs and policies and generally to assure Americans that he was aware of their difficulties and working diligently toward solutions.

Roosevelt also made himself available for biweekly press conferences, offering candid answers to reporters' questions and making important policy announcements that would provide the reporters with significant stories to file.¹⁷ Roosevelt was especially effective in designating a press secretary, who organized press conferences and made certain that reporters distinguished presidential comments that were off the record from those that could be attributed.

Every president since Roosevelt has sought to craft a public-relations strategy that would emphasize the president's strengths and popular appeal. One innovation under Bill Clinton was to make the White House Communications Office an important institution within the EOP. The Communications Office became responsible not only for responding to reporters' queries but also for developing a coordinated communications strategy—promoting the president's policy goals, developing responses to unflattering news stories, and ensuring that a favorable image of the president would, as much as possible, dominate the news.

Consistent with President Obama's use of social networking in his 2008 election campaign, the Obama administration's Communications Office emphasized social networking techniques to reach news makers and the American people directly. President Trump has innovated on the "going public" strategy with his use of Twitter. Going over the heads not only of his own party but also of the traditional media, Trump communicates directly with his followers, maintaining an almost personal relationship with his political base and attacking his opponents, especially the press, in his frequent tweets. Presidents may also reach out to the American people through public appearances (Figure 6.4).

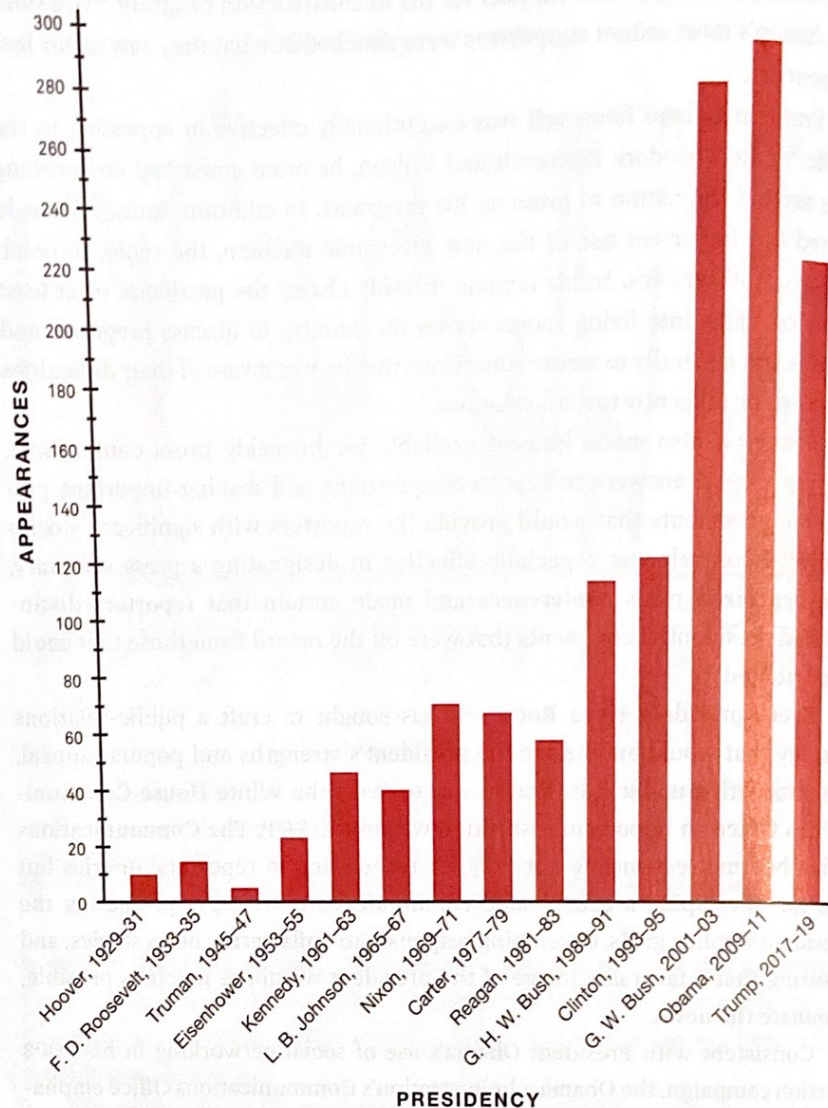
However, popular support has not been a firm foundation for presidential power. To begin with, it is notoriously fickle. President George W. Bush maintained an approval rating of over 70 percent for more than a year after the September 11 terrorist attacks. By 2003, however, his rating had fallen nearly 20 points as

figure 6.4

PUBLIC APPEARANCES BY PRESIDENTS

analyzing the evidence

In the nineteenth century, presidents seldom made public speeches or other public appearances. By the end of the twentieth century, the number of times presidents went public had increased dramatically. What accounts for the increase in public appearances? What do presidents hope to accomplish through speeches and other public events? What risks do presidents take when they seek to develop and use popular support as a political tool?



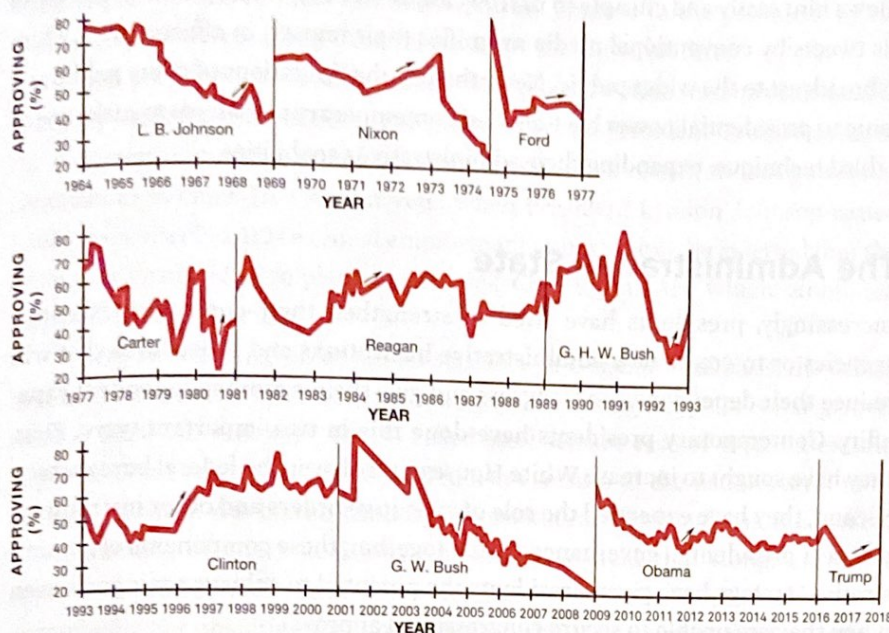
NOTE: Only the first two years of each term are represented, because the last two years include many purely political appearances for the president's reelection campaign.

SOURCES: Kernell, *Going Public*, p. 118; Lyn Ragsdale, *Vital Statistics on the Presidency*, 3rd ed. (Washington, DC: CQ Press, 2009), table 4-9, pp. 202-3; POTUS Tracker, <http://projects.washingtonpost.com/potus-tracker> (accessed 8/8/11); and authors' updates.

American casualties in Iraq mounted, and it steadily declined through the rest of his presidency. Barack Obama began his presidency with a high approval rating, but after 2010 it hovered in the 40s and 50s. By the time he left office in 2017, however, it had rebounded dramatically to nearly 60 percent approval. Trump began his presidency with low popular approval; six months into his term, it dropped to the high 30s. Toward the end of his first two years in office, his approval rating was about 40 percent.

figure 6.5

PRESIDENTIAL PERFORMANCE RATINGS, 1964–2018



NOTE: Arrows indicate preelection upswings.

SOURCE: Gallup, http://news.gallup.com/interactives/185273/presidential-job-approval-center.aspx?g_source=mn2-us (accessed 6/29/2018).

Declines in popular approval during a president's term in office are nearly inevitable and follow a predictable pattern (Figure 6.5).¹⁸ Presidents generate popular support by promising to undertake important programs that will contribute directly to the well-being of large numbers of Americans, but presidential performance almost inevitably falls short of those promises, leading to a sharp decline in support. Ronald Reagan and Bill Clinton are the exceptions among modern presidents—leaving office at least as popular as when they arrived. Trump is an exception of a different sort, beginning office with very low popular approval, despite promising an active agenda of policy goals.

Technological change has affected the tactics of going public. The growing variety of media outlets—cable stations, podcasts, social media such as Facebook and Twitter—and the declining viewership and readership of formerly “mainstream” outlets have fragmented the public. This change has necessitated newly crafted approaches—“narrowcasting” to reach targeted demographic categories rather than broadcasting to reach the “public.” Instead of going “capital P” public, new approaches seek to appeal to many “small p” publics (plural).

analyzing the evidence

In the presidential performance-rating poll, respondents are asked, “Do you approve of the way the president is handling his job?” The graphs show the percentage of positive responses. What factors help explain changes in presidential approval ratings? Does popular approval really affect presidential power?

Today, presidents use an array of strategies, including appearances on popular television shows, to reach constituents, shape their image, and attempt to win support for their policies.



Shrinking and fragmented audiences have raised the costs and cast doubt on the effectiveness of presidential efforts to educate and mobilize public opinion. President Trump's Twitter strategy stands as a partial exception. The technology allows him easily and cheaply to narrowcast to his base, while the coverage given his tweets by conventional media magnifies their impact, in effect allowing him to broadcast to the wider public. Nevertheless, the limitations of going public as a route to presidential power have also led contemporary presidents to make use of a third technique: expanding their administrative capabilities.

The Administrative State

Increasingly, presidents have tried to strengthen their control of executive agencies or to create new administrative institutions and procedures that will reduce their dependence on Congress and give them a more independent capability. Contemporary presidents have done this in two important ways. First, they have sought to increase White House control over the federal bureaucracy. Second, they have expanded the role of executive orders and other instruments of direct presidential governance. Taken together, these components of administrative strategy have given presidents the potential to achieve their goals even when they are unable to secure congressional approval.

Appointments and Regulatory Review. Presidents have sought to increase their influence through bureaucratic appointments and **regulatory review**. By appointing loyal supporters to top jobs in the bureaucracy, presidents make it more likely that agencies will follow the president's wishes. Through regulatory review, presidents have tried to control rule making by the agencies of the executive branch. Whenever Congress enacts a statute, the agency charged with administering the law must establish hundreds of rules in order to implement it. Some congressional statutes are quite detailed and leave agencies with relatively little discretion. Typically, however, Congress enacts a broad statement of its intentions and delegates to the appropriate agency the power to fill in many important details.¹⁹ In other words, Congress often says to an administrative agency, "Here is the problem. Deal with it."²⁰

The discretion that Congress delegates to administrative agencies has provided recent presidents with an important avenue for expanding their power. For example, after President Clinton ordered the Food and Drug Administration (FDA) to develop rules to restrict the marketing of tobacco products to children, White House and FDA staffers prepared nearly a thousand pages of new regulations affecting tobacco manufacturers and vendors.²¹ Although Republicans claimed that Bill Clinton had overstepped the powers of the presidency,²² Presidents George W. Bush and Barack Obama continued the practice of ordering agencies to issue new regulations.

Executive Orders. Contemporary presidents have also enhanced their power to govern unilaterally through the use of executive orders and other forms of presidential decrees, including executive agreements, national security findings

regulatory review

The Office of Management and Budget's function of reviewing all agency regulations and other rule making before they become official policy.

and directives, proclamations, reorganization plans, signing statements, and others.²³ Presidents cannot use executive orders to issue whatever commands they please. If a president issues an executive order, proclamation, or directive, in principle the decree must fall under powers granted to the president by the Constitution or delegated by Congress, usually through a statute.

When presidents issue such orders, they generally state the constitutional or statutory basis for their actions. For example, when President Truman ordered the desegregation of the armed services, he cited his constitutional powers as commander in chief. In a similar vein, when President Lyndon Johnson issued Executive Order No. 11246 (equal employment opportunity), he asserted that the order was designed to implement the 1964 Civil Rights Act, which prohibited employment discrimination.

Where an executive order has no statutory or constitutional basis, the courts have held it to be void. The most important case illustrating this point is *Youngstown Sheet & Tube Co. v. Sawyer*, the so-called steel seizure case of 1952.²⁴ Here the Supreme Court ruled that President Truman's seizure of the nation's steel mills during the Korean War had no statutory or constitutional basis and was thus invalid.

A number of court decisions, though, have held that Congress might approve a presidential action after the fact or through "acquiescence"—for example, by not objecting for long periods or by continuing to fund programs established by executive orders. In addition, the courts have indicated that some areas—most notably, military policy—are inherently presidential in character, and so they have allowed presidents wide latitude to make policy by executive decree. Thus, within the very broad limits established by the courts, presidential orders can be important policy tools. Analyzing the Evidence on pp. 184–5 explores how presidents use executive orders and other forms of unilateral action to bypass the legislative process, enabling them to make policy without Congress.

Although all presidents have used the executive order as a policy tool, government by executive order has become an especially common practice since the Clinton presidency, reflecting the growing difficulty of making policy through the legislative process. Divided government and increasing interparty policy differences have raised these costs. Clinton's frequent use of this strategy showed that an activist president could develop and implement a significant policy agenda without legislation—a lesson that was not lost on his successors. President George W. Bush made aggressive use of executive orders in response to the threat of terrorism; for example, he issued a directive authorizing the creation of military tribunals to try noncitizens accused of involvement in terrorism against the United States.

By the end of his second term, President Obama had issued over 250 executive orders, including a controversial one that would protect some 4 million undocumented immigrants (informally known as "Dreamers") from the threat of deportation. That order spurred a variety of legal challenges and one federal court ruling blocking its implementation. In June of 2016, the Supreme Court sustained the lower-court decision, a major blow to Obama's immigration policy. President

President Reagan, shown here signing the Deficit Reduction Act of 1984, often issued signing statements to point to elements of the law that he deemed unconstitutional.



Trump issued 33 executive orders in the first 100 days of his administration, more than any of his predecessors over this period. Many of these were aimed at reversing policies of the Obama years.²⁵ By the end of 2017 he had issued 65 executive orders, and through mid-year 2018 he added 25 additional executive orders.

signing statement

An announcement made by the president when signing a bill into law, sometimes presenting the president's interpretation of the law, as well as remarks predicting the benefits it will bring to the nation.

Signing Statements. The signing statement has become another instrument of presidential power, used frequently by recent presidents to negate congressional actions to which they objected.²⁶ A **signing statement** is an announcement by the president at the time of signing a bill into law, sometimes presenting the president's interpretation of the law, as well as remarks predicting the benefits it will bring to the nation. Occasionally, presidents have used signing statements to point to sections of the law that they deem improper or unconstitutional or to instruct executive branch agencies how to execute the law.²⁷

Presidents have made signing statements throughout American history, though many were not recorded and so did not become part of the official legislative record. Ronald Reagan's attorney general, Edwin Meese, is generally credited with transforming the signing statement into a routine tool of presidential direct action.²⁸ Reagan used detailed statements—prepared by the Department of Justice—to attempt to reinterpret certain congressional enactments.

Despite subsequent court rulings that the president lacked the power to declare acts of Congress unconstitutional²⁹ or to “excise or sever provisions of a bill with which he disagrees,”³⁰ the same tactic of reinterpreting and nullifying congressional enactments was continued by George H. W. Bush and Bill Clinton, and even more so by George W. Bush. The latter Bush challenged more than 800 legislative provisions with his signing statements, including a number of important domestic and security matters, such as a congressional effort to ban the use of torture by American interrogators.

Though he had denounced George W. Bush's use of signing statements while running for president, soon after taking office Barack Obama began to make use of the same tactic. Toward the end of his presidency, by November 2016, Obama