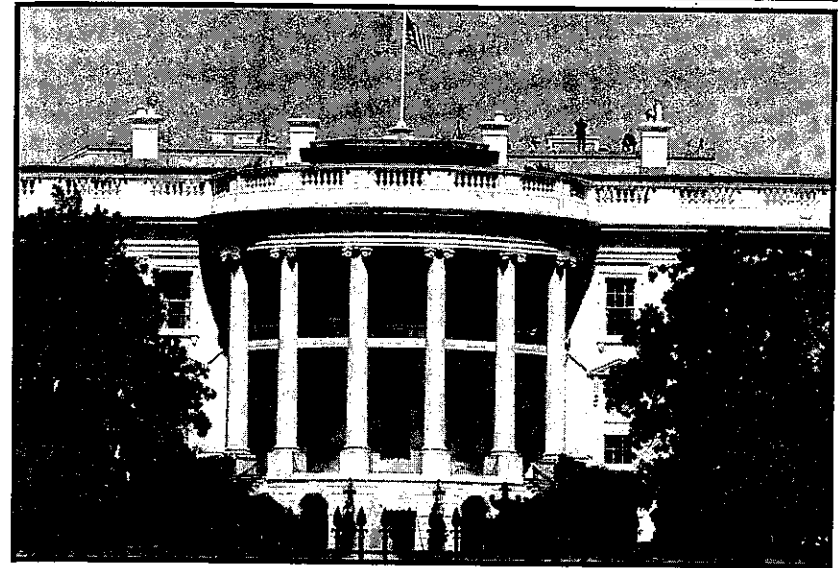


The Changing Presidency



The White House—nerve center of the executive branch and home of its chief.

For most Americans the president is the focal point of public life. Almost every day, they see the president on television newscasts interpreting current events, meeting with foreign dignitaries, proposing policy, or grappling with national problems. This person appears to be in charge, and such recurrent images of an engaged leader are reassuring. But the reality of the presidency rests on a very different truth: presidents are seldom in command and usually must negotiate with others to achieve their goals. It is only by exercising adroit political skill in winning public and elite support and knowing how to use it that a president can succeed in office. For more than three decades this lesson has dominated scholarly accounts of the presidency, but it has not always been fully appreciated by either the public or the presidents themselves.

The Scope of Presidential Power

In some respects, modern presidents are stronger than ever before. At the beginning of the twentieth century presidents embraced new, expansive views of presi-

dential power that by midcentury were accepted as normal. They used the power of the "bully pulpit" to shape public opinion. With the advent of radio and television, they became the leading voice in government. Congress added to the power of presidents by requiring them to submit annual federal budgets for congressional approval—an action that made presidents policy leaders in a way they had never been before. Staff support for presidents increased dramatically. And by leading the United States to victory in two world wars and playing for high stakes in the cold war, presidents took center stage on the world scene.

And yet, since World War II, we have witnessed a string of "failed" or otherwise abbreviated presidencies. Of the ten presidents serving from 1945 through the end of the twentieth century, only three (Dwight D. Eisenhower, Ronald Reagan, and Bill Clinton) served out two full terms of office. Despite strong public support when they were thrust into the presidency, Harry S. Truman and Lyndon Baines Johnson left office repudiated by their own parties after they involved the country in controversial military conflicts abroad. Both were eligible to run for another term, but neither chose to do so. John F. Kennedy was assassinated before completing his first term. Richard Nixon resigned in disgrace two years after his landslide reelection. Nixon's vice president, Gerald R. Ford, failed to win the presidency in his own right after completing Nixon's term. Jimmy Carter lost his reelection bid after his public approval ratings plummeted to a record low of 21 percent because of the Iranian hostage crisis and runaway inflation. George H. W. Bush, whose approval rating skyrocketed to 89 percent during the Persian Gulf War, lost reelection the next year when faced with an economic recession and criticism of his domestic agenda. Even Reagan and Clinton were distracted by scandal in their second terms. Reagan faced congressional investigations and an independent counsel probe into the Iran-contra affair. Clinton faced an independent counsel probe and became the first president since Andrew Johnson in 1868 to be impeached by the House of Representatives (like Johnson, Clinton was acquitted by the Senate). Moreover, both Reagan and Clinton were constrained in their second terms by a Congress controlled by the opposition party.

George W. Bush found himself in a similar predicament in his second term. Democrats won control of both houses of Congress in the 2006 midterm elections. The Democratic victory paved the way for congressional investigations of alleged abuses by the administration and led to heightened oversight of the president's war strategy in Iraq. It also made it more difficult for the president to secure passage of his legislative proposals. Bush's job approval rating plummeted. By July 2007 his Gallup approval rating stood at 29 percent (down from a high of 90 percent in the aftermath of the September 11, 2001, terrorist attacks).¹ Faced with such a number,

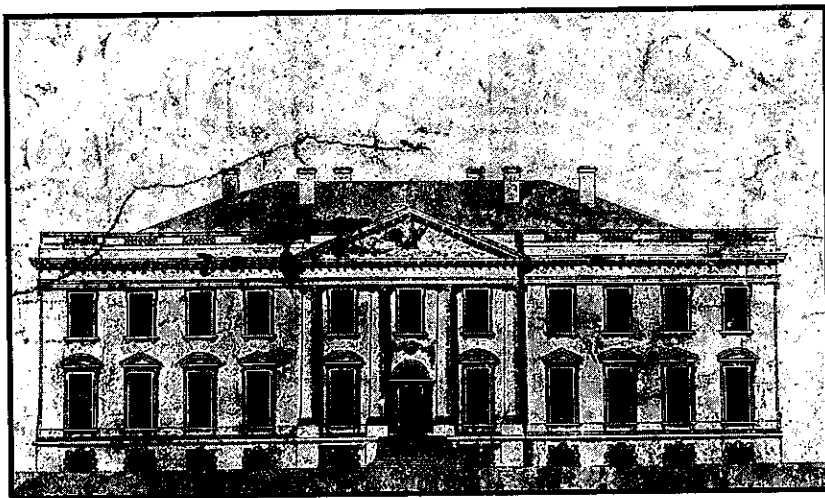
even fellow Republicans became less loyal defenders of the administration, leading the *New York Times* to note that the president was "in danger of losing control over a party that once marched in lockstep with him."² The unusually early start to the 2008 campaign season only reinforced the president's lame-duck status. Bush's situation reminds us that presidential power is not a fixed commodity. Formal powers mean little if presidents cannot convince others to follow their lead. As Richard Neustadt so succinctly put it: "Presidential power is the power to persuade."³

Dramatic changes in presidential fortunes are not new to American politics, nor are "failed" presidencies. Only about 20 percent of all U.S. presidents have served out two full terms. Through both success and failure, however, one might think that constitutional provisions would serve as a constant source of presidential power. But, as the following sections demonstrate, those provisions not only were a source of great debate at the Constitutional Convention but also have been subject to widely different interpretations by presidents and others ever since. Quite simply, the scope of presidential power and the conceptions of the office have changed dramatically over the years.

Inventing the Presidency

Those who invented the presidency in 1787 did not expect the office to become the nation's central political institution. In fact, Article II of the Constitution, which deals with the executive branch, is known for its brevity and lack of clarity, particularly in comparison with the carefully detailed description of the legislative branch in Article I. But within the presidency's vague constitutional description lay the seeds of a far more powerful position, one that has grown through elaboration of its explicit, **enumerated powers** as well as interpretation of its **implied and inherent powers**. Moreover, through the years Congress and the public have caused the range of responsibilities associated with the presidency to expand, particularly in response to changes in society and America's position in the world. What has developed over two centuries is the office that now stands at the center of American government and American politics. As Stephen Skowronek puts it, the president has become "the lightning rod of national politics."⁴

The office of the presidency gained stature and a set of precedents from its initial occupant, George Washington. During the nineteenth century, however, the office languished, so much so that Lord Bryce, the British chronicler of American government, felt compelled to explain in 1890 that because of the institution's weaknesses, great men do not become president. Government during this period centered on Congress and political parties (an American invention the founders did not anticipate). A



This is James Hoban's original architectural drawing of the White House from 1792. Like the building itself, the office of the presidency has changed over time.

few presidents—most notably Thomas Jefferson, Andrew Jackson, and Abraham Lincoln—seemed to foreshadow strong presidents of the future, but most receded quickly from history. How, then, did the presidency come to assume its exalted position? The answer is complex and involves a variety of factors. At one level, the original design of the office—its structure, mode of selection, and powers—continues to exercise important influence on its operation today. But the office has changed over time in response to the influence of its occupants, changing expectations in Congress and by the public, and the internal dynamics of institutional development.

Constitutional Design

The events leading to the American Revolution led the colonists to disparage anything resembling a monarch. Thomas Paine's enormously influential pamphlet, *Common Sense*, published in January 1776, sharply dismissed the institution of monarchy, calling it "the most prosperous invention the Devil ever set on foot for the promotion of idolatry."⁵ Paine went on to call for a new government that had no executive. Some 120,000 copies of *Common Sense* were sold in just the three months following its publication.⁶ The pamphlet's rallying cry against monarchy and executive power had hit a nerve.

In the weeks leading up to the Declaration of Independence, the Continental Congress urged the colonies to adopt new constitutions in anticipation of state-

hood. The resulting state constitutions drafted in 1776 and 1777 "systematically emasculated the power of the governors."⁷ The Pennsylvania Constitution, drafted by Benjamin Franklin, went the furthest. It provided for a unicameral legislature but no chief executive at all. Those states that did create chief executives made them subordinate to the legislature. Most governors served one-year terms, were elected by the legislature, and had little or no appointment or veto powers.⁸ Even where governors were not chosen by the legislature (such as in Massachusetts), their powers were checked by a privy council.⁹ New York stood out as the exception to this practice of weak governors and strong legislatures.¹⁰

As a result, most state legislatures became all-powerful, which led to something of a backlash against strong legislatures by other participants and observers of the political process. For example, after serving as governor of Virginia for two years, Thomas Jefferson strongly criticized the concentration of power in the Virginia legislature. Although the Virginia Constitution explicitly called for the separation of the three branches, the executive and judicial branches were so dependent upon the legislative branch that their powers had been eviscerated. Although mindful of the fear of executive power, Jefferson wrote that his experience with the Virginia legislature had convinced him that "173 despots would surely be as oppressive as one."¹¹ If an unchecked executive could lead to tyranny, so too could an unchecked legislature. These experiences would inform the delegates to the Constitutional Convention in 1787 and make them more willing to accept a strong executive than they would have been immediately after the Revolution.

Experience with the Articles of Confederation also would inform the delegates. The articles were a compact among the thirteen states that the Continental Congress had endorsed in 1777 and the states had ratified by 1781. The articles not only avoided the creation of anything resembling a president but also failed even to create an independent executive branch. Over time, this omission proved problematic. Attempts to administer laws through ad hoc committees, councils, or conventions proved unsuccessful, and Congress found it necessary to create several permanent departments in 1781 (including treasury, foreign affairs, and war). Although Congress appointed eminent men such as Robert Livingston, John Jay, and Robert Morris to head them, the departments remained mere appendages of the legislature.¹² Because the articles also failed to create a federal judiciary, the resulting government revolved around a single legislative body. In their zeal to ward off monarchy, the writers of the articles ignored the principle of separation of powers. And because the states had not delegated much power to the national government under the new scheme, the Confederation Congress remained impotent. Indeed, the

national government had so little power to control the states that the confederation seemed to be but a "cobweb."¹³ Congress did not even have the authority to regulate commerce among the states. This flaw led to a dire situation in which states fought with each other for economic advantage. Protective tariffs and trade barriers became routine weapons used by one state against another. Trade was further complicated by the states' different currencies. Some states went so far as to pass legislation canceling their debts. With no federal judiciary to turn to, those affected by such legislation sometimes had no legal recourse. The resulting chaos was so great that it became a driving force for the Constitutional Convention.

Riots and mob actions in various states, culminating in Shays's Rebellion in Massachusetts, also signaled the need for change. Shays's Rebellion—an uprising in 1786–1787 by more than two thousand farmers who faced foreclosures because of high property taxes and economic depression—underscored the chaos. Massachusetts had to rely on a volunteer army to stop the rebellion because the Confederation Congress was powerless to act. This failure of Congress highlighted the need for a strong national government to maintain public order and prompted several states to vote to send delegates to the proposed Constitutional Convention. Even more significant, it helped to legitimize the idea of a strong *executive*. As Forrest McDonald has written: "Shays' Rebellion stimulated many Americans, especially in New England, to talk openly of monarchy as a safer guardian of liberty and property than republican institutions could be, particularly in a country as large as the United States."¹⁴

The delegates to the Constitutional Convention came to Philadelphia with these problems in mind. They agreed that the power of the national government had to be increased, although they disagreed over *how* to increase it and how *much* to increase it. Virtually all agreed that the new constitution should impose some form of separation of powers with a distinct executive branch at the national level. But delegates disagreed fundamentally about what that executive branch should look like and just how strong it should be. Despite that disagreement, it is striking that just eleven years after the Declaration of Independence, support for an executive (and even support for a *strong* executive) had increased dramatically because of events at the state and the national levels. In short, the delegates brought to the task of designing an executive office two conflicting attitudes: a healthy skepticism for executive power and a new appreciation of its necessity.

Initial Convention Debates. James Madison, the thirty-six-year-old Virginian commonly credited as the chief architect of the Constitution, was the first delegate to arrive in Philadelphia. He was convinced that the national government had to be

dramatically refashioned, especially to increase its power over the states, but he had given little thought to the issue of executive power. In a letter he wrote to George Washington two weeks earlier, Madison admitted that "a national Executive must...be provided" but confessed, "I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed."¹⁵

The "Virginia Plan"—written mostly by Madison but introduced on the first working day of the convention by fellow Virginian Edmund Randolph—reflected this uncertainty. The plan called for an executive of unspecified size and tenure, selected by the legislature, and with unclear powers.¹⁶ Indeed, the executive did not appear to be a matter of high importance to Randolph. His opening speech on May 29, 1787, included a lengthy analysis of the defects of the Articles of Confederation, but he failed to include the lack of an executive as one of them.¹⁷

When the convention began its executive branch deliberations on June 1, Randolph revealed his preference for a weak executive by arguing for a plural executive. More than a quarter of the delegates agreed.¹⁸ Although we now take a single president for granted, the question of whether there should be a singular or plural executive (one president or multiple presidents) was an open question for the delegates. Benjamin Franklin, for one, had long argued for a plural executive.¹⁹ When Franklin's fellow delegate from Pennsylvania, James Wilson, moved that the executive should be singular, a "lengthy embarrassed silence ensued."²⁰ Franklin broke the silence by encouraging the delegates to express their views on the matter. The debate that followed was the first of many between those advocating a strong executive and those a weak one.

Roger Sherman, a delegate from Connecticut, took the most extreme position on a weak executive. He saw no need to give the executive an explicit grant of power in the Constitution. Sherman believed the executive should be completely subservient to the legislature: "nothing more than an institution for carrying the will of the Legislature into effect" and "appointed by and accountable to the Legislature only."²¹ In addition, he argued that Congress should be able to change the size of the office at will. Wilson's motion for a singular executive—a first step toward creating a strong one—eventually won on June 4. But Sherman's suggestion for legislative appointment—something that Wilson and other proponents of a strong executive vigorously opposed—had won on June 2. On yet another issue, presidential veto power, the delegates steered a middle course. After voting for a single executive, the delegates gave the executive a qualified veto power, subject to an override by a two-thirds vote of the legislature.

These decisions, however, proved to be just the beginning of the debate over the position. On June 15 William Paterson introduced the "New Jersey Plan," which proposed simply amending the existing Articles of Confederation rather than replacing them with a new constitution. The plan reintroduced the idea of a plural executive and said the executive should be elected by Congress for a single term.²² Although the primary motivation of the New Jersey Plan was to protect the power of small states (the Virginia Plan apportioned representation in the national legislature according to population; the New Jersey Plan called for equal representation regardless of size), it is clear that those favoring the New Jersey Plan preferred a weak executive.

Since the first debates on executive power in early June, Gouverneur Morris, a delegate from Pennsylvania, had joined the convention. Morris, who had spent most of his life in New York, became—along with James Wilson—one of the most influential proponents of a strong executive. He stood out because of his appearance—he had a wooden leg as a result of a carriage accident and a crippled arm as a result of a scalding as a child—but, as Richard J. Ellis writes, "It was his rapier wit, infectious humor, and brilliant mind that set him apart and drew others."²³ On July 17 he began his offensive. Attempting to free the executive from its dependence on the legislature, Morris called for popular election by freeholders. Sherman vigorously objected, and Morris's motion was quickly defeated by a resounding margin. But the battle lines were drawn, and the debate over presidential selection was far from over.

Heated argument over presidential selection continued for the next week, but when the delegates finished talking on July 26, the plan for an executive that had been agreed upon in early June remained unchanged: legislative appointment of a single executive for one unrenowable seven-year term. Thereupon the delegates turned their resolutions over to a five-member Committee of Detail chaired by James Wilson. Its task was to take the resolutions passed by the Committee of the Whole and turn them into a draft of the Constitution.

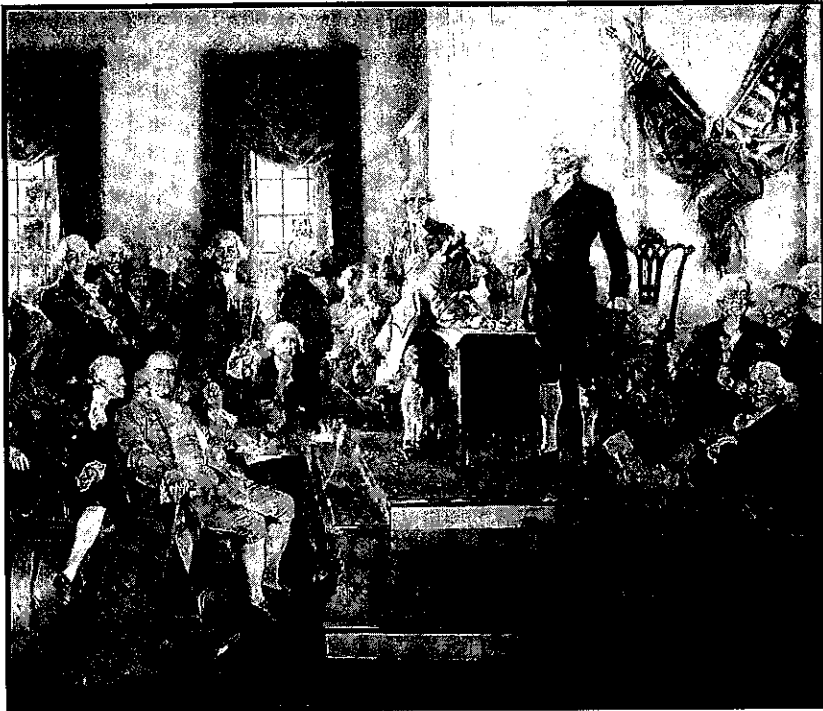
Committee Work and Final Action. One of the notable contributions of the Committee of Detail was its decision to use the word *president* to identify what the delegates had simply referred to as "the Executive." The committee rejected the word *governor*, suggested by John Rutledge of South Carolina, because of the negative connotations associated with the royal governors who had ruled the colonies. The committee chose *president* because it was an innocuous term. Derived from the Latin word *praesidere* ("to sit in front of or at the head of" and "to defend"), president had historically been used to denote passive guardianship

rather than strong executive power. The presiding officer of Congress under the Articles of Confederation was called its president. George Washington, who performed a mostly ceremonial function at the Constitutional Convention, served as its president.²⁴ Arguably, this choice of a term helped to sugarcoat executive power and make it more palatable.

In its draft of the Constitution, the Committee of Detail followed the convention's wishes and gave the president relatively little power. But the fact that it gave the president a specific constitutional grant of power at all was significant. The alternative would have been to follow Sherman's suggestion and allow Congress to dictate presidential powers. The Committee of Detail followed the convention's recommendation for a single executive elected by Congress to one unrenowable term, subject to impeachment, and with a qualified veto power. The draft also gave the president the power to appoint executive officers, to grant pardons, and to receive ambassadors. But many powers traditionally associated with the prerogative of the executive—such as raising armies, making war, making treaties, appointing ambassadors, and coining money—were all withheld from the president and given to the legislative branch.²⁵

Convention debate resumed on August 6. When the delegates took up the article dealing with the president, it was obvious that they remained dissatisfied. But there seemed to be no agreement on how to improve things, and debate ended on August 31 with the powers of the president largely unchanged. At that point, the convention sent unresolved issues to the Committee on Postponed Matters. The committee, chaired by David Brearly of New Jersey, consisted of one member from each state (including, significantly, Gouverneur Morris). It was in that committee that the final constitutional vision of the president took shape.

One of the committee's most significant accomplishments was its cobbling together of a compromise plan for presidential selection. Various proposals had been introduced either for popular election of the president or selection by an electoral body, but the delegates had always reverted back to selection by Congress. The Committee on Postponed Matters revisited this issue and offered a novel twist on James Wilson's suggestion. The committee proposed that a president—and a *vice president* (the first time this position had been recommended)—be chosen by an "electoral college" consisting of electors from each of the states. Each state would be free to choose its electors (equaling that state's combined number of senators and representatives in the U.S. Congress) as its state legislature saw fit. Electors would meet and vote in their respective states. Each elector would have two votes, only one of which could be cast for a candidate from that elector's state. When the votes



George Washington presides over the signing of the Constitution by members of the Constitutional Convention in Philadelphia on September 17, 1787. This depiction of the event was painted by Howard Chandler Christy and hangs in the U.S. Capitol.

from all states' electors were counted, the candidate with the most votes would be elected president and the runner-up would be elected vice president. If no candidate received a majority in the electoral college, the Senate would choose from among the five candidates who had received the most electoral votes. (The convention later changed this provision so that the House of Representatives, with each state delegation having an equal vote, would decide the outcome in such cases.)

The committee's proposed electoral college seemed to resolve the problems that had stymied the convention. First, it placated both large and small states. Basing the number of electors on the combined number of a state's senators and representatives served as a compromise between equal and proportional allocation of electors. Large states could support the plan with the hope that they would dominate the electoral college. At the same time, small states were pleased that each elector could cast only one vote for a home-state candidate. Small states were further as-

sured that if the election were thrown to Congress, each state would have an equal vote (this was true under both the committee's plan for Senate selection and the eventual constitutional provision for House selection). Second, the compromise plan satisfied proponents of an independent president and proponents of congressional selection of the president. Proponents of congressional selection argued that a presidential candidate would seldom get a majority of votes in the electoral college. Therefore, they believed that Congress would ultimately choose the president most of the time anyway, with the electoral college acting simply as a nominating convention. Advocates of an independent president, on the other hand, saw the electoral college as an explicit rejection of congressional selection. They discounted the argument that presidential candidates would seldom get a majority in the electoral college.²⁶ Even on those occasions when a candidate did not get a majority, Congress was limited in its choice to the five candidates with the most votes in the electoral college.²⁷ Clearly this provision limited Congress more than the original plan, in which congressional choice was unrestricted. Finally, the proposal for both a president and a vice president resolved concerns about succession if presidents did not complete their terms.

In addition to its plan for an electoral college, the Committee on Postponed Matters made a few other significant decisions. It shortened the president's term from seven to four years and made the president eligible for reelection to an unlimited number of terms. And—of great import to advocates of a strong executive—it gave the president a number of executive powers that the delegates had previously given to the Senate, including expanded appointment power and the power to make treaties. The resulting language was again a compromise. The president could **nominate** ambassadors and other public ministers, Supreme Court justices, and all other officers whose appointments were not otherwise provided for. Actual **appointment** would come only with the “**advice and consent**” of the Senate. And although the president could make treaties, they could be ratified only by a two-thirds vote of the Senate.²⁸

The convention as a whole spent several days in early September scrutinizing the proposals of the Committee on Postponed Matters. The only major change came on September 6, when the convention gave the House of Representatives the power to choose the president if no candidate received a majority in the Electoral College. The change was the result of fear among the delegates that the Senate was becoming too powerful. When voting for president, each state delegation in the House would have one vote. This guaranteed that each state would have an equal vote (a counterbalance to the Electoral College itself, which gives large states an advantage).

On September 8 the delegates created a five-member Committee of Style, chaired by Morris, to write a final draft of the Constitution. This committee was responsible for the opening words of Article II: "The executive Power shall be vested in a President of the United States of America." As we shall see, the ambiguity of this sentence continues to be the subject of debate, and it stood in marked contrast to the opening words of Article I, which seemed to explicitly limit Congress's powers to those listed in the Constitution: "All legislative powers *herein granted* shall be vested in a Congress of the United States." Ironically, the **vesting clause** of Article II was accepted by the whole of the Constitutional Convention without any discussion of its specific language.²⁹ The constitutional language regarding the presidency resulted from compromise, but it was a compromise that ultimately favored the strong executive model more than the weak one (see Table 1-1). Credit for this usually goes to a small group of delegates, especially Wilson and Morris, who used their strategic positions within the convention's working committees to further their goal of a strong executive.

Interpreting Constitutional Language

The ambivalence over executive power exhibited by the convention has become a permanent feature of American political culture. Like the delegates in 1787, Americans have had to confront the trade-off between tyranny and effectiveness—the one to be feared and the other to be prized. The antifederalists, who opposed ratification of the Constitution, frequently pointed to the risks inherent in a national executive, a post that some considered even more threatening than its British counterpart. As George Mason, a delegate from Virginia who ultimately refused to sign the Constitution, had argued: "We are not indeed constituting a British monarchy, but a more dangerous monarchy, an elective one."³⁰ But others—Alexander Hamilton, for example—saw the newly created presidency as essential to effective government, the source of energy, dispatch, and responsibility in the conduct of domestic and foreign affairs.³¹

This ambivalence has been reflected over the years in differing interpretations of constitutional language concerning presidential power. The vesting clause drafted by Morris and the Committee of Style—"The executive Power shall be vested in a President of the United States of America"—has proven to be, as presidential scholar Charles C. Thach Jr. put it in the 1920s, the "joker" in the game of presidential power.³² Constitutional language limits both legislative and judicial power. Article I limits legislative powers to those "herein granted." Article III uses the phrase "the judicial power shall extend to," followed by an enumeration of those powers,

TABLE 1-1 Models of Executive Considered by the Constitutional Convention

<i>Elements of executive</i>	<i>Weak-executive model</i>	<i>Strong-executive model</i>	<i>Decision by convention</i>
Relation to Congress	To put into effect will of Congress	Powers independent of Congress	Powers independent of Congress but with checks and balances
Number of executives	Plural or single individual checked by council	Single individual with no council or only advisory one	Single individual with Senate advisory on some matters
Method of choosing	By Congress	By means other than congressional selection	Electoral college
Tenure	Limited term; not renewable	No limitation	Unlimited
Method of removal	By Congress during term of office	Only for definite, enumerated reasons after impeachment and conviction by judicial body or Congress	For treason, bribery, high crimes and misdemeanors, by impeachment by majority of House and conviction by two-thirds of Senate
Scope and source of powers	Limited powers delegated by Congress	Broad powers from Constitution, not subject to congressional interference	Broad powers delegated by Constitution
Appointment and foreign policy and war-making powers	None—province of Congress	Would appoint judicial and diplomatic officials and participate in foreign policy and war-making powers, including making of treaties	Appoints executive and judicial officials with consent of Senate; shares foreign policy and war-making powers with Congress; Senate must approve treaties negotiated by president
Veto	None	Veto over legislation passed by Congress, exercised alone or with judiciary	Qualified veto, may be overridden by two-thirds vote of House and Senate

SOURCE: Joseph E. Kallenbach, *The American Chief Executive: The Presidency and the Governorship* (New York: Harper and Row, 1966), chap. 2

which suggests the same sort of limitation of power as that in Article I. But Article II contains no such limit. Whether the omission was intentional is unclear because the full convention never even debated the language. Thach, however, points to letters that Morris wrote in which he admitted how much impact small, seemingly inconsequential changes of phraseology could have on the meaning of constitutional

clauses. Although Morris did not refer explicitly to presidential power in these letters, his advocacy of a strong executive is well known, and Thach suspects that Morris embraced the language of Article II with "full realization of its possibilities."³³ By failing to limit executive power to those "herein granted," Article II suggests that the scope of presidential power is not confined to those powers enumerated in the Constitution. Carried to its extreme, this view gives the president unlimited executive power. The ambiguity of the first sentence of Article II has led to three widely divergent theories of presidential power: the constitutional theory, the stewardship theory, and the prerogative theory.

Proponents of the **constitutional theory**, such as William Howard Taft, argue that presidential power is strictly limited. According to the constitutional theory, presidents have only those powers that are either enumerated in the Constitution or granted by Congress under its constitutional powers. As Taft put it in his book *Our Chief Magistrate and His Powers*:

The true view of the Executive function is, as I conceive it, that the President can exercise no power which cannot fairly and reasonably be traced to some specific grant of power or justly implied and included within such grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power that he can exercise because it seems to him to be in the public interest. ... [Presidential power] must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist.³⁴

In contrast, the **stewardship theory** holds that the president can do anything not explicitly *forbidden* by the Constitution or by laws passed by Congress under its constitutional powers. Theodore Roosevelt embraced this view as president and explained it in his *Autobiography*:

My view was that every Executive officer and above all every Executive officer in high position was a steward of the people bound actively and affirmatively to do all he could for the people. ... I declined to adopt [the] view that what was imperatively necessary for the Nation could not be done by the President, unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp power but I did greatly broaden the use of executive power. In other words, I acted for the common well being of all our people whenever and in whatever measure was necessary, unless prevented by direct constitutional or legislative prohibition.³⁵

Taft, who had served as Roosevelt's secretary of war but later ran against him for president, took direct issue with the stewardship theory in his book:

My judgment is that the [stewardship theory], ascribing an undefined residuum of power to the President, is an unsafe doctrine and that it might lead under emergencies to results of an arbitrary character, doing irremediable injustice to private right. The mainspring of such a view is that the Executive is charged with responsibility for the welfare of all the people in a general way, that he is to play the part of a Universal Providence and set all things right, and that anything that in his judgment will help the people he ought to do, unless he is expressly forbidden not to do it. The wide field of action that this would give the Executive one can hardly limit.³⁶

The **prerogative theory** is the most expansive of these three theories of presidential power. John Locke defined the concept of prerogative power in his *Second Treatise of Government* as the power "to act according to discretion for the public good, without the prescription of the law, and sometimes even against it."³⁷ The prerogative theory not only allows presidents to do anything that they are *not* forbidden to do but allows them to do things that *are* explicitly forbidden when in the national interest. Abraham Lincoln exercised such prerogative power at the outset of the Civil War. During the almost twelve weeks from the outbreak of hostilities at Fort Sumter, South Carolina, on April 12, 1861, to the convening of Congress in a special session on July 4, Lincoln stretched the executive's emergency powers further than ever before. This period has been described as a time of "constitutional dictatorship."³⁸ Lincoln unilaterally authorized a number of drastic actions: he called up the militia and volunteers, blockaded southern ports, expanded the army and navy beyond the limits set by statute, pledged the credit of the United States without congressional authority to do so, closed the mails to "treasonous" correspondence, arrested persons suspected of disloyalty, and suspended the writ of habeas corpus in areas around the nation's capital. Admitting that most of these matters lay within the jurisdiction of Congress rather than the president, Lincoln asserted that they were done because of popular demand and public necessity and with the trust "that Congress would readily ratify them." But he deliberately chose not to call the national legislature into special session until he was ready to do so, and then he presented it with *faits accomplis*.

Although Lincoln's use of executive power was most freewheeling in the early days of hostilities, he continued to exercise firm control over the war throughout his presidency. He controlled the mails and newspapers, confiscated property of people suspected of impeding the conduct of the war, and even tried civilians in military courts in areas where civilian courts were operating. To justify such actions, he appealed to military necessity, asserting that the Constitution's commander in chief clause (requiring command of the armed forces) and its take care

clause (that the laws be faithfully executed) combined to create a “war power” for the president that was virtually unlimited. Lincoln’s success in defending that position is demonstrated by the fact that neither Congress nor the courts placed any significant limits on his actions during the war.

A century later, Richard Nixon pointed to Lincoln’s actions in an attempt to justify illegal covert actions he had taken as president. In fact, Nixon went so far as to claim that if a president chooses to do something illegal because he believes it to be in the national interest, it is—by definition—no longer illegal. As he explained in a televised interview with David Frost in 1977:

When the President does it, that means that it is not illegal. ... If the President, for example, approves something because of the national security, or in this case because of a threat to internal peace and order of significant magnitude, then the President’s decision in that instance is one that enables those who carry it out, to carry it out without violating the law. Otherwise they’re in an impossible position.³⁹

Following the September 11, 2001, terrorist attacks, President Bush also exercised prerogative powers. As part of the “war on terror” he authorized the detention of “enemy combatants” at Guantánamo Bay, Cuba. He argued that detainees could be held there indefinitely without charge, without access to a lawyer, and without regard to the laws of armed conflict, which many argued violates the Geneva Conventions and basic due process rights.⁴⁰ He also authorized the CIA to establish secret prisons in several countries to detain and interrogate al Qaeda suspects—a possible violation of international law.⁴¹ The president eventually admitted that “an alternative set of procedures” was used as part of the interrogation process at those prisons, but insisted that the procedures—though “tough”—were lawful and did not constitute torture.⁴² But behind the scenes, two deputy attorneys general in the Office of Legal Counsel had written memos that justified the use of torture against terror suspects and argued that international law should not interfere with the president’s prerogative war power to use torture if necessary.⁴³

Bush also used his war power domestically. Critics claimed that he violated the Foreign Intelligence Surveillance Act of 1978 when he authorized the use of domestic wiretaps without warrants. The nonpartisan Congressional Research Service found the wiretaps to be “inconsistent with the law.”⁴⁴ The Bush administration, however, pointed to the use of emergency war power by Lincoln and other presidents as justification for the wiretaps and noted that the Authorization for Use of Military Force passed by Congress on September 14, 2001, implicitly gave approval for the president to take broad measures in response to the war on terror.⁴⁵

In short, the ambiguity of the opening sentence of Article II, Section 1, has allowed individual presidents to expand significantly the power of the office. As constitutional scholar Edward S. Corwin wrote in 1957, “Taken by and large, the history of the presidency is a history of aggrandizement.”⁴⁶ By the 1970s Arthur Schlesinger Jr. had coined the phrase “the imperial presidency” to describe the current conception of the office.⁴⁷

Presidents have also relied on ambiguities in their specifically enumerated powers, in Sections 2 and 3 of Article II, to further that aggrandizement. Together, the enumerated powers have created at least five presidential roles that have evolved and expanded over time.

Chief Administrator. This role for the president is more implicit than explicit as set forth in the Constitution. It rests on the executive power clause (Article II, Section 1, Paragraph 1) as well as passages dealing with the right to require opinions from the heads of government departments (Article II, Section 2, Paragraph 1) and the power to make personnel appointments subject to whatever approval Congress may require (Article II, Section 2, Paragraph 2). George W. Bush took the role of chief administrator very seriously. He actively embraced the concept of the **unitary executive**—a concept not widely discussed outside the conservative Federalist Society before Bush took office.⁴⁸ Those who believe in a unitary executive argue that because the president alone possesses the executive power, the president must have absolute control over the executive branch and its administration, including the ability to control all subordinates and to veto or nullify their exercise of discretionary executive power. Moreover, the president must be able to fire any executive branch officials at will.⁴⁹ This view of the presidency holds that attempts by Congress to limit the president’s removal power, even in the case of independent agencies, are improper, as are other oversight measures that interfere with executive branch functions.

If fully implemented, these ideas would be a major shift in the balance of power because traditionally Congress has jealously guarded its oversight powers, thereby denying the president anything approximating a monopoly of administrative power. Moreover, in 1935 the Supreme Court unanimously recognized Congress’s power to limit the president’s ability to fire officers who perform quasi-legislative or quasi-judicial functions in independent agencies within the executive branch.⁵⁰ The Court ruled that only purely executive officials performing purely executive functions can be fired by the president at will.⁵¹ Given the large number of independent agencies (including disparate entities such as the Environmental Protection Agency, Federal Communications Commission, Federal Trade Commission, and

the National Science Foundation), the Court's ruling places a significant limitation on the president's removal power.

Commander in Chief. This role is specifically enumerated in Article II, Section 2, Paragraph 1: "The President shall be 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." But did this language merely confer a title on the president or imply wide-ranging powers in times of emergency? Lincoln believed the latter. From this germ of constitutional power has grown the enormous control that modern presidents exercise over a permanent military establishment and its deployment. The Constitution stipulates that the legislative and executive branches share the war power, but the pressure of events and the presidency's institutional advantages in taking decisive action have led Congress to give greater discretion to the executive. Nor was this delegation of power completely unexpected. Recognizing the need to repel attacks when Congress was not in session, the Constitutional Convention altered language describing the role of Congress in armed hostilities from "make" war to "declare" war (Article I, Section 8, Paragraph 11), thereby expanding the president's realm of discretionary action.⁵² Over time, presidents have invoked the commander in chief clause to justify military expenditures without congressional authorization, emergency powers to suppress rebellion, the internment of American citizens of Japanese descent during World War II, the seizure of domestic steel mills during the undeclared armed conflict in Korea in the 1950s, and the use of warrantless wiretapping as part of the war on terror.⁵³

Moreover, presidents have initiated the use of force far more frequently than they have awaited congressional authorization and continued to wage war—sometimes for years—without a congressional declaration of war. They do so, as political scientist Richard Pious points out, by relying on "congressional resolutions of support, UN resolutions, NATO resolutions, congressional authorizations, and what they consider to be self-executing treaty provisions, relying on whatever is at hand."⁵⁴ John C. Yoo, a strong proponent of the unitary executive who served as deputy attorney general in the Bush administration's Office of Legal Counsel from 2001 to 2003, argued in a memo dated September 25, 2001, that "the Constitution vests the President with the plenary authority, as Commander in Chief and the sole organ of the Nation in its foreign relations, to use military force abroad—especially in response to grave national emergencies created by sudden unforeseen attacks on the people and territory of the United States." Yoo concluded that military actions in the wake of the September 11 attacks "need not be limited to those individuals, groups, or states that participated in the attacks on the World Trade Center and the

Pentagon." Even more significant, he argued that Congress could not "place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the President alone to make."⁵⁵ Pious has noted that some of the Framers, such as Madison, came to an opposite conclusion: Madison "claimed that the Constitution assigned all war and foreign affairs powers to the legislature, with only such exceptions as were explicitly assigned by the Constitution to the executive."⁵⁶

Chief Diplomat. When combined with the president's expanded war power, constitutional primacy in the conduct of foreign affairs establishes the office's claim to being the government's principal agent in the world, if not its "sole organ." Presidents are not only authorized to make treaties "by and with the Advice and Consent of the Senate" but also empowered to nominate ambassadors, subject to Senate approval (Article II, Section 2, Paragraph 2) and to receive diplomatic emissaries from abroad (Article II, Section 3). Presidents have varied in how closely they collaborate with the Senate in making treaties, most waiting until after negotiations have been concluded before allowing any Senate participation. More significant, the conduct of foreign affairs has come to rely on **executive agreements** between heads of state in place of treaties. These agreements do not require Senate ratification, as treaties do, although many are given legislative approval by statute (as was NAFTA, the North American Free Trade Agreement, under President Clinton) or a joint resolution of Congress (as was SALT I, the first strategic arms limitation agreement with the Soviet Union, under President Nixon). Statutes and joint resolutions require only a simple majority, rather than the two-thirds approval necessary for Senate ratification of a treaty.⁵⁷ When given such legislative approval, they are referred to as "congressional-executive agreements."⁵⁸

Chief Legislator. This feature of the job did not fully develop until the twentieth century. Before then, the president's role in legislation was primarily negative: the ability to veto. Today, however, the president's power to provide leadership for Congress rests primarily on the ability to shape the legislative agenda through active leadership. Congress fostered this development in 1921 when it passed legislation requiring the president to submit a budget for the whole of government. Constitutional language in Article II, Section 3, merely obliged the president to give "the Congress Information of the State of the Union" and to recommend such other measures for its consideration as deemed "necessary and expedient." Legislative leadership is now considered a task for all presidents to fulfill, and they routinely develop detailed legislative agendas and present them to Congress and the nation.

Chief Magistrate. This area of presidential activity is perhaps the least clearly recognized, but it is one that George W. Bush expanded as part of his embrace of the unitary executive. It is based on the oath clause of Article II, Section 1, Paragraph 8, of the Constitution, directing the president to “preserve, protect, and defend the Constitution of the United States,” and the general charge in Article II, Section 3, directing the president to “take Care that the Laws be faithfully executed.” Proponents of a unitary executive argue that these clauses require *coordinate construction*. In other words, the president, along with the courts and Congress, has the power and the duty to interpret the Constitution to make sure that it is preserved and faithfully executed. President Bush’s interpretation led to his controversial use of **presidential signing statements** when signing a bill into law. Presidents since James Monroe have issued them, but usually they were ceremonial in nature—designed to state why the president signed a law or to celebrate its passage. Occasionally, however, a president would use them to point out portions of a bill he thought were unconstitutional. In some rare instances, the president would say that he would not execute that provision. Other presidents, Clinton, for example, noted constitutional problems in signing statements but made it clear that they would enforce the provision until a court struck it down.⁵⁹ Starting with Reagan, signing statements were used more systematically—often to clarify how the president believed executive branch agencies should interpret ambiguous sections of the law. In 1986 the Justice Department added signing statements to the legislative history section of the U.S. Code.⁶⁰

Bush, however, used signing statements routinely to state his intent *not* to enforce specific provisions of legislation. The American Bar Association Task Force on Presidential Signing Statements reported in August 2006 that Bush had challenged more than eight hundred specific provisions of legislation he signed. In a single signing statement accompanying the Consolidated Appropriations Act of 2005, Bush issued 116 specific objections relating to almost every part of the bill.⁶¹ Bush’s signing statements rejected encroachments on the unitary executive. For example, he rejected congressional oversight of Patriot Act authority to search homes secretly and to seize private papers as well as more general encroachments on presidential prerogative power. Although he signed the McCain amendment banning the use of torture by U.S. officials, Bush quietly indicated that he could disregard the law and use torture under his commander in chief powers when he deemed it necessary.⁶² In short, Bush claimed the right to disobey laws that he had signed whenever he felt those laws conflicted with his interpretation of the Constitution without waiting for action by a court. His conception of the power of the chief mag-

istrate goes far beyond the normal executive branch role, but until 2006, most people—including members of Congress—were largely unaware of Bush’s extensive use of signing statements.⁶³

President Bush interpreted all five of these presidential roles broadly. Law professor Jeffrey Rosen points out that the result has been “the largest expansion of executive power since FDR.”⁶⁴ Because the constitutional job description for presidents is permissive rather than confining, it aids such aggrandizement of presidential power.

Expansion of the Presidency

Students of the presidency commonly divide the office’s development into two major periods: traditional and modern. In the traditional era, presidential power was relatively limited, and Congress was the primary policymaker. The modern era, on the other hand, is typified by presidential dominance in the policymaking process and a significant expansion of the president’s powers and resources. The presidency of Franklin D. Roosevelt was the turning point into the modern era. Political scientist Fred I. Greenstein argues that the modern presidency is distinguished by four features: (1) the president is expected to develop a legislative program and to persuade Congress to enact it; (2) presidents regularly engage in direct policymaking through actions not requiring congressional approval; (3) the presidential office has become an extensive bureaucracy designed to enable presidents to undertake points 1 and 2; and (4) presidents have come to symbolize the nation and to personify its government to such an extent that the public holds them primarily responsible for its condition and closely monitors their performance through intensive media coverage.⁶⁵

A number of factors have contributed to the expansion of the American presidency. Several individual presidents, culminating in FDR, helped to precipitate the change. In addition, changes in the presidency have been established by Congress through statute; as a result of presidential actions that later became customary practices; and through institutional development. We examine each of these factors in turn.

Expansion by Individual Presidents

Several early presidents—including George Washington, Thomas Jefferson, Andrew Jackson, and Abraham Lincoln—are often credited with providing their successors with an institutional legacy that left the office more powerful than before.⁶⁶

This assertion is true to a certain extent, but it was three twentieth-century presidents who were largely responsible for expanding presidential power and creating the modern presidency: Theodore Roosevelt, Woodrow Wilson, and FDR.

Theodore Roosevelt. As president, Theodore Roosevelt helped the United States become a world power. Concerned over the rise of Japan as a threat to American interests in the Pacific, Roosevelt sought and obtained a major role in negotiating the Portsmouth treaty, which terminated the Russo-Japanese War of 1905. Closer to home he intervened in the affairs of neighbors to the south when he considered it vital to the national interests of the United States, sending troops to the Dominican Republic and Cuba. Even more blatant was Roosevelt's role in fomenting the rebellion of Panama against Colombia so that the United States could acquire rights to build a canal. An avowed nationalist with the desire to expand U.S. influence in international affairs, Roosevelt ordered the navy to sail around the world as a symbolic demonstration of American military might. The image of U.S. naval ships sailing off the shores of other countries would serve as a potent reminder to those nations that the United States was now a major world power. When Congress balked at the expense, he countered that he had sufficient funds to get the navy there; if the lawmakers wanted the fleet back home, they would have to provide the money for the return trip.

Roosevelt also responded vigorously to the rapid industrialization of American life. He had charges pressed against corporations that violated antitrust laws, and he pushed legislation through Congress that gave the Interstate Commerce Commission power to reduce railroad rates. When coal mine operators in Colorado refused to agree to arbitration of a dispute with their workers, Roosevelt threatened to have troops seize the mines and administer them as a receiver for the government. He was the first American chief executive to intervene in a labor dispute who did *not* take management's side. Roosevelt also championed major reclamation and conservation projects as well as meat inspection and pure food and drug laws.

Perhaps most important, Roosevelt did much to popularize the presidency after three decades of lackluster leaders. (Of the eight men who served between Lincoln and Roosevelt, only Grover Cleveland is considered at all significant.) A dynamic personality, an attractive family, and love of the public spotlight enabled Roosevelt "to put the presidency on the front page of every newspaper in America."⁶⁷ Considering himself the "steward of the people" and seeing the office as a "bully pulpit" from which the incumbent should set the tone of American life, Roosevelt was the first president to provide meeting rooms for members of the press and to hold informal news conferences to link the presidency with the people. His style of leadership depended upon extensive use of popular speech, a distinctive reinterpretation

of statesmanship that ushered in the era of the "rhetorical presidency."⁶⁸ In keeping with his stewardship theory of presidential power, Roosevelt was also the first president to rely on broad discretionary authority in peacetime as well as in crisis.⁶⁹

Woodrow Wilson. Although Theodore Roosevelt laid the groundwork for use of popular appeals during his presidency (1901–1909), it was Wilson (1913–1921) who linked inspirational rhetoric to a broad program of action in an effort to address domestic and foreign affairs. Jeffrey Tulis has argued that this effort rested on a systematic, ambitious reinterpretation of the president's role in the constitutional order.⁷⁰ A skilled public speaker, Wilson was the first president since John Adams to go before Congress in person to give his State of the Union message, a practice we now take for granted.⁷¹ Like Jefferson, he was a powerful party chief who worked through congressional leaders and the Democratic caucus to influence legislation. He also did not hesitate to take his case to the people, casting himself as the interpreter as well as the representative of their interests.

During his first term in office, Wilson pushed through a vast program of economic reform that lowered tariffs, raised taxes on the wealthy, created a central banking system, regulated unfair trade practices, provided low-interest loans to farmers, and established an eight-hour day for railroad employees. When the United States became involved in World War I during his second term, Wilson went to Congress and obtained authority to control the economic as well as the military aspects of the war (rather than prosecuting it through unilateral executive action). This grant gave him the power to allocate food and fuel, license trade with the enemy, censor the mail, regulate the foreign language press of the country, and operate railroads, water transportation systems, and telegraph and telephone facilities. At the end of the war, he made a triumphant trip to Europe, where he assumed the leading role in the writing of the Versailles peace treaty.

Wilson also provided a lesson in how *not* to work with Congress: his adamant refusal to accept any reservations proposed by the Senate for the League of Nations Covenant of the Treaty of Versailles ensured that the United States would not participate. Wilson's archenemy, Sen. Henry Cabot Lodge, R-Mass., calculated that the president's intransigence and personal hatred of him was so intense that the president would reject all compromises proposed to the treaty. Lodge was right: Wilson said it "better a thousand times to go down fighting than to dip your colors to dishonorable compromise." A trip to win popular support for the League ended in a physical breakdown (Wilson suffered a stroke) and failure. As a result, the country whose leader proposed the League of Nations ended up not belonging to the organization at all.

Franklin D. Roosevelt. Confronted by enormous domestic and international crises, FDR began a program of action and innovation unmatched by any chief executive in U.S. history. In most respects, his service is now used as a yardstick against which the performance of his successors is measured.⁷² When Roosevelt came into office in March 1933, business failures were legion, 12 million people were unemployed, banks all over the country were closed or doing business under restrictions, and Americans had lost confidence in their leaders and themselves. Counseling the nation in his inaugural address—the first of four—that “the only thing we have to fear is fear itself,” the new chief executive swung into action: a four-day bank holiday was declared, and an emergency banking bill was prepared within a day’s time. During Roosevelt’s first hundred days in office, the nation witnessed a social and economic revolution in the form of his New Deal. Congress adopted a series of far-reaching government programs insuring bank deposits, providing crop payments for farmers, establishing codes of fair competition for industry, granting labor the right to organize, providing relief and jobs for the unemployed, and creating the Tennessee Valley Authority, a government corporation, to develop that region. With these measures and others such as Social Security, public housing, and unemployment compensation, Roosevelt established the concept of the “positive state” in America—a government that has the obligation to take the lead in providing for the welfare of all the people.

Internationally, Roosevelt extended diplomatic recognition to the Soviet Union, embarked on the Good Neighbor policy toward South America, and pushed through the Reciprocal Trade Program, which lowered tariffs with other nations. In his second term, FDR began the slow and difficult task of preparing the nation for its eventual entry into World War II: he funneled aid to the Allies; traded fifty “over-age” destroyers to Britain for naval and air bases in the British West Indies, Argentina (Newfoundland), and Bermuda; and obtained passage of the nation’s first peacetime draft. After Pearl Harbor, in his own words, “Dr. New Deal” became “Dr. Win-the-War.” He took over economic control of the war effort granted him by Congress and established the victorious strategy of concentrating on defeating Germany before Japan. While hostilities were still going on, he took the lead in setting up the United Nations, but died before he could see the organization established in 1945.

Roosevelt was an innovator whose actions reshaped the presidential office. He was not only an effective legislative leader but also a skilled administrator responsible for a thorough reorganization of the executive branch, including the creation of the Executive Office of the President (see chapter 6). Even more important, FDR was probably the most effective molder of public opinion the nation has ever

known. He pioneered the use of “fireside chats” over radio to explain his actions to the people. In addition, he raised the presidential press conference to new heights as a tool of public persuasion. As a man who could take idealistic goals, reduce them to manageable and practical programs, and then sell them to Congress and the American people, Roosevelt has no peer.

Expansion through Statute

Congress is another major source of change in the presidency. Legislators have mandated activities that earlier presidents exercised on a discretionary basis or have formally delegated responsibility for activities that traditionally resided with Congress. One of the contemporary presidency’s major responsibilities—serving as the nation’s economic manager—is nowhere suggested in the Constitution.⁷³ Congress foisted this power on the president. In 1921 Congress passed the Budget and Accounting Act as part of an effort to increase the fiscal responsibility and efficiency of government. The act created the Bureau of the Budget as a part of the Treasury Department and required the president to use the expert advice of the bureau to propose annual fiscal policy to the government. Quite simply, the legislation compelled the president to take an active role in domestic policy formulation. According to James Sundquist:

Before 1921, a president did not have to have a program for the whole of the government, and none did; after that date he was compelled by the Budget and Accounting Act to present a program for every department and every bureau, and to do it annually. Before 1921, a president did not have to propose a fiscal policy for the government, and many did not; after 1921, every chief executive had to have a fiscal policy, every year. That made the president a leader, a policy and program initiator, and a manager, whether he wished to be or not.⁷⁴

Naturally, strong presidents exerted policy leadership before 1921, but nothing had compelled them to act. Likewise, it is wrong to assume that the Budget and Accounting Act automatically produced strong presidents. The first three affected by the act—Warren Harding, Calvin Coolidge, and Herbert Hoover—dutifully submitted proposals to Congress but seldom exerted strong leadership to secure enactment.⁷⁵ That pattern changed under FDR, who used the crisis of the Great Depression as a rallying cry for policy enactment.

Over time, Congress further expanded presidential power. It created the Executive Office of the President in 1939 as a source of expert advice to help presidents in the formulation of policy. Congress also added to the president’s economic responsibilities by passing the Employment Act of 1946. As Sundquist explains, the act “compels the president to maintain a continuous surveillance of the nation’s econ-

omy, to report on the state of its health at least annually, and if there are signs of pathology—inflation, recession, stagnation—to recommend corrective action.”⁷⁶ Despite giving the president new tasks to fulfill, Congress did not surrender its traditional right to alter presidential proposals, thereby ensuring that tax rates and spending proposals would continue to be a mainstay of partisan politics as well as legislative-executive relations. (The politics of economic policymaking are discussed in chapter 9.)

Congress has taken comparable action in other areas as well. In 1947 Congress charged the president with the task of coordinating national security policy—foreign policy, intelligence collection and evaluation, and defense policy—through the creation of the National Security Council (NSC). Truman resisted the newly created NSC as an intrusion on his powers and was slow to use it. In fact, no president can be *required* to use such a structure, but during the cold war one president after another established administrative machinery designed to achieve the same goal of coordination of American foreign policy (see chapter 10).

During George W. Bush’s administration, the Republican-controlled Congress sanctioned many of the actions Bush had already taken unilaterally under his war power. Prior to the Democrats’ regaining control in the 2006 midterm elections, Congress passed the Military Commissions Act of 2006. As Richard Pious wrote, the act

authorized the military commissions initially promulgated by Bush’s military order to try noncitizen detainees in the War on Terror; granted vast delegation of power to the president to determine their rules of procedure; delegated to the president the power to determine by executive order what interrogation techniques would be used on detainees (with the exception of a set of limited techniques defined to constitute torture that would be prohibited, such as sleep deprivation and waterboarding); allowed the president to “interpret the meaning and application” of international conventions involving treatment of prisoners; permitted information acquired through harsh interrogations (prior to passage of the Detainee Treatment Act of 2005) [which contains the McCain amendment] to be used in trials if the commission found the statements reliable and in the “interests of justice”; and stripped federal courts of pending habeas corpus petitions filed by detainees (as of October 2006 numbering 196).⁷⁷

It seems clear that Congress can encourage presidents to provide leadership in areas wholly absent from the original constitutional design or encourage executives to devise new ways to exercise their traditional responsibilities.

Expansion through Custom and Practice

Across a wide range of presidential activities, “action based on usage may acquire legitimacy.”⁷⁸ Nowhere in the Constitution does it say that presidents would

serve as leaders of their party, but that task has been associated with the office since Thomas Jefferson first established his dominance of the Democratic-Republicans’ congressional caucus. Enormous variation may be found in how presidents pursued such activities and in how successful they were. Some, like Jefferson, had a close relationship with their party, while other executives were virtually abandoned by their partisan allies (Rutherford B. Hayes). At other times, presidents sought, and seemed to derive, greater influence by appearing to serve “above” party (Eisenhower). If the political parties continue to weaken or have difficulty reasserting themselves as structures vital to democracy, this informal part of the president’s job description could disappear.

A second example of precedent and custom can be found in Theodore Roosevelt’s attempt to mediate a labor-management dispute. Earlier presidents had intervened on the side of company owners, but Roosevelt put his prestige on the line when he sought to resolve the anthracite coal strike of 1902, a struggle that had paralyzed a vital industry. Other presidents followed suit: Wilson intervened in eight major disputes, Harding in two, FDR in eleven, and Truman in three.⁷⁹ The response of one president to emergency conditions had become an accepted precedent for his successors, if they wished to pursue it.

Institutional Sources of Change

Finally, it needs to be recognized that the modern presidency is no longer a one-person job—a reality that may have significant consequences for the office’s evolution. To dispatch the many responsibilities placed at the president’s door, the modern presidency has become a working collectivity. The shift toward what has been called the “institutional presidency”—a twentieth-century phenomenon—is partly a result of changing customs and practice, but it is also something that was furthered by statute. During FDR’s first term, the average number of full-time White House staffers was forty-seven. By Nixon’s second term some thirty-five years later, that number had grown to well over five hundred.

Congress spurred the increase in staff by creating the Executive Office of the President (EOP) in 1939 and then passing subsequent legislation to create additional staff units, such as the Council of Economic Advisers and the National Security Council, within that structure. At the same time, presidents unilaterally created their own specialized staff units. These include the Congressional Liaison Office (to help secure congressional passage of presidential initiatives), the Office of Communications (to help communicate the president’s agenda to the American people and to coordinate the flow of information from the many departments and agencies within the executive branch), and the Office of Public Liaison (to maintain support

from interest groups). By some counts, the president's full-time executive staff under Nixon, including presidential advisers in the EOP, grew to more than five thousand. During FDR's first term, comparable executive staff (including groundskeepers and the White House police force) numbered only 103.⁸⁰

Presidential Culture

Understanding the presidency's institutional development provides an important perspective on the functions of the office, but we also need to address a less concrete question: What does the presidency *mean* to Americans? The final section of this chapter focuses on the development of the office's emotional and psychological significance.

Despite the Framers' ambivalence toward executive power, the office of president quickly acquired mythic dimensions when it was filled by the country's first true hero. George Washington, argues Seymour Martin Lipset, supplied the virtues of a charismatic leader who serves as "symbol of the new nation, its hero who embodies in his person its values and aspirations. But more than merely symbolizing the new nation, he legitimizes the state, the new secular government, by endowing it with his 'gift of grace,'" the near magical qualities such leaders supposedly possess.⁸¹ A cult of personality grew up around Washington so that well into the nineteenth century citizens displayed his likeness in their homes, named their children after him, and paid him endless tributes.

In the process of contributing stability and identity to the new nation, Washington also endowed the presidential office with a special meaning that has become part of our collective heritage. Bruce Buchanan refers to this as **presidential culture**, "widely held meanings of the presidency, derived from selected episodes in the history of the institution and transmitted from one generation to the next by political socialization."⁸² Buchanan explains that families, teachers, and the media sustain this view of the presidency as an office with the ability to deliver the nation from danger as a result of its occupants' greatness. Somehow, it is widely believed, the institution "has the potential to make extraordinary events happen" and the incumbent "should be able to realize that potential."⁸³ Occupants of the position, then, are expected to live up to these levels of performance and are roundly criticized when they fall short.

Why have such unrealistic expectations taken hold? One reason is that we have glorified the memories of past presidents. The "great" presidents, particularly those who took decisive action and bold initiatives, and even some of the "not so great"

are treated as folk heroes and enshrined in a national mythology—figures whose birthdays we celebrate, whose virtues we are urged to emulate, whose achievements we memorialize, and whose sex lives continue to interest us long after their deaths. Schoolchildren throughout America are regaled with stories of Washington and Lincoln every February in classrooms decorated with their silhouettes. Every summer, thousands of vacationers make the pilgrimage to visit shrines located along the Potomac in Washington, D.C., or scattered throughout the nation in presidential libraries and museums. Historical and popular glorification, however, does not constitute the full story. The presidency has always been important in American civic life, but it may have assumed even greater proportions in the modern era, assisted by new technologies and resting on new conceptions of the office.

A number of political scientists have pointed to the importance of the presidency in meeting the emotional and psychological needs of the populace. In particular, it is argued that citizens have expressive needs for confidence, security, reassurance, and pride in citizenship.⁸⁴ In the view of Murray Edelman, citizens suffer from a "general sense of anxiety about the comprehensive function played in human affairs by chance, ignorance, and inability to comprehend, plan, and take responsibility for remote and complicated contingencies." The natural response is to seek emotional comfort through attachment to reassuring symbols, "and what symbol can be more reassuring than the incumbent of a high position who knows what to do and is willing to act, especially when others are bewildered and alone?"⁸⁵ We know that American children develop a highly idealized image of presidents that emphasizes both their power and their benevolence, a source of reassurance that may be transferred from childhood to adulthood.

Fred Greenstein suggests additional psychological needs that are met through the presidency. Citizens seeking to sort through the complexity of political life turn to presidents for cognitive assistance. Presidents personify the government and make it possible to become engaged by what would otherwise be an impersonal abstraction. By following the president's activities, citizens may also experience a sort of vicarious participation in public affairs, giving them a sense of power and control that ordinarily would be unavailable. As a symbol of stability, predictability, and national unity, the president soothes fears and enables us to proceed with our daily lives.⁸⁶

This aspect of the presidential office has become particularly "potent as a symbol of the public welfare, built-in benevolence, and competence to lead."⁸⁷ Barbara Hinckley points out that "symbols evoke ideas the society wants to believe are true. ... [They] can substitute for something that does not exist otherwise."⁸⁸ In

fact, Hinckley argues that because the Constitution failed to clarify the presidency's nature and responsibilities, symbols have become enormously significant: "The office is undefined; thus presidents become what people want them to be."⁸⁹ And the people want them to be many things. The list of desirable personal attributes is impressive, as Ray Price, an aide to Richard Nixon during the 1968 presidential campaign, pointed out in a memo to the staff:

People identify with a President in a way they do with no other public figure. Potential presidents are measured against an ideal that's a combination of leading man, God, father, hero, pope, king, with maybe just a touch of the avenging Furies thrown in. They want him to be larger than life, a living legend, and yet quintessentially human; someone to be held up to their children as a model; someone to be cherished by themselves as a revered member of the family, in somewhat the same way in which peasant families pray to the icon in the corner. Reverence goes where power is.⁹⁰

The problem for candidates (and incumbents) is how to project an image that matches these public expectations. Theodore Lowi has argued that "the expectations of the masses have grown faster than the capacity of presidential government to meet them."⁹¹ According to Lowi, modern presidents resort to illusions to cover failures and seek quick fixes for their flagging public support in foreign adventures. As we discuss in chapter 3, advances in the means of communication have increased the ability of presidents to do this. Such behavior—portrayed by Lowi as rooted in the presidential institution, not in individual presidents' personalities—is ultimately self-defeating because it does nothing more than further inflate expectations and ensure public disappointment, which may help to explain the string of failed presidencies described at the beginning of this chapter.

Conclusion: The Changeable, Political Presidency

There can be little doubt that today's presidency is a far cry from the office designed by the Constitutional Convention. Responsibilities have grown enormously as have means to fulfill them. So have the mythic dimensions of the office. Unlike the office that was launched in 1789, today's presidency is firmly rooted in the national consciousness as the consequence of childhood socialization and a secular mythology whose idealized images are magnified with the passage of time. There is no way to determine whether the office of president means more to Americans today than it did two centuries ago in terms of the emotional and psychological needs it meets, but certainly it occupies a more central—some observers would argue excessive—place in the public consciousness.

The contemporary presidency is not a static construct, however. As this overview of institutional development demonstrates, Americans' perceptions of the office and what they want from it can and will change over time. All too often, observers of the presidency treat temporary conditions as if they were permanent—mistaking a snapshot for a portrait.

To summarize, the presidency is variable for several reasons. First, in no other public office do the personality, character, and political style of the incumbent make as much difference as they do in the presidency. As an institution, the presidency exhibits important continuities across administrations, but the entry of each new occupant has an undeniably pervasive effect on the position's operation. The presidency is also heavily influenced by changes outside the office and throughout the U.S. political system—whether in the formal political structure (Congress, the executive branch, the courts), in the informal political institutions (political parties and interest groups), in society at large, in the mass media, or in conditions surrounding substantive issues, particularly national security and the economy. Because of their extensive responsibilities, presidents must contend with all of these influences. Furthermore, although the Constitution and historical precedents give structure to the office, the powers of the presidency are so vague that incumbents have tremendous latitude to shape the office to their particular desires.

The presidency is not only highly *changeable* but also essentially *political*. Although on occasion, especially in times of crisis, presidents rule by asserting their constitutional prerogatives, they usually are forced to govern by political maneuvering—by trying to convince and persuade the many participants in the political process. This is a very complex task. Not only must they perform on the public stage of mass politics, but they also must master the intricacies of elite politics, a game played among skilled insiders. In the following chapters, we first examine "public politics" (chapters 2, 3, and 4) and then turn to the skills that presidents bring to relations with other public elites (chapters 5, 6, and 7). These separate dimensions are linked in discussions of major policy areas (chapters 8, 9, and 10).

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NOTES

1. For up-to-date polling data, including these results, see www.pollingreport.com.
2. Sheryl Gay Stolberg, "For President Bush, a Reversal of Fortune on His Political Capital," *New York Times*, June 30, 2007, A11.
3. Richard E. Neustadt, *Presidential Power: The Politics of Leadership* (New York: Wiley, 1960), 26.
4. Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge: Harvard University Press, 1993), 20.
5. Quoted in Forrest McDonald, *The American Presidency: An Intellectual History* (Lawrence: University Press of Kansas, 1994), 127.
6. McDonald, *The American Presidency*, 126.
7. Richard J. Ellis, ed., *Founding the American Presidency* (Lanham, Md.: Rowman and Littlefield, 1999), 1.
8. McDonald, *The American Presidency*, 132–133.
9. Richard M. Pious, *The American Presidency* (New York: Basic Books, 1979), 23.
10. Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776–1993*, 2nd ed. (Washington, D.C.: CQ Press, 1994), 5. One of the drafters of the New York Constitution, Gouverneur Morris, later played an important role in the creation of presidential power at the 1787 Constitutional Convention.
11. Thomas Jefferson, *Notes on the State of Virginia*, quoted in Ellis, *Founding the American Presidency*, 4.
12. Charles C. Thach Jr., *The Creation of the Presidency, 1775–1789: A Study in Constitutional History* (Baltimore: Johns Hopkins University Press, 1923), chap. 3.
13. Pious, *The American Presidency*, 22.
14. McDonald, *The American Presidency*, 151.
15. Quoted in Ellis, *Founding the American Presidency*, 6.
16. Milkis and Nelson, *The American Presidency*, 2nd ed., 13–14.
17. McDonald, *The American Presidency*, 163.
18. *Ibid.*, 164.
19. Ellis, *Founding the American Presidency*, 31–32.

20. McDonald, *The American Presidency*, 164; see also Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1911), 1:65.
21. Farrand, *Records*, 1:65.
22. *Ibid.*, 1:244.
23. Ellis, *Founding the American Presidency*, 13.
24. This paragraph is based on McDonald, *The American Presidency*, 157.
25. *Ibid.*, 171.
26. Ellis, *Founding the American Presidency*, 112–113.
27. We use the term *Congress* loosely here. As we have pointed out, the original recommendation of the Committee on Postponed Matters called for the *Senate* alone to choose from among the top five presidential candidates. As finally ratified, the Constitution called for the *House* alone to choose from the top five candidates. After the ratification of the Twelfth Amendment in 1804, the Constitution called for the House to choose from among the top *three* presidential candidates.
28. This account of the Committee on Postponed Matters is drawn largely from McDonald, *The American Presidency*, 176–178; see also Milkis and Nelson, *The American Presidency*, 2nd ed., 21–22.
29. Edward S. Corwin, *The President: Office and Powers*, 4th ed. (New York: New York University Press, 1957), 12.
30. Quoted in Michael Nelson, ed., *Guide to the Presidency*, 2nd ed. (Washington, D.C.: CQ Press, 1996), 30. Although this sort of hostility toward a strong executive was common among antifederalists, Herbert J. Storing has pointed out that there are greater differences of opinion among them than one might expect. Some antifederalists continued to argue for a plural executive or an executive council, but others agreed that a unitary executive was necessary. Storing points out that among antifederalists there was even "a fair amount of sympathy for a strong (even, under some circumstances, a hereditary) executive to resist the aristocratic tendencies of the legislature; and some of the Anti-Federalists objected that the President would be too weak to stand up to the Senate and would become a mere tool of aristocratic domination." Herbert J. Storing, ed., *The Complete Anti-Federalist* (Chicago: University of Chicago Press, 1981), 1:49.
31. Alexander Hamilton, *Federalist* No. 70.
32. Thach, *The Creation of the Presidency*, 138.
33. *Ibid.*, 139.
34. William Howard Taft, *Our Chief Magistrate and His Powers* (New York: Columbia University Press, 1916), 139–140.
35. Theodore Roosevelt, *Autobiography* (New York: Macmillan, 1913), 388–389.
36. Taft, *Our Chief Magistrate*, 144–145.
37. Quoted in Corwin, *The President*, 4th ed., 8 (emphasis added).
38. Clinton Rossiter, *Constitutional Dictatorship* (Princeton: Princeton University Press, 1948).
39. Interview with Richard Nixon by David Frost, televised May 19, 1977; quoted in Craig Ducat, *Constitutional Interpretation*, 7th ed. (Belmont, Calif.: West, 2000), 206.
40. Charles Babington, "Critics of Guantánamo Urge Hill to Intervene," *Washington Post*, June 16, 2005, A2.
41. Dana Priest, "CIA Holds Terror Suspects in Secret Prisons; Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11," *Washington Post*, November 2, 2005, A1.
42. "Bush: CIA holds terror suspects in secret prisons," CNN.com, September 7, 2006. The full text of the president's remarks is available at www.whitehouse.gov/news/releases/2006/09/20060906-3.html.
43. Christopher S. Kelley, "Rethinking Presidential Power: The Unitary Executive and the George W. Bush Presidency" (paper presented at the annual meeting of the Midwest Political Science Association,

Chicago, April 7–10, 2005), 25. The two memos are: Jay S. Bybee, "Memorandum for Alberto Gonzales, Re: Standards of Conduct for Interrogation under 18 U.S.C. Sections 2340-2340A," Office of Legal Counsel, August 1, 2002 (full text at www.washingtonpost.com/wp-srv/nation/documents/dojinterrogationmemo20020801.pdf); and John Yoo, "Memorandum to The Honorable Alberto R. Gonzales," Office of Legal Counsel, August 1, 2001 (full text at <http://news.findlaw.com/wp/docs/doj/bybee80102ltr.html>).

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45. Edward Epstein, "Wiretap defense invokes Lincoln, Roosevelt; Attorney general says they didn't get warrants, either," *San Francisco Chronicle*, January 25, 2006, A3.

46. Corwin, *The President*, 4th ed., 30.

47. Arthur M. Schlesinger Jr., *The Imperial Presidency*, 2nd ed. (Boston: Houghton Mifflin, 1989).

48. Kelley, "Rethinking Presidential Power."

49. Christopher S. Yoo, Steven G. Calabresi, and Anthony J. Colangelo, "The Unitary Executive in the Modern Era," *Iowa Law Review* 90 (January 2005): 606.

50. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

51. *Myers v. United States*, 272 U.S. 52 (1926). In 1988 the Court ruled in *Morrison v. Olson*, 487 U.S. 654, that Congress could limit the power to remove an independent counsel, even though an independent counsel is a purely executive official performing a purely executive function. The lone dissenter was Justice Antonin Scalia.

52. McDonald, *The American Presidency*, 173–174.

53. Louis Fisher, *Constitutional Conflicts between Congress and the President*, 5th ed. (Lawrence: University Press of Kansas, 2007), chap. 9.

54. Richard M. Pious, "Inherent War and Executive Powers and Prerogative Politics," *Presidential Studies Quarterly* 37 (March 2007): 77.

55. John C. Yoo, "Memorandum Opinion for the Deputy Counsel to the President: The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them," September 25, 2001. The full text of the memorandum is posted at the U.S. Department of Justice Web site at www.usdoj.gov/olc/warpowers925.htm. Yoo's book, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11* (Chicago: University of Chicago Press, 2005), explicates this theory.

56. Pious, "Inherent War and Executive Powers," 70.

57. Fisher, *Constitutional Conflicts between Congress and the President*, chap. 8.

58. For a defense of congressional-executive agreements, see John C. Yoo, "Laws as Treaties? The Constitutionality of Congressional-Executive Agreements," *Michigan Law Review* 99 (February 2001): 757. For a critique of congressional-executive agreements, including the argument that NAFTA is unconstitutional, see Laurence H. Tribe, "Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation," *Harvard Law Review* 108 (April 1995): 1221.

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60. Kelley, "Rethinking Presidential Power," 27.

61. American Bar Association Task Force on Presidential Signing Statements, "Report," 14; Kelley, "Rethinking Presidential Power," 32. A single signing statement may contain multiple challenges. These figures relate to the number of specific challenges within signing statements rather than the total number of signing statements themselves.

62. American Bar Association Task Force on Presidential Signing Statements, "Report," 16.

63. Charlie Savage, "Bush challenges hundreds of laws, President cites powers of his office," *Boston Globe*, April 30, 2006, A1. Although this article is what brought public attention to Bush's use of signing statements, political scientist Christopher S. Kelley had already written a doctoral dissertation on the topic: Christopher S. Kelley, "The Unitary Executive and the Presidential Signing Statement (Ph.D. diss., Miami University, 2003).

64. Jeffrey Rosen, "Bush's Leviathan State: Power of One," *New Republic*, July 24, 2006.

65. Fred Greenstein, "Change and Continuity in the Modern Presidency," in *The New American Political System*, ed. Anthony King (Washington, D.C.: American Enterprise Institute, 1978), 45–46.

66. See, for example, Corwin, *The President*, 4th ed., chap. 1.

67. Clinton Rossiter, *The American Presidency*, rev. ed. (New York: Harcourt, Brace, 1960), 102.

68. Jeffrey K. Tulis, *The Rhetorical Presidency* (Princeton: Princeton University Press, 1987), chap. 4.

69. Milkis and Nelson, *The American Presidency*, 2nd ed., 208.

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73. James L. Sundquist uses the term *economic stabilizer*, and earlier Clinton Rossiter had used the term *Manager of Prosperity*. See Sundquist, *The Decline and Resurgence of Congress* (Washington, D.C.: Brookings, 1981), chap. 4.

74. *Ibid.*, 39.

75. *Ibid.*, 33.

76. *Ibid.*, 66–67.

77. Pious, "Inherent War and Executive Powers," 78. Legal challenges to the act were filed almost immediately, and in June 2007 the U.S. Supreme Court agreed to rule on the constitutionality of the provision stripping detainees of their right to file habeas corpus petitions. See Robert Barnes, "Justices to Weigh Detainee Rights," *Washington Post*, June 30, 2007, A1.

78. Fisher, *Constitutional Conflicts*, 24.

79. Corwin, *The President*, 4th ed., 175–177.

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82. Bruce Buchanan, *The Citizen's Presidency: Standards of Choice and Judgment* (Washington, D.C.: CQ Press, 1987), 25.

83. *Ibid.*, 28.

84. See especially Murray Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press, 1964); and Fred I. Greenstein, "What the President Means to Americans: Presidential 'Choice' between Elections," in *Choosing the President*, ed. James David Barber (Englewood Cliffs, N.J.: Prentice Hall, 1974).

85. Edelman, *The Symbolic Uses of Politics*, 76–77.

86. Greenstein, "What the President Means to Americans," 142–147. It should be noted that in this essay Greenstein deemphasized the likelihood that children socialized to a positive feeling about the pres-

ident as an authority figure would extend this reliance on an "unconscious symbolic surrogate of childhood authority figures" into adulthood.

87. Murray Edelman, "The Politics of Persuasion," in Barber, *Choosing the President*, 172.

88. Barbara Hinckley, *The Symbolic Presidency: How Presidents Portray Themselves* (New York: Routledge, 1990), 5.

89. *Ibid.*, 8.

90. As cited in Michael Novak, *Choosing Our King: Powerful Symbols in Presidential Politics* (New York: Macmillan, 1974), 44.

91. Theodore J. Lowi, *The Personal President: Power Invested, Promise Unfulfilled* (Ithaca: Cornell University Press, 1985), xii.

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