

# American Federal Government

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## 9 & 10. The Presidency in International Affairs and the Presidency in Domestic Affairs

### Chapter Roadmap:

In these two chapters we will consider the many roles Presidents are expected to play in both the international and domestic policy arenas, where they are Head of State, Head of Government, Chief Diplomat, Commander-in-Chief, Chief Legislator, Chief Law Enforcer, and Defender of the Public. We will also consider the relationship between the President and the Public, and the particular political advantage over other political actors that presidents have through their ability to “go public.”

### 9.1 Chief Diplomat

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors...

[H]e shall receive ambassadors... (Article II, §2 & 3, U.S. Constitution).

The constitutionally granted powers cited in this snippet from Article II of the U.S. Constitution—the power to make treaties with other countries, and the powers to appoint ambassadors to other countries and receive ambassadors from them—together make the President the U.S.’s Chief Diplomat, its representative to the rest of the world. While Congress—particularly the Senate—does have some power to check the President in foreign affairs, in general “his position is paramount, if not

indeed dominant.”<sup>1</sup> Congress tends to be deferential to the President in foreign affairs (although not invariably so).

### *Head of State and Head of Government*

The President’s role as Chief Diplomat incorporates both the Head of State and the Head of Government roles. Presidents speaking to other countries stand within their Head of State role because they represent the whole of the United States, not just the party to which they belong or those citizens who represent them—they are the personification and embodiment of American sovereignty. No other person in or out of government can lay claim to this status; if the President chooses not to speak to the world, the U.S. is silent.

But as Chief Diplomat presidents also must play the role of Head of Government, because as the chief executive—the official head of the executive branch agencies (the bureaucracy)—they must oversee and manage the Department of State, the U.S.’s diplomatic agency, and they also must engage in extensive policymaking about how the U.S. will act with or toward other countries. While many of these policies will require congressional action to make effective (by approving and providing funds for them), the President’s pre-eminence in foreign affairs, and the idea that politics stops at the water’s edge (although there is no constitutional reason it must), normally lead Congress to concur with the President’s policy choices.

### *Treaty Making*

The Constitution gives the President, and only the President, the power to negotiate treaties, but to take effect treaties must be approved by a  $\frac{2}{3}$  vote of the Senate, a super-majority requirement which can be tough to meet. Presidents rarely do the negotiating themselves, delegating this task to subordinates (whether the Secretary of State or lower-level officials), but the President remains the principle and the delegate is merely the agent. Congress cannot require a President to negotiate a treaty, nor can they prevent a President from negotiating one, although the Senate can refuse to approve them, either by a vote rejecting them (as happened to Woodrow Wilson’s treaty to create the League of Nations after World War I) or by simply never bringing them to a vote (as happened to the 1996 Comprehensive Nuclear-Test-Ban<sup>2</sup>). But presidents take notice when Senate (and public) opposition to a treaty is strong, and

more often than suffer an outright rejection they will not bother even sending it to the Senate<sup>3</sup> (as Bill Clinton did with the Kyoto Protocol treaty on climate change). And yet the percentage of treaties negotiated by the President but never approved by the Senate is only around 6%.<sup>4</sup>

However, the Constitution speaks not only of Senate consent but of *advice* and consent, and while Presidents have no constitutional duty to take the Senate's advice, as a pragmatic matter they may not be able to ignore it, because the  $\frac{2}{3}$  supermajority requirement for Senate approval is such a high bar. Senators also want to have influence, and there are several ways in which they try to pressure a President to listen to their advice: 1) by serving as part of the negotiating team; 2) by providing input during the negotiation process; 3) through approval with amendment. In the case of Woodrow Wilson's League of Nations Treaty, which he saw as the crowning achievement of his life, the Senate wanted some of their members to be part of the negotiating team, and were offended when Wilson refused to invite them.<sup>5</sup> Fully aware of this, President Truman included Senators on the U.S. team when negotiating the creation of the United Nations after World War II.

Senators, at least those on the relevant committees, also like to be kept informed of the state of the negotiations, which allows them to register concerns so that they can be addressed prior to the conclusion of negotiations, when changes may be harder to make; getting their information from the press, after it's been made public, rather than directly from the President's office prior to becoming public, can anger them. Finally, rather than reject a treaty, the Senate can approve it conditionally, subject to amendments that satisfy Senators concerns, forcing the President to either return to the negotiating table or give up on the treaty.

### *Executive Agreements*

In lieu of negotiating formal treaties presidents often take the easier path of executive agreements, an agreement between the U.S. President and the head of another country. Under international law these have the same binding power of treaties, but under U.S. law they are considerably weaker than treaties. The Supremacy Clause of the U.S. Constitution (Article VI) makes Treaties part of the supreme law of the land, whereas executive agreements are more akin to executive orders or agency rule-making, and more easily overridden by Congressional action.

Although an old practice, the use of executive agreements expanded dramatically after World War II, as the U.S. moved out of its traditionally isolationist foreign policy and into a leadership role in world affairs. This required the U.S. to enter into ever more international agreements, and created pressure for a more efficient process than the constitutional process of treaty approval. While presidents sometimes use executive agreements so they can avoid the challenges of achieving a  $\frac{2}{3}$  majority in Congress (where a President's political party rarely has such an advantage), this unilateral approach accounts for only about 5% of all international agreements. Over 80% of all international agreements are "congressional-executive agreements" negotiated under a statutory grant of authority by Congress (the remainder are formal treaties). Under these grants of authority Congress generally retains the authority of approval, although with a simple majority (50%+1) rather than requiring the  $\frac{2}{3}$  supermajority needed for treaties.<sup>6</sup> The evidence suggests that the Senate as an institution prefers a more efficient approval process for international agreements than the high bar for Senate approval set by the Framers of the Constitution.

#### *Appointing and Receiving Ambassadors*

Another important aspect of the President's Chief Diplomat role is the power to appoint and receive ambassadors. In some respects this is just a procedural task—the U.S. has diplomatic negotiations with almost every country in the world, and each President gets to replace the preceding President's ambassadors with his own (although each appointee must be approved by the Senate), and other countries also occasionally replace their ambassadors to the U.S. But this power can have very important policy implications because it enables the President to determine whether the U.S. will recognize another country or not. Because the U.S. is so powerful, this recognition can play an important role in determining whether that other country is recognized by yet other major countries—that is, whether it will be treated as a country in world affairs or not. For example the U.S. encouraged the region of Panama to break away from Colombia in 1903, and immediately recognized its independence, giving it legitimacy, as a means of gaining approval to build the Panama Canal.

Similarly, in 1948 Jews in Palestine declared a new independent country of Israel, carved out of a portion of territory Great Britain controlled following World War I. Britain had made various conflicting

promises to Jews and Arabs in the region, leading to frustration on both sides. U.S. President Truman granted diplomatic recognition to Israel within a half hour, instantly giving the Israeli claims a legitimacy they would not have had if the U.S. had ignored them. In contrast, the U.S. refuses to recognize claims of independence for the Palestinian areas around Israel, so while Palestine is recognized by other Arabic states it is not generally treated as its own country in international affairs.

An even more significant example is the U.S. choice of which of the competing governments of China to recognize. After World War II, a civil war in China resulted in Mao Zedong's communists winning control of the mainland, while Chiang Kai-shek's nationalists retreated to the Chinese island of Formosa, which they renamed Taiwan. Even today, both governments claim to be the rightful government of China, and although in practice there are two Chinas—the People's Republic of China (PRC) on the mainland and the Republic of China (ROC) on Taiwan—officially the whole world recognizes the mainland and Taiwan as part of a single China (the one China policy). So U.S. Presidents have to choose which government to recognize. Initially the U.S. and its allies recognized the nationalists as the real government of China, which meant they held China's permanent seat on the United Nations Security Council—one of only 5 countries to have a permanent seat and the veto over all Security Council actions that goes with it. In 1972 Richard Nixon began the normalization of relations with the communists by visiting mainland China and beginning discussions with the communist government, and in 1979 Jimmy Carter withdrew the U.S. ambassador from Taiwan and sent an ambassador to Beijing, the mainland capital, simultaneously withdrawing recognize of Taiwan's ambassador to the U.S. and receiving an ambassador from Beijing. This led to the communist government taking over the UN Security Council seat, and also put pressure on the Soviet Union to engage in arms reduction talks as they saw their two greatest enemies establishing warmer relations.

Presidents also use a lack of diplomatic relations to signal extreme displeasure with another country, even if it does not affect that country's recognition by the rest of the world. For example, the U.S. canceled diplomatic relations with Cuba in 1961, when the new communist government of Fidel Castro expelled American diplomats. This freeze in relations continued even after the dissolution of the Soviet Union, Cuba's patron state, in 1991, and diplomatic relations were only successfully

restored in 2015 by President Barack Obama. The United States also broke off diplomatic relations with Iran after protestors seized the U.S. embassy and took Americans hostage, and despite the recent executive agreement on nuclear weapons, the two countries remain without formal diplomatic relations. The U.S. also has no diplomatic relations with North Korea, and in 2014 closed its embassy in Syria and expelled Syrian diplomats from the U.S. in response to the Syrian civil war.

The President can also use the prestige of the U.S. to shape relations between other states to the advantage of the U.S. As an example, after Israel and Egypt had fought several wars within a quarter century, in 1978 Jimmy Carter invited the leaders of both countries to Camp David, the presidential retreat, to try to work out a peace agreement. Because of their hostilities neither country was willing to initiate peace talks, but each was willing to accept the invitation of the U.S. Although the talks nearly broke down multiple times, requiring Carter to go back and forth between the cabins of the Israel and Egyptian leaders to persuade them to not give up, ultimately they were successful, and the peace agreement reached has now lasted for over 35 years, and remains effective even through the recent revolution in Egypt.

## **9.2 Commander-in-Chief**

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 (Article II, §2, U.S. Constitution).

The Congress shall have power...To declare war...To make rules for the government and regulation of the land and naval forces (Article 1, §8, U.S. Constitution).

In a role related to being the country's Chief Diplomat, the President is also Commander-in-Chief of the country's armed forces. The military is a quintessential executive power. Max Weber defined the state as having a monopoly on the legitimate use of physical force, and no other mechanism of the state has greater capacity for force than the military.

The Constitution's appointment of the President — an elected civilian — as the Commander-in-Chief is an important political choice. As has been observed in many developing countries over the past century, lack of civilian control over the armed forces often leads to coups that overthrow

democratic governments and install military dictatorships. The U.S. President appoints the Secretary of Defense (and other top officials in the Department of Defense, who must also be civilians, although they can be former members of the military) as well as the Joint Chiefs of Staff (the top officers the military), and can remove them at will.

### *Congressional Authority*

The President's authority as Commander-in-Chief is constrained by Congressional authority. As provided for in Article 1 of the Constitution, Congress writes the laws governing the military (which are compiled in the U.S. Code, Title 10), with which the President and the Department of Defense must comply. Congress also determines, in negotiations with the President, the budget for the military and how the money may be spent. For example, Congress can decide whether money will be spent on development of a new weapons system or not, and if so, how much will be spent on it.

Congress also has the authority to declare war, which theoretically constrains presidents from using the military until Congress has decided to authorize action. In practice, successive presidents have managed to wrest the warmaking power away from Congress, and although the U.S. has engaged in numerous wars in the past 70 years, Congress has not formally declared war since WWII, and in every case where they have passed a resolution authorizing military action—a step that falls just short of actually declaring war—they have done so in reaction to a President taking the initiative to send troops into action. By taking the initiative, Presidents set the policy agenda and put the pressure on Congress to rubber-stamp their choices. In the rare cases where Congress has refused to authorize the action, presidents have ignored the lack of legislative approval, even going as far as to declare that as Commander-in-Chief they do not need legislative authorization to order the military into action because to do so is part of their inherent executive powers, rather than a legislative power.

### *Congressional Responses to Presidential Initiative in Warmaking*

Presidents taking initiative in warmaking is not new—President James Polk initiated the Mexican-American War by sending troops to patrol territory claimed by both the U.S. and Texas, knowing it would provoke a response that would lead to war—but it remains controversial. But as the

U.S. took on a world leadership role after World War II, first in response to the threat of communism, and then in response to terrorism, presidents have claimed the authority, as Commander-in-Chief, to determine solely on their own when and where to insert troops into conflict. An incomplete list of these actions includes the following:

- In Korea, which was divided between the Soviet Union and the U.S. at the end of World War II, U.S. troops responded to an attack in 1950 by Soviet supported communist North Korean troops – the troops being already there, and having been attacked first, Harry Truman did not see congressional authorization as necessary to have the troops respond not just by defending themselves but by shifting to offensive warfare;
- In 1964, with military advisers already in-country trying to help the Vietnamese government stop a communist insurgency, Lyndon Johnson secured U.S. authorization for an increased troop presence in Vietnam by presenting Congress with a false claim of an unprovoked attack by Vietnamese gunboats on a U.S. ship sailing peacefully in international waters (in fact the ship was in Vietnamese waters, engaged in support of troops on land, and was not attacked);
- In the 1980s Ronald Reagan invaded the Caribbean Island of Grenada to remove a socialist government that had come to power through a coup, informing Congress only after the fact;
- In the 1990s, as Yugoslavia plunged into civil war following the collapse of its communist government, Bill Clinton sent troops to enforce a UN ceasefire despite Congress's rejection of a resolution to authorize the use of force;
- In the 2000s George W. Bush's advisers initially argued that his authority as Commander-in-Chief meant he did not need congressional authorization to launch a full-scale invasion of Iraq,<sup>7</sup> although ultimately he did seek and receive that authorization as Congressional opposition wilted in the face of what turned out to be false claims that Iraq was close to developing a nuclear weapon.

Congress's attempts to reign in the President's usurpation of the warmaking power have been ineffective. In response to Johnson's misleading of Congress in the Vietnam War, it passed the 1973 War Powers Resolution, requiring presidents to notify Congress within 48



hours of committing troops to military action, and putting a 60 day limit (plus another 30 days for troop withdrawal) on such action unless Congress declared war or otherwise authorized the use of force. Despite hopes that this would help Congress regain control of the warmaking power, presidents have since then continued to strengthen their near-total control over the decision of when and where to use military force. Congress could, theoretically, constrain presidential warmaking by revoking funding for military actions, but in practice doing so might have the appearance of not supporting the troops, and few legislators would dare to run for re-election with that as their opponent's campaign slogan. A further difficulty is that while Congressmembers in general might like to rein in presidents, most legislators are reluctant to do so by weakening presidents of their own party.

The Framers of the Constitution thought they were setting the institution of Congress against the institution of the presidency. But in fact each Congressman is generally more concerned about their own district and their own party more than they are concerned about the interests of Congress as an institution, because defying the interests of their constituents can cost them re-election and defying the interests of their own party can cost them influence, but defying the interests of Congress as an institution has no political costs for them.

### *War and Diplomacy*

Although distinct on paper, the roles of Chief Diplomat and Commander-in-Chief are inter-related. The military historian Carl von Clausewitz famously said that "war is not merely a political act, but also a real policy instrument, a continuation of political commerce...by other means."<sup>8</sup> Those means, and their purpose, he described as "an act of violence intended to compel our opponent to fulfil our will."<sup>9</sup> Diplomacy is also an act of political commerce intended to persuade others to act in ways that fulfil our will, so war can be seen as a particular form of diplomacy.

Although most diplomacy occurs in the absence of any threat of war because it occurs between countries pursuing a mutually agreed upon goal (and mostly haggling over the details), when countries have conflicting goals, the threat of military action is at least in the background, and sometimes very much in the forefront, of the discussion as a possible policy action if a satisfactory agreement is not reached. For example the

recent agreement between the U.S. and Iran limiting Iran's development of nuclear weapons took place with a backdrop of the recent U.S. invasions of two of Iran's neighbors and American foreign policy hardliners talking seriously about the possible necessity of also invading Iran.

At the same time the prospect of war can put limits on diplomatic opportunities. In 2014 Russia occupied and annexed the Crimean peninsula, internationally recognized as territory of Ukraine. Although U.S. President Barack Obama protested the action, the prospects for any diplomatic solution were dim because of the risk of war. Although the U.S. and its NATO allies had the military capacity to drive Russia out of Crimea, the costs of war with another major power, and the potential for it to spread into a broad regional or even world war, made the costs too high. And absent a credible threat, the U.S. had little to offer Russia diplomatically to entice them to leave.

Ultimately, as Chief Diplomat and Commander-in-Chief the President is fulfilling two aspects of the same role as the U.S.'s representative to the world, and the two cannot be fully separated.

## **Summary**

The Framers of the Constitution certainly intended the President to take the leading role in representing the United States to other countries, giving him the authority to negotiate treaties, to appoint ambassadors (or not) to other countries, and to receive (or not) other countries' ambassadors, as well as to be Commander-in-Chief of the country's means of enforcing its will on other countries through violence. But they also provided Congress with an important role in international affairs, giving the Senate authority to approve or reject treaties, and to approve or reject the President's appointments for ambassadors, as well as the power to declare war. But over time the President's pre-eminence in foreign affairs has grown at the expense of Congress. Treaties have largely, although not completely, been replaced—with Congress's complicity—with executive agreements that are much harder for Congress to reject, and the President has effectively co-opted the warmaking power entirely, with Congress unable to find a way to effectively check the President's war powers.

# 10. The Presidency in Domestic Affairs

## 10.1 Roles of the Presidency

The executive power shall be vested in a President of the United States of America...

[H]e shall take care that the laws be faithfully executed  
(Article II, §1; §3)

The constitutionally mandated duties and authorities of the President of the United States are listed in Article II of the U.S. Constitution, but the Constitution does not provide a complete description of the roles the President plays in the U.S. political system. The public's understanding of what they want from the presidency has evolved since 1787, and while no constitutional amendments have added any formal responsibilities or powers to the presidency, *time* has made some informal additions. These changes have made the presidency both more powerful than the Framers of the Constitution intended and a much more difficult job for any person to handle successfully.

The broad role of the President is to be the country's chief executive. To be an *executive* means *to execute*, a word that comes to us from Latin, and means to "follow after; carry out, accomplish."<sup>10</sup> And indeed the President's responsibility is carry out, or implement, the laws passed by Congress; to faithfully execute the law. But presidents have rarely settled for simply being directed by Congress, and have actively participated in the shaping of public policies, sometimes trying to influence Congress's decisions and sometimes acting on their own, trying to exercise as much independent policy-making authority as possible.

Below we consider some of the critical roles the President plays—and is expected by the public to play—in the U.S. political system.

### *Head of State and Head of Government:*

The state and the government are two different concepts, so being the head of the state is different from being the head of the government. The state is the country, its people, institutions, policies, traditions, and economy. The government is the set of offices and institutions that

manage the policies and governance of the state. To be the head of state is to represent all the people of that state, to be the embodiment of them as a collective, and to represent them in engagement with other states. To be head of government is to manage the operations of the state's governing bodies, responsible for trying to steer them toward good policies and for overseeing the execution of those policies.

As *head of state* the President represents the whole country, and tries to *unite*, rather than divide, the public. In a constitutional monarchy, the king or queen fulfills the role of head of state. In Great Britain, for example, Queen Elizabeth is the head of state. She tries to be a symbol of Great Britain but does not have day-to-day involvement with politics or running the government. In the U.S., the President plays the head of state role when he steps outside of everyday politics, to act in a way that represents the U.S. as a whole. Examples include when a president personally visits disaster-stricken areas, or meets with championship sports teams, or hosts the annual White House Easter egg hunt. For example, after the 9/11 terrorist attacks George W. Bush visited the site of the collapsed World Trade Center. There was no *policy* need for the President to go there and he did not go as a Republican or as a conservative, but as the representative of all Americans.

Americans expect their presidents to take such symbolic actions. When Hurricane Katrina flooded New Orleans, President Bush was criticized for simply observing the devastation from Air Force One (the presidential plane), rather than touring it on the ground. Bush himself has said this was a "big mistake," and that the photos of him looking out the window made him look "detached and uncaring."<sup>11</sup> The criticisms may be silly—not only is an aerial view a good way to get perspective on a wide-ranging disaster, but there's no concrete action Bush could have taken that required him to set foot on the ground—but Presidents are constrained not by what makes sense, but by what the public demands. And if Bush had actually landed in New Orleans he could have benefited by having pictures taken of him consoling victims or praising relief workers, because for presidents it is not enough to care; the public demands a public display of caring.

As *head of government* the President is involved in the daily running of the government and making policy. In a parliamentary system this is the role of the Prime Minister. As head of government presidents promotes policies they favor, pressuring Congress to pass legislation to their liking

and trying to block legislation they dislike. The President also is the head of the executive branch agencies as they make decisions about the implementation of the country's laws. As we noted in the chapters on Congress, Congress often write laws vaguely, allowing the executive agencies to write rules—called *federal regulations*—to fill in the details. For example, in filling in the details of the Clean Air Act, the Environmental Protection Agency has created rules governing plywood manufacturers that emit 10 tons or more each year of any designated hazardous air pollutant, or 25 tons of a combination of hazardous air pollutants. A president who supports stronger environmental protections might ask the EPA to reduce that to, say, 8 tons and 20 tons per year, to cover more plywood manufacturers, while a president who thinks environmental regulations are already too strict might ask the EPA to consider changing the rule to increase the allowable amounts of hazardous air pollutants emitted.

As head of government presidents are policy-makers, which often requires them to take positions supported by their party and opposed by the other party. For example Barack Obama pressed for the Affordable Care Act (Obamacare) with the support of Democrats over the opposition of Republicans. This means that the President is playing a *divisive role*, supporting the policy preferences of some Americans while angering others. Presidents cannot avoid this role, however. They seek the presidency by making policy promises to voters, and voters, journalists, and presidential scholars judge them not only by the policies they support but by their success or failure in implementing those policies.

These conflicting roles create one of the President's biggest challenges. While the head of state role asks the President to be a uniter of the public, the head of government role inevitably forces the President to be a divider of the public. The Queen of Great Britain can focus on being a symbol for the whole country because she isn't expected to get involved in politics, and British Prime Ministers can focus on passing their party's favored policies against other parties' opposition because they don't have to worry about uniting the whole public, just maintaining the support of a majority for the next election. But U.S. presidents are expected to be both a symbol of the country and a partisan political warrior, and few can handle such a challenging task well.

*Chief Legislator*

He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; (Article II, §3, U.S. Constitution).

Although the President is not part of the legislative branch, the Constitution gives clear guidance to be involved in the legislative process. As presidential scholar Richard Neustadt observed, the American system really is less one of separation of powers than one of separated institutions *sharing* powers. The role of *chief legislator* falls within the President's role as head of government.

Although the Constitution is vague about how often the President should give Congress information about the state of the union, and in what manner the information should be given, this duty has evolved into the annual State of the Union address—viewed by people around the world as well as in the U.S.—in which the President declares a set of policy goals for the coming year. Constitutionally, presidents could just send occasional notes to Congress giving them factual information, such as the unemployment rate and international threats to U.S. interests, without appearing before the public or making specific policy proposals, but the televised State of the Union Address, with lots of pomp and ceremony, is an important agenda-setting opportunity.

Thinking of politics in Harold Lasswell's understanding of it as who gets what, when, and how, agenda-setting power is one of the most important political tools a President has. No policy is ever enacted without first getting on the agenda, and space on the agenda is limited, so by putting his (and someday her) issues on the agenda, a President not only increases the prospects of accomplishing his goals, but also takes up space that squeezes out alternative policy proposals that he opposes. Announcing a policy during the State of the Union address does not guarantee it will successfully find a space on the policy agenda, but the public attention given to the President's State of the Union speech, which cannot be matched by any other player in the political system, increases the chances for success.

The President may also submit bills to Congress—"recommend[ing] to their consideration such measures as he shall judge necessary and expedient." These bills are likely to be taken seriously by members of the President's party, but may face stiff opposition from the opposition party. Presidents can also get actively involved in the legislative process by

having aides negotiate with congressmembers or even talking to them directly, sometimes by telephone, and sometimes by inviting them over to the Oval Office, to pressure them for support of his proposed policies. And of course the President also has the veto power, which means legislators must take account of the President when passing legislation, and which gives the President significant leverage in negotiations over the substance of bills.

A controversial way presidents act as legislators is through *signing statements*. When signing a bill into law, presidents normally make some commentary about the law, and what they see as its meaning and significance. In recent presidencies, most notably in the presidency of George W. Bush, the signing statement became a substitute for veto battles, as Bush signed the bills into law, but frequently announced that certain parts trespassed on executive authority, and therefore were unconstitutional (from his perspective) and would not be enforced. While presidents have always had a considerable amount of leeway in the implementation and enforcement of laws, this blunt statement that the President had authority to pick and choose which parts of the law he would enforce was a step beyond the traditional authority of the executive, and remains controversial.

Presidents also play a legislative role at the direct order of Congress, through the delegated authority and requirement to propose an annual budget for the United States. Ultimately Congress has the power of the purse, as Article I, §9 of the Constitution requires that

No money shall be drawn from the treasury, but in consequence of appropriations made by law.

But Congress often finds it hard to develop a budget on its own, and in 1921 passed the Budget and Accounting Act, requiring the president to submit a budget for their consideration. Often, especially when at least one chamber of Congress is controlled by the other party, the President's budget faces an uphill battle, and in all cases presidents have to bargain with Congress over how much to spend in different areas. But by being the first mover in the budget process, the President again gains agenda-setting power. It has been said that if you want to know any organization's real goals, you have to look not at what it says its goals are, but where it spends its money. The same is true of a country as big as the United States, so by making decisions about how much money to spend on what policies,

budgeting is the most fundamentally important set of policy decisions the government makes. And by trying to set the agenda on those decisions, and by wielding the veto at the back end of the budgeting process, a canny President can wield significant influence in shaping public policy.

A final way presidents are *de facto* legislators is through *executive orders*. Executive orders do not need approval of Congress because they refer only to the operations of the executive branch of government. For example, one of Barack Obama's first executive orders, issued on the second day of his presidency, repealed an executive order from the Bush administration allowing "enhanced interrogation techniques," widely considered to mean means of torture.<sup>12</sup> The order applies to those executive branch agencies that might need to interrogate suspects, particularly terrorism suspects. As with all executive orders, it is in force until such time as Barack Obama or a future President decides to cancel it via another executive order. Executive orders have also been used for such purely domestic purposes as streamlining the executive branch's process for procuring office supplies<sup>13</sup> and for foreign affairs purposes like prohibiting the importation of any goods from North Korea.<sup>14</sup> While in most cases Congress has authority to override executive orders through legislation, in nearly all cases they see the orders as within the appropriate purview of the executive, and not pursuing policy ends which they are interested in obstructing.

### *Chief Law Enforcer*

[H]e shall take care that the laws be faithfully executed  
(Article II, §3, U.S. Constitution).

The President is the country's chief law enforcer. Of course the President does not do this work himself, but oversees the executive branch agencies that do so. This includes not only the traditional law enforcement agencies like the FBI and the U.S. Marshalls, but also the federal regulatory agencies such as the Food and Drug Administration, the Securities and Exchange Commission, the Environmental Protection Agency, and others.

The President also plays a *judicial* role at the end of the law enforcement process, through the power to pardon. The pardon power applies only in cases of people convicted of violating federal law (governors have an equivalent authority in regards to their own state's laws).



### *Defender of America*

Although *defender of America* sounds like a superhero title, as the country's chief executive and commander-in-chief, the President, more than any other person in the country, is responsible for the national security of the U.S. And a President's effectiveness in this role, more than any other, will determine how they are viewed historically. The presidents normally listed as the country's greatest—such as Washington, Lincoln, and Roosevelt—are nearly all associated with great victories in war. (An exception is Jefferson, whose presidential legacy rests primarily on the Louisiana Purchase, which doubled the size of the U.S.) Presidents perceived as weak in foreign affairs normally get low approval ratings from presidential historians and the public, such as Jimmy Carter, who was unable to rescue 52 American diplomats and citizens held hostage in Iran for over a year. The hostages were released immediately after Carter's successor, Ronald Reagan, was sworn into office, giving him an immediate bump in approval (as well as leading to suspicions that his political team had negotiated a secret deal with Iran *before* becoming official representatives of the U.S.)

This role often leads to conflict with constitutional protections of citizens' rights, such as when Lincoln suspended the writ of *habeus corpus* without congressional approval, or when George W. Bush tried to imprison an American citizen suspected of aiding terrorists without a trial or access to a lawyer, as well as claims that American citizens suspected of being in league with terrorists were tortured during interrogations.

Immigration also can thrust a president into this role. Some citizens see immigration as a threat to American workers and to the American identity. Although the history of the United States is a history of growth through immigration, at various times in the country's history various groups have been seen as dangerous and unwanted, from Irish and Eastern Europeans, to Chinese, to Latinos, and Middle Easterners. At present, contenders for the presidency find it difficult to express support for immigration without finding their electoral prospects dimming.

### **10.2 The President and the Public**

Presidents are elected (indirectly) by the public, and their influence in Congress is enhanced by having strong public support. Presidents have one particular advantage over Congress when it comes to influencing the

public, but they face one particular disadvantage over the course of their time in office.

*Going Public: The Presidential Advantage*

The advantage presidents have over Congress is that they are the only political actor who can regularly command the whole public's attention. Only the President has the whole country for a constituency; only the president represents every citizen of the country. When the Speaker of the House talks, his or her constituents (generally just a portion of one state) listen, and engaged political observers listen. But the whole country doesn't listen because the Speaker doesn't represent them. The same is true for the Senate Majority Leader, who—despite being such a significant political figure—only represents one state.

This uniqueness of the President influences the media as well. There are too many members of Congress, most of them of only local relevance, for the media to try to cover. And the White House beat is the most prestigious media job in the Capital. When the President—or even the President's Press Secretary—holds a press conference, the room is filled. When Congressmembers on Capital Hill give a press conference, the size of the audience depends on how interesting the media expects the event will be. And only the President can command national television time (but the networks only give up time if presidents don't request time too often).

This ability of the President to reach citizens more effectively than anyone else in government has been termed “the bully pulpit” by Theodore Roosevelt, and “*going public*” by political scientists. Often the purpose is to move Congress on legislative issues by bypassing them and talking directly to their constituents. A presidential speech that receives a good response can lead legislators to agree to a President's policy goals, because they don't want to upset their own constituents.

However, going public does not ensure presidential success. Sometimes presidents are unable to persuade the public to support a policy, such as when George W. Bush tried to build support for privatizing Social Security. A series of town hall meetings designed to build grass roots support for the policy failed to move the public at all, and legislators, aware that their constituents overwhelmingly opposed the idea, were unwilling to push the policy forward. The public also seems to not like it if the President asks for their attention too often. In the 1970s, during the energy crisis, Jimmy Carter gave a series of speeches on the importance of

saving energy. Each speech was much like the one that came before, and the public soon tuned him out. Even worse, he argued that conserving energy was the “moral equivalent of war,” and critics quickly realized that the phrase formed the acronym “meow,” which undermined the seriousness the Carter was trying to portray.

In brief, Presidents have greater ability to reach the whole of the American public than anyone else, but there is no guarantee of success in building public support.

### *Declining Support: The Presidential Disadvantage*

Since pollsters began tracking the public’s approval ratings of presidents in the mid to late 20<sup>th</sup> century, a consistent pattern has appeared. Presidents usually come into office with fairly high approval ratings, generally higher than the percentage of the vote they received. This is the presidential “honeymoon.” The honeymoon doesn’t last long, though, and approval ratings soon decline from that initial high point, and bounce up and down depending on political events. A strong economy can boost a President’s approval rating, while a downturn in the economy tends to produce a similar downturn in approval, even though in either case the President probably has little to do with the state of the economy. Foreign policy events can play a big role—after successfully driving the Iraqi army out of Kuwait in 1991 in the first Gulf War, George H. W. Bush’s approval ratings reached 91%, a record high for any president since such tracking began. But the public’s approval can be very ephemeral, and the following year Bush was defeated in his bid for re-election by Bill Clinton, largely because of a weak economy and his perceived ineffective response to it.

The final part of the trend—after the honeymoon bump and the up-and-down that follows—is a general decline in public approval. Presidents nearly always leave office less popular than when they entered it. This may reflect their declining effectiveness across the course of their presidency—especially if they have a second term, during which presidents rarely achieve the level of success of their first term—or it may be a cause of declining effectiveness, as they lose the ability to influence policy by influencing the public.

Whichever explanation has more power, few presidents escape this long-term decline in public approval. There are few trends in American politics more predictable than this one.

## **Summary**

Presidents have multiple roles they must fulfill, from defender of the America to chief legislator to chief law enforcement officer to chief diplomat. They must also balance being head of government with being head of state.

Their status, and the requirement that they provide information on the state of the union to Congress, give presidents a unique ability to command the attention of the American public, enhancing their agenda-setting power, which can give them an advantage over Congress in policy negotiations. But their public approval ratings inevitably decline over time, eroding their ability to successfully use this tool to achieve their policy goals.

## **What to Take Away from this Chapter**

1. The president's constitutional authority as Chief Diplomat and how they exercise it;
2. Congress's role in international affairs;
3. How the President's role as Chief Diplomat incorporates their roles both as Head of State and Head of Government;
4. What it takes to ratify a treaty;
5. What is an executive agreement, and why they have become more common than treaties;
6. The significance of the power to appoint and receive ambassadors;
7. The President's constitutional authority as Commander-in-Chief;
8. How the warmaking power has shifted from Congress to President;
9. How the roles of Chief Diplomat and Commander-in-Chief conflict.
10. How the roles of Head of State and Head of Government conflict.
11. The President's term of office and how long a President can serve.
12. The qualifications to be president.
13. The many roles the President plays.
14. The President's legislative role and agenda-setting power.
15. The President's advantage communicating with the public.
16. The normal trend in presidential approval ratings.

## **Questions to Ponder and Think About**

1. The presidency has grown much stronger over time, to the point that

some scholars think it has become “unchecked and unbalanced,” or even imperial. Do you think the presidency should be reformed to limit the power of the presidency, or do you think strong presidents are necessary?

2. Do you think there is any way for Congress to regain control of the war power? Do you think they should try to regain control of the war power, or do you think the Framers of the Constitution erred, and it is best placed in the President’s hands?
3. The Head of State and Head of Government roles of the President conflict. Should we change the Constitution to separate those roles, perhaps by adding an elected person with no actual political power to play the ceremonial Head of State role? Or by instituting a ceremonial monarchy with no actual political power, as some European countries have?

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## References

- <sup>1</sup> Rossiter, Clinton. 1956/1960. *The American President*, 2<sup>nd</sup> ed. New York: Mentor Books. p.28.
- <sup>2</sup> United States Senate. “Pending.” <http://www.state.gov/s/l/treaty/pending/>.
- <sup>3</sup> United States Senate. “Treaties.” <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>
- <sup>4</sup> *ibid.*
- <sup>5</sup> United States Senate. “Senate History 1878-1920. November 19, 1919: A Bitter Rejection” [http://www.senate.gov/artandhistory/history/minute/A\\_Bitter\\_Rejection.htm](http://www.senate.gov/artandhistory/history/minute/A_Bitter_Rejection.htm).
- <sup>6</sup> Krutz, Glen S. and Jeffrey S. Peake. 2009. *Treaty Politics and the Rise of Executive Agreements: International Commitments in a System of Shared Powers*. Ann Arbor: University of Michigan Press. p.30.
- <sup>7</sup> Fisher, Louis. 2003. “Deciding on War Against Iraq: Institutional Failures.” *Political Science Quarterly* 118(3): 389-410.
- <sup>8</sup> von Clausewitz, Carl. 1966. *On War*, v.1. Translated by Col. J. J. Graham. London: Routledge and Kegan Paul. p.23.
- <sup>9</sup> *Ibid.* p.2.
- <sup>10</sup> *Online Etymology Dictionary*. <http://www.etymonline.com/index.php?term=executive>.
- <sup>11</sup> Brower, Kate Anderson, and Catherine Dodge. 2010. “Bush Says New Orleans Flyover After Katrina a “Huge Mistake.” Bloomberg.com. Nov. 5. <http://www.bloomberg.com/news/2010-11-05/bush-calls-new-orleans-flyover-in-wake-of-hurricane-katrina-huge-mistake-.html>.

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- <sup>12</sup> Executive Order 13491—Ensuring Lawful Interrogations. <http://www.whitehouse.gov/the-press-office/ensuring-lawful-interrogations>.
- <sup>13</sup> Executive Order 12352—Federal Procurement Reforms. <http://www.archives.gov/federal-register/codification/executive-order/12352.html>.
- <sup>14</sup> Executive Order 13570—Prohibiting Certain Transactions with Respect to North Korea. <http://www.whitehouse.gov/the-press-office/2011/04/18/executive-order-13570-prohibiting-certain-transactions-respect-north-kor>.