4.0 | Introduction

When the American public thinks of the presidency, they think of the president—the person whose name, face, character, and personality are prominently featured during the presidential campaign, and the person who upon taking office dominates media coverage of the federal government. The president personifies the federal government. The media report on the Trump administration, the Obama administration, the Bush 41 administration, and so on. Political scientists reinforce the personal perspective by emphasizing the importance of presidential character and style. In one sense, Article II of the Constitution created a personal presidency by providing that “The executive Power shall be vested in a President of the United States of America.” In contrast with the legislative and judicial branches, one individual has all the executive power. The modern president personifies the federal government, but the presidency is actually a vast institution that consists of a large number of offices, executive departments, and agencies. So the presidency consists of an individual and an office. Understanding the
presidential role in government and politics requires learning about the person who is president and the presidency, the individual who happens to occupy the Office of the President of the United States and the institution. This chapter examines three main issues that are central to the presidency:

- The power problem: Accountability.
- The increase in presidential power: Presidential government?
- Management of the executive branch: Controlling the bureaucracy.

The accountability problem is directly raised by the question whether a president can be indicted for a crime. During the 2016 campaign, Donald Trump claimed that his supporters were so smart and so loyal to him that he could stand in the middle of 5th Avenue and shoot someone and not lose any of his voters. This political claim was surprising and debatable. What may be even more surprising and debatable is the legal claim that a president cannot be indicted for a crime. Whether a sitting president has immunity from prosecution for a crime is an open question in the sense that the U.S. Supreme Court has never decided the question. Presidents have claimed that they are immune from prosecution. And legal scholars have explained the constitutional theory justifying immunity, but the Court has not yet agreed with them. The claim seems to be incompatible with what is taught in American government 101 and civics about the American commitment to the rule of law (rather than the rule of man) and the belief that no one, not even the president, is above the law.

4.1 The Unprecedented President

Political scientists describe “change elections” as elections when voters want different public policies and therefore put a different party in control of government. The desire for change also applies to presidential character and style. President George W. Bush had an informal style that relied on gut instincts more than careful analysis of the issues. President Obama’s rational character sometimes made him seem too cool for school, too rational, and too aloof to enjoy or engage in the back-slapping give-and-take of legislative politics. No drama Obama was a Spockian rationalist. Spock was the hyper-rational character in Star Wars (1966–69), the science fiction television series that became a cult phenomenon, who described human behavior with the catch phrase “highly illogical.” President Trump is a political phenomenon who has swung the pendulum back toward drama. His character and style thrive on drama—even high political melodrama. Did the presidential pendulum swing from too cool to too hot?

The Trump presidency is unprecedented in many ways. During the presidential campaign he broke all the conventional rules and established norms but he still survived and even thrived as an unconventional candidate to become an unconventional president. He denigrated and bullied individual opponents—even breaking Ronald Reagan’s Eleventh Commandment, “Thou Shalt Not Speak Ill of Another Republican,” by insulting virtually all of the Republican candidates during the primary. He is a master practitioner of political jiu jitsu! Jiu jitsu is using an opponent’s strength or momentum, or one’s own weakness, against the opponent. Trump accused Hillary Clinton of being a liar, of being corrupt, of being plagued by scandals, and of being in the pocket of Wall Street because these were his own political weaknesses. He accused the news media of being fake news because he had a record of playing fast and loose with the facts. He very effectively used his weaknesses against his opponent to throw them off balance. This is not easy to do.
He criticized individual government officials, including judges. He criticized government and politics in general. Scandals involving bad personal behavior that probably would have ended most presidential campaigns did not end his. His first 100 days in office included a major scandal involving his and his associates’ relations with Russia. He did not keep his word about releasing his income tax records. He is the only president to have never held a prior elective office or served in the military. He is the first real estate developer-president. And the legal and ethical questions about the conflicts of interest between his official duties as president, and his and his family’s business interests, are unprecedented. President Trump’s son Eric’s casual comment that in his business world “[n]epotism is kind of a factor of life” seems an affront to basic American beliefs about meritocracy as well as norms and laws against using public office for private profit.

The Trump administration’s blurring of the line between private profit and public interest is unprecedented. This is particularly the case with his and his associates’ business and political relations Russia. A military report prepared for President-elect Trump named Russia the greatest threat to U.S. national security interests. President Trump’s flattering description of Vladimir Putin as a strong leader, and Trump’s campaign and administration officials with financial ties to Putin, raised concerns and prompted counter-intelligence investigations by the Federal Bureau of Investigation and intelligence agencies. Against this background, President Trump’s strong criticism of U.S. intelligence agencies and his remarks at CIA headquarters the day after his inauguration were particularly unprecedented. President Trump began his presidency with an unprecedented low public opinion approval rating. And the Trump administration’s rocky relationship with the media has also been unprecedented.

4.11 | The Personal Presidency

In other ways, however, the Trump president is not unprecedented as much as it takes normal to the extremes. It is the culmination of the long-term trend toward the personal presidency. The personal presidency may be the most significant development in the American system of
government. The term personal presidency originates with works such as Lowi’s *The Personal President* (1985). It refers to a presidency whose political legitimacy is based on popular support and whose power is characterized by executive discretion. The political legitimacy is reflected in presidential claims of electoral mandates that support their agendas. The executive discretion is evident in claims that the president has the power to do whatever he or she thinks is necessary and appropriate, and statutes that actually give presidents that power.

Taken together, the personal power and the executive discretionary power make it hard to hold presidents legally accountable for their actions. In fact, both features of the modern presidency are part of the shift away from the model of legal accountability toward the model of political accountability. The model of legal accountability relies on rule of law values to hold presidents and other government officials accountable. The model of political accountability relies on elections as referenda on presidential actions. The classic defense of the political model of accountability is former President Richard Nixon’s argument that if a president orders something that is plainly illegal to be done—for example, a burglary, a forgery, a robbery, perhaps even a murder—then it is not illegal.

**Think About It!**

Is this claim consistent with the American commitment to the rule of law?

“If the president does it, that means it is not illegal.” (The *Nixon-Frost Interviews*, April 6, 1977)

Former President Nixon, *in his own words*.

The term *personal presidency* also refers to power that is personal rather than institutional. Personal bases of power increase a president’s independence from institutional checks and balances by Congress, the courts, or the political parties. The deregulation of campaign finance makes it easier for candidates to run self-financed campaigns that are not dependent political parties for fund-raising and campaign workers. The increase in the percentage of voters who consider themselves Independents rather than Republicans or Democrats makes it easier for candidates to be more independent of partisan support. Party loyalty strengthens congressional creates stronger ties to the president and weaker institutional loyalty. The diminished public confidence in Congress and the declining party identification have created a void that the personal presidency is occupying. President Obama’s eight years in office provided evidence of the personal presidency. Obama’s support was personal more than partisan. Democratic voter turnout was higher when he was on the ballot in the 2008 and 2012 elections than when he was not on the ballot. Democrats lost 69 congressional seats in the midterm elections in 2010 and 22 seats in 2014, and Hillary Clinton lost the 2016 presidential election.

**4.12 The Postmodern Presidency**

The personal nature of the presidency requires scholars to reassess presidential theories with each new president in order to determine whether the new president confirms theories or signals the beginning of a new presidential era. Presidential scholars have identified the traditional presidency of the 19th Century and the modern presidency that began in 1932 with Franklin Roosevelt. The main difference between the two is the modern presidency’s activism with a
popular electoral base. Some scholars think the era of the modern presidency ended with President Nixon, who resigned the presidency rather than face impeachment and removal from office. These scholars maintain that the personal presidency enabled the development of a third presidential era—the postmodern presidency.

The term postmodern presidency was originally coined to describe a new era of a diminished presidency. (Rose) Stark (1993) describes Bill Clinton as the first postmodern president. Miroff (2000: 106) defines the postmodern president as “a political actor who lacks a stable identity associated with ideological and partisan values and who is, thereby, free to move nimbly from one position to another as political fashion dictates.” Ironically, the postmodern presidency is the result of a governing style that increasingly depends on public approval as a base of support. It is ironic because the popular support was originally considered solely a strength of the modern presidency. Public approval dependency creates an incentive for presidents to stage-manage spectacles in order to create and reinforce presidential images. Daniel Boorstin’s The Image: A Guide to Pseudo-Events in America (1962) describes how spectacles became part of managing the president’s image. Presidential “debates” and press conferences have become public performance events that are staged for the media to report, rather than regularly scheduled opportunities for the general public to gain information about candidates, parties, or presidential administrations. The images and events are staged reality.

President Trump began his tenure in office as a new kind of postmodern president. The first reason he is a new postmodern president is his effective appropriation of the original meaning of postmodern. Postmodernism began as a primarily liberal belief that facts, values, and reality are relative or subjective because they are almost entirely dependent upon an individual’s or a culture’s perspective. This academic belief in subjectivity provided the foundation for the popular cultural belief that most of the news media and much of science (e.g., theories of evolution and climate change) is biased. This conditioning enabled President Trump to call media criticism of him or his administration fake news. In fact, conservative Republicans called CBS News correspondent and anchor Dan Rather “Dan Rather Biased” for his liberal bias in covering Presidents Reagan and presidential candidate George W. Bush.

The second reason Trump is a new kind of postmodern president is because his ideology seems a mash-up of conventional ideas, and political base of support reflects ideological and partisan cross cutting. This creates the opportunity to form a new presidential coalition that realigns the political system. These unconventional developments in presidential politics are hard to explain using conventional political science literature about political systems, government institutions, and scholarship on the presidency. Therefore the following analysis looks at these developments and the postmodern presidency of Donald Trump through the lens of popular culture.

4.13 The Popular Culture Lens

Julian Barnes is an award-winning English writer. His satirical postmodern novel England, England (1998) is about a rich entrepreneur with a big ego, Sir Jack Pitman, who decides to create a theme park called England England that is filled with all the things and figures that tourists consider quintessentially or stereotypically English—Big Ben, Harrods, the Queen, pubs, the White Cliffs of Dover, etc. The Disneyland-style theme park England England becomes tremendously popular and successful because all things English are so conveniently located, so clean, and so well-run. So many people leave the real “old” England to live in the fake England
England that the real England suffers a great decline. Spoiler alert: the satire ends in a sex scandal!

Was the appeal of Donald Trump’s campaign promise to *Make America Great Again* based on the desire to recreate an *America, America* where all the things that are part of the distinctive American national identity were preserved? The campaign slogan did echo Patrick Buchanan’s call for a culture war in his *Culture Wars Address* at the Republican Party Convention in 1992. Buchanan called upon his fellow conservative Republicans to fight to take back *our* cities, *our* culture, and *our* country. The audience—an overwhelmingly white, upper class, older America—enthusiastically supported his call because they felt that they were still losing their country despite having elected Presidents Reagan and George H. W. Bush in 1980, 1984, and 1988. Donald Trump renewed this call to take back the country—but for a different, more populist demographic.

Donald Trump’s character and style complement the postmodern variation of the personal presidency. His personality-centric politics accelerated the political system’s momentum away from institution-centric politics and toward personality politics. Trump’s personal campaign style then became a personal style of governance. As President, he spends a great deal of time every day watching television to see how the media are portraying him and his administration. Media reports about him, his family, and his administration produce Tweet storms. All presidents pay close attention to grooming their image in the media. The Reagan administration was famously attuned to how television visuals conveyed images because it brought Madison Avenue advertising and Hollywood Boulevard sensibilities to managing the president’s image. Michael Deaver, Reagan’s Deputy Chief of Staff responsible media relations, and Dick Darman, a presidential aide responsible for budget issues among other, realized that the masterful use of pictures—particularly presidential photo ops—reinforced in the public’s mind favorable images of President Reagan. Deaver was one of the White House officials whose backgrounds in Hollywood entertainment and Madison Avenue marketing taught them that good visuals could trump critical words.

A case study is a 1984 story that CBS aired on the evening news. The report by Lesley Stahl’s exposed the apparent hypocrisy of President Reagan speaking at a nursing home and a Special Olympics event while his administration’s budget reduced spending on disabled children and health care. Stahl worried that the critical story would hurt her access to the White House, but Dick Darman called her to say “Great story, kiddo.” He explained, “You guys in Televisionland haven’t figured it out, have you? ....Nobody heard you.”[Emphasis added.] Powerful emotional pictures or images of the president being presidential by getting on or off Air Force One are more important than the critical words accompanying the story. Michael Deaver reinforced this point by explaining that he did not care if a news reporter’s voice-over was critical of President Reagan’s policy, as long as the news report had good visuals, because “the eye trumps the ear every time.” Good pictures were more important than bad words.

The Reagan administration was innovative because it applied Madison Avenue marketing strategies to politics. The voting public was considered consumers of political information the way customers were considered consumers of commercial information. President Trump has used commercial popular culture—his reputation as a dealmaker—and added elements of entertainment popular culture—celebrity status—to politics and governance. This combination of commercial and entertainment appeal is apparent in an *Associated Press interview* where he repeatedly claims that he gets great ratings whenever he is on television—whether it is the inauguration, an address to Congress, a news program, or a press conference. Exaggerating the
size of crowds and audiences reinforces his supporters’ belief that the mainstream or Fake News media are biased against both him and them. Insulting the CBS news program *Face the Nation* by calling it “Deface the Nation” similarly plays to a conservative Republican base that has been referring to “the lame-stream” media for years.

### 4.14 Framing Theory

Media scholars developed framing theory to describe and explain the mass media’s influence on public opinion. According to framing theory, the way the news media present an issue to the audience—the way facts and stories are framed—influences what people think about the subject. Framing theory also applied to fiction. For example, legal fiction is a universally popular genre for television and film. How police procedurals frame their crime stories shapes what people think about criminal justice officials, the causes of crime, and the appropriate public policies to prevent crime and to punish offenders. Print and electronic news stories similarly influence thinking about public affairs. Framing theory is crucial to understanding both the Trump presidency and the news media’s reporting and analysis of the administration.

Understanding the unconventional Trump campaign and presidency requires thinking outside the conventional political frames provide by presidential scholars. It requires looking at popular culture. Terry Gross, the host of the NPR radio program *Fresh Air*, describes President Trump as living and working “at the intersection of politics and popular culture.” A real estate developer who became a television celebrity on *The Apprentice*, Trump greatly accelerated the speed with which politics was becoming popular culture by bringing a “reality show sensibility to the office.” It is not surprising that the popular cultural obsession with movie stars and other celebrities brought a celebrity figure to the White House. What unsettling is how he got there by conspicuously breaking all the rules and then he continued to break the rules about presidential conduct.

Frank Rich, a writer for *New York* magazine, describes Trump as brilliant at creating the drama that all good showmen master to get and keep the audience’s attention. According to Rich, Trump makes outrageous statements and then contradicts them with more outrageous statements two hours later; streams the public from all media platforms and angles including television and Twitter; and continually “gins up” the suspense and the drama in order to keep the spotlight and all the eyeballs focused on him and what he is doing. He used one form of entertainment—reality television—to get to the White House, then continued to use it in the White House, and then added drama by changing the location to Mar-a-Lago, the National Historic Landmark in Palm Beach, Florida that is an even more exotic setting than the White House. Reality television was a popular culture stop along the way. Television does not merely mirror society, politics, or culture. It provides insightful commentary that tells us a great deal about modern American culture. Accordingly, *The Apprentice* is as revealing about Donald Trump as it is revealing about us.

### 4.15 Political Personalities or Personas

Professional wrestling is another popular culture phenomenon that provides a useful alternative frame for understanding President Trump and his loyal base of support. President Trump has used his long relationship with professional wrestling to develop his *larger-than-life persona*. In fact, *wrestling explains conservative personalities* such as Alex Jones and Donald Trump.
Professional wrestling fans know that the contests are not real athletic contests even though the wrestlers are athletes performing in the ring. The fans get genuine emotional feelings from matches that are elaborated staged contests between characters portrayed as heroes and villains. This may help explain why as a candidate and as president, Trump is not expected to state facts or tell the truth. The conventional wisdom is that politicians and government officials are expected to tell the truth, to state facts, and to stand firm by not flip-flopping on the issues.

Donald Trump’s pattern of not telling the truth, not stating facts, and flip-flopping on major issues has kept fact-checkers busy, but it has not been as politically damaging as expected of a conventional candidate or president. His unconventional behavior seems to violate the civic moral of the story about young George Washington and the cherry tree! It is also hard to reconcile with President John Adams’s blessing that is carved into the fireplace in the State Dining Room: “I pray God to bestow “May none but an honest and wise men rule under this roof.”

Think About It!
An early civics lesson?
One of the most enduring and endearing stories about George Washington is the cherry tree story. Young George Washington used a hatchet that he received as a gift to damage a cherry tree. Confronted by his father who angrily asked whether he had damaged the tree, young George admitted it saying “I cannot tell a lie.” His father was overjoyed because his son’s honesty was worth more than a thousand trees. The moral of the story is part of the American national myth about private virtue being the foundation for political character.

Presidential scholars pay a great deal of attention to presidential character and style. Occasionally, this includes the touchy study of mental health. Americans believe that the process for selecting a president is well designed to weed out individuals who are politically or psychologically unsuited for the job. This faith might be shaken by the results of a Duke University study of 37 presidents from Washington to Nixon. The results were published in the Journal of Nervous and Mental Disease in 2006. Almost half of the 37 presidents studied met the criteria for a psychiatric disorder at some time in their lives—mostly depression, nervousness, and substance abuse. Presidents have often obscured disease and disorder. President John F. Kennedy’s obvious tan was called a sign of vigor when it actually was a symptom of Addison’s disease. In Landslide (1988), Jane Mayer and Doyle McManus describes White House concerns about President Reagan’s health. Reagan was 76 years old in 1987 during the stress of the Iran-Contra scandal. When Howard Baker became Reagan’s Chief of Staff he was so worried about a dysfunctional White House that he asked an aide to gather information about the President. The staff reported that Reagan did not want to work—he just wanted to stay in the residence and “watch movies and television.” Subsequent studies of Reagan’s speech patterns reveal changes that are linked with Alzheimer’s disease, with which he was diagnosed four years after leaving office.
Have the civics rules changed? Or is Trump just a special case to whom the rules about probity do not apply? There is another explanation, one that ties Trump’s character and style to his political constituency. Popular culture once again provides good insights. Alex Jones is the host of a right-wing radio program and contributor to the website InfoWars.com. In a custody hearing, his ex-wife claimed that his statements denying the 2012 mass shooting at Sandy Hook Elementary School, and his claims that Hillary Clinton was running a sex-trafficking operation out of a pizza parlor, were evidence that he was unstable and therefore an unfit parent. Jones replied that his outrageous comments are all just for entertainment value. Jones’s claim that his conservative persona was just an act will not likely hurt his standing in the radical right community because the audience knows that the persona is artifice. They don’t expect or even want factual truth. Jones’s rhetoric and persona, like President Trump’s rhetoric and persona, validate basic political feelings and perhaps even provide a cathartic release of pent-up frustrations with politics.

Spectacle or political theater is a hallmark of the postmodern presidency. Professional wrestling presents fake matches that are treated as real matches so that audiences can experience “genuine emotion.” This allows the real and the fake to coexist side-by-side in the minds of the wrestlers and the fans. The wrestlers genuinely care about the fan’s experience. Both the wrestlers and the fans care more about the “emotional fidelity” of the matches—the meaning of the dramatic conflict—than the “facts.” President Trump’s political success is an indication that the aesthetic of World Wrestling Entertainment has spread outside the ring into the real world of political conflict. Taking the fight outside is familiar to anyone who has seen professional wrestling matches. Some of the most dramatic matches have one wrestler throwing his opponent out of the ring where the fighting continues among the fans. Donald Trump’s repeated promise to build a big, high, strong and beautiful wall along the southern border is not necessarily intended to be taken literally. The political significance of the promise is catharsis: the promise to take concrete action releases the anger and sense of betrayal some of his supporters feel about the loss of control over immigration policy, southern border anxiety, and worries about the loss of American national identity after a period of increased and uncontrolled immigration. The repeated pledges to repeal Obamacare can be similarly explained as political catharsis as much as literal descriptions of promised actions. This rhetorical style has worked well for Donald Trump because he is such a good showman capable of producing high drama.
4.2 | The Power Problem

The power problem is the difficulty striking the right balance between granting government enough power to be effective while also limiting power so that government can be held accountable. The power problem with Congress is effectiveness. Congress is institutionally designed for representation and deliberation rather than effective or decisive action. The power problem for the presidency is accountability. The executive power was vested in the hands of one individual to promote effectiveness. The discretionary nature of modern presidential power makes it hard to hold a president legally accountable for the use of government power.

4.21 | Is the Presidency Imperial or Imperiled?

<table>
<thead>
<tr>
<th>Best Presidents</th>
<th>Worst Presidents</th>
</tr>
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<tbody>
<tr>
<td>1. Abraham Lincoln</td>
<td>1. James Buchanan</td>
</tr>
<tr>
<td>2. Franklin D. Roosevelt</td>
<td>2. Andrew Johnson</td>
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<tr>
<td>5. Harry Truman</td>
<td>5. William Harrison</td>
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Source: C-SPAN Survey of Historians on Presidential Leadership

The power of the president has greatly increased over time, and that the increased power of the president has presented some challenges. The modern presidency is much more powerful than the Founders intended it to be. In the early decades of the 19th Century, great political figures including Henry Clay, Daniel Webster, and John C. Calhoun, served in the Senate, a body that was described as the “greatest deliberative body in the world.” Abraham Lincoln did not aspire to be president. His ambition was to serve in the Senate. The antebellum presidency was by contrast “a mundane administrative job that offered little to a man of Lincoln’s oratorical abilities.”4 The modern president is not only more powerful than the president was in the early years of the republic but the modern president is more powerful relative to Congress. The Founders created a system of legislative governance in the sense that
Congress was intended to be the primary branch of government. But the system has developed into presidential government. The presidency has become the primary branch of government, the most powerful branch of government—the first among equals. Presidents accumulated power for a variety of reasons but the main reason is crises. Domestic and foreign crises, wars and other threats to national security, and hostage rescue missions have concentrated power in the branch of government that was designed to act quickly.

The personal nature of the presidency has caused presidential scholars to regularly take the pulse of the presidency to determine whether it is too strong, too weak, or just about right. The term Imperial Presidency describes presidents who are too strong, too powerful for their and our own good. The term Imperiled Presidency describes presidents who are too weak to govern effectively. The term Imperial Presidency was coined to describe a presidency that had grown too powerful, and resembled a monarchy insofar as it was becoming hard to control. The imperial label was initially applied to the presidencies of Lyndon Johnson (1963-1968) and Richard Nixon (1969-1974).

The Imperiled Presidency label was initially applied to the presidencies of Gerald Ford (1973-1976) and Jimmy Carter (1977-1980). President Ford seemed incapable of responding effectively to a domestic economic crisis. The Organization of the Petroleum Exporting Countries (OPEC) oil embargo shocked the economy with gas shortages and inflation. The Ford administration’s response to the threat included distributing “WIN” buttons, but the Whip Inflation Now buttons seemed a pathetically weak response to the economic threat of gas shortages. President Carter seemed incapable of responding effectively to either the domestic or foreign crises. The Soviet invasion of Afghanistan in 1978, an anti-American Iranian Revolution in 1979 that included holding Americans hostage in Teheran, created the impression that the presidency had become too weak.

Ronald Reagan campaigned for the presidency pledging to return to a stronger presidency, and his election as president (1981–1988) marked a return to a strong presidency with confidence in American leadership in foreign affairs and national security. However, Reagan’s successor, George H. W. Bush (Bush the Elder or “41”), who served from 1989 to 1992, revived worries about an imperiled presidency. Bill Clinton’s presidency (1993–2000) was described as both imperial and imperiled. The presidency of George W. Bush (or Bush “43”) revived worries about an imperial presidency. Conservatives and Republicans criticized President Obama for being both imperial and imperiled, both too strong and too weak! The dynamic nature of presidential power, the fact that it fluctuates greatly from one president to the next, makes it hard to take the pulse of the presidency to see whether it is too weak or too strong.
The delegates at the constitutional convention of 1787 extensively debated whether the new government should have a single executive. The opponents of a single executive worried that it would betray the Revolutionary War had been fought against monarchy. But the constitutional convention was called to remedy defects in the Articles of Confederation, and it was agreed that the lack of an executive figure was one of the defects. The extended debate over executive power concluded with the creation of a unitary executive with both considerable powers and considerable checks and balances.

The following diagram shows the president’s formal (or legal) and informal (or political) powers.

The formal powers are provided in the Constitution, statutes, and case law. The president’s constitutional powers are set forth in Article II. Article II is a short article that only generally mentions presidential power. It is much shorter than Article I, which specifically lists congressional powers. The Article II statement that “the executive Power shall be vested in a President” is followed by brief descriptions of how the president is selected, eligibility to serve as president, a statement that the president is commander-in-chief, and a description of the president’s appointment and treaty making powers. The president’s statutory powers are very extensive. From the earliest years of the republic, Congress has delegated broad powers to the president. These statutory delegations have greatly increased presidential power. The president’s case law powers come from court rulings, primarily Supreme Court decisions interpreting the law. The president’s formal constitutional powers have changed very little since the founding of the republic, but presidential power has increased a great deal. This is one of the reasons why presidential scholars refer to the development of the personal presidency. The major changes have occurred in the president’s statutory, case law, and political powers.

The rule of law is so widely accepted as an essential element of good government that it can be considered the successor doctrine to democracy as the measure of good government. The rule of
law principle is considered part of the American “creed.” Courses on Introduction to American government and civics education contrast political systems based on the rule of law with those based on the rule of man, and describe the rule of law as the good form of government and the rule of man as the bad form of government. The rule of law is the principle that government authority is legitimately exercised only in accordance with written, publicly disclosed laws that are adopted in accordance with established procedure. The rule of law is a safeguard against arbitrary governance by requiring those who make and enforce the law to be bound by the law. The modern presidency is difficult to reconcile with this principle.

### 4.3 | Legal Sources

In order to understand the presidency, it is very important to recognize the difference between legal and political powers. In fact, the difference is one of the keys to explaining the modern presidency. The president’s constitutional powers have remained surprisingly constant (or steady) for more than 200 years. In fact, the major amendment affecting presidential power is the 22nd Amendment and it actually reduced presidential power by limiting a president to serving two full terms in office—thereby making a president a lame duck as soon as the second term begins.

<table>
<thead>
<tr>
<th>Constitutional Power of the President</th>
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<tr>
<td>1789</td>
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<tr>
<td>Less Power</td>
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</table>

But presidential power has increased a great deal since the founding of the republic, and presidential power fluctuates considerably from one president to another. The president’s constitutional powers have been static, but presidential power has been very dynamic: it has increased over time, and it varies from one president to the next with some presidents considered strong and others weak. The fact that presidential power changes while the constitution remains the same means that the key to understanding presidential power is not the Constitution but statutory law, case law, and politics.
4.31 | *The Article II Constitutional Power*

Presidents claim three kinds of constitutional powers: enumerated, implied, and inherent powers. The **enumerated** powers are those that are actually mentioned in Article II:

- The chief executive;
- The commander in chief;
- The veto power (to veto legislation);
- The pardon power;
- The power to make treaties;
- The power to appoint ambassadors and other government officials including Supreme Court justices;
- The power to from time to time report to Congress on the state of the union; and
- The power (or duty) to “take Care that the Laws be faithfully executed…."

Some of these enumerated powers are shared with Congress. For instance, the Senate must ratify treaties and confirm the appointment of federal judges, high-ranking administrators such as the secretaries of the executive departments, and the commissioners of the independent agencies such as the Federal Reserve Board.

**Implied** powers are powers that are not actually mentioned in the Constitution, but which are logically related to them. The president is not limited to those powers that are specifically granted. The following are implied powers of the president.

- **Firing Officials.** The power to hire implies the power to fire. If the president has the enumerated power to appoint an official, then it is implied that the president has the power to fire that official because the power to fire is logically related to the president’s responsibility as chief executive to manage the executive branch.
- **Executive Privilege.** *Executive privilege* is a president’s power to refuse to disclose to Congress, the courts, or the public certain communications with advisors or other individuals. The Supreme Court has held that the president needs executive privilege to ensure that the president can get candid advice about public policy matters. Executive privilege limits the power of Congress or the courts to compel the president or his subordinates or advisors to disclose communications.
- **Executive Agreements.** *Executive Agreements* are international agreements between the leaders of countries. Executive agreements function like treaties but they do not require Senate ratification. Therefore the president has more control over executive agreements than treaties. The Supreme Court has held that the president’s constitutional power over foreign affairs implies the power to enter into executive agreements.
- **Executive Orders.** An *executive order* is a presidential directive, usually issued to an executive branch official, which provides specific guidelines on how a policy is to be implemented. Executive orders are a way for the president to manage the executive branch. Executive orders are a form of presidential legislation.

Inherent power is the most controversial kind of presidential power. The Supreme Court has never official recognized inherent powers, but presidents regularly claim they have inherent
powers. Inherent powers are powers that presidents claim as inherent in the office, powers that the president has simply because the president is the president. Presidents have historically claimed that they have the power to do something (e.g., use military force) simply because they are President. The argument for inherent powers is that certain powers are inherent in the office and therefore do not require any specific legal authorization. The inherent powers doctrine is controversial because it is practically impossible to hold Presidents legally accountable if they can claim that their actions do not need legal authorization.

4.32 | Statutory Powers

The president also has powers that are conferred by statutes. Congress has delegated a broad range of powers to the president to act in domestic policy and global affairs. In fact, Congress has delegated so much policy making power to the president that political scientists refer to presidential legislation and call the modern president the chief legislator. The following is just a short list of statutory delegations of broad discretionary power to the president.

The Hostage Act of 1868. This 19th Century Act authorized the president to take “all actions necessary and proper, not amounting to war, to secure the release of hostages.” It provided that the president may act quickly to secure the release of “any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government.” Furthermore, the president has the duty to attempt to secure the release of any hostage and can “use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the president to Congress.”

Employment Act of 1946. This Act declared that it was the federal government’s responsibility to manage the economy. It also delegated to the president the power “to foster and promote free competitive enterprise, to avoid economic fluctuations or to diminish the effects thereof, and to maintain employment, productivity, and purchasing power.” The Act was passed because of the significant increase in unemployment in the early 1930s and the perceived “planlessness” of economic policy.

Gulf of Tonkin Resolution (1964). This Act authorized the president “to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.” Congress gave the president a “blank check” to fight the war in Vietnam.

Economic Stabilization Act of 1970. This Act authorized the president “to stabilize prices, rents, wages, and salaries by issuing orders and regulations he deems appropriate.”

Emergency Economic Stabilization Act of 2008. This Act authorized the president, acting through the secretary of the treasury, to spend up to $700 billion dollars to “rescue” or “bailout” distressed financial institutions.

Authorizations for the Use of Military Force in Afghanistan and Iraq (2002) In response to the terrorist attacks on September 11, 2001, Congress authorized the president “to use all means that he deems appropriate, including the use of military force, in order to enforce the UN resolutions,
defend the national security interests of the United States against the threat posed by Iraq, and restore international peace and security in the region.”

The cumulative effect of all these congressional delegations has been a great increase in the statutory powers of the president. Modern presidents have much more statutory power than early presidents. The chart below, “Statutory Powers of the President Over Time,” describes the statutory powers of the president over time. The stepped increases indicate the statutory delegations of power.

![Statutory Power of the President Chart](chart.png)

Think About It
Is it a good idea for Congress to give the president power to do “whatever the president deems necessary and proper” to solve a problem?

4.33 | Case Law Sources of Presidential Power

Case law is the third source of formal power. The Supreme Court’s rulings in cases involving war, national security, foreign affairs, and emergency powers are an especially important source of presidential power. The Court has generally supported an expansive reading of presidential power in these areas of law so there is a large body of case law that supports presidential power. *U.S. v. Curtiss-Wright Export Corporation* (1936) is one of the most important cases. Curtiss-Wright Export Corporation was a major U.S. company that, among other things, was an international arms dealer. The company challenged the president’s power to issue an executive
order banning companies from selling arms to two South American countries that were fighting over a border region. The Court upheld the president’s power, saying that the Sole Organ doctrine gave the president power complete power over foreign affairs. The Sole Organ doctrine originates from a statement that Representative John Marshall made in the House of Representatives in 1799: “The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.”

Presidents have relied on this and other expansive readings of presidential power in national security and foreign affairs. World War II, the Cold War, and the War on Terror provided presidents with many opportunities to use the Sole Organ doctrine to assert control over foreign affairs—particularly when challenged by Congress or in court. For example, President George W. Bush claimed that the president, not Congress or the Supreme Court, had the power to decide how to treat the unlawful enemy combatants that were detained in the war on terror. The enemy combatant cases that the Supreme Court decided in 2002, 2004, and 2008 were exceptions to the general rule that the courts defer to presidential power over national security affairs because they established constitutional limits on the president’s power as commander-in-chief to decide how best to wage the war on terror.

4.4 | Political Sources of Presidential Power

Presidents also have a variety of informal or political sources of power. In contrast with the legal sources, which have remained fairly constant over time, the political sources change a great deal.

4.41 | Party Leader

The emergence of political parties fundamentally changed politics and government. Political parties changed government by making the president the de facto leader of the president’s party. The Republican and Democratic Parties have official leaders, but the president is the most politically visible member of the party and its highest elected official. Presidents use the parties to build public support for their policies, to build political support in Congress for their policies, and to organize support for electoral campaigns.

President Andrew Jackson was the first president to use a mass membership party as a base of political support. He served during the time when political parties changed from legislative caucuses—meetings of like-minded members of Congress—to mass membership organizations—parties with whom members of the public identified. The development of mass political parties created a new source of presidential power. In the past, presidents were not always willing to use the party as a base of support. President Rutherford B. Hayes was a Republican but he did not consider himself beholden to either public opinion or the Republican Party.

Is President Trump Jacksonian? Is he channeling Andrew Jackson, populist with a reputation for being a fighter and a strong leader? Trump may find Jackson appealing, but his identification with Jackson comes from his advisor, Steve Bannon, who called Trump’s election Jacksonian. Since then, President Trump has on numerous occasions identified himself with Jackson as, for example, a strong leader who might have prevented the Civil War in the way that being a strong leader today may prevent political violence.
Think About It!
Is President Trump’s suggestion that he could have done a deal to prevent the Civil War a sign of developing narcissism? Some presidential scholars think that the man makes the office, while others think that the office makes the person? Robert Caro’s study of Lyndon Johnson, *Master of the Senate*, writes that power reveals—possessing power reveals a person’s character and even exaggerates their characteristics.

Partisanship has undermined the system of institutional checks and balances. The separation of powers was supposed to help solve the problem of corruption. Congress would protect its power from the executive or judicial branch; the president would protect executive power from encroachment by the congress or the courts; and the courts would protect their power from Congress or the president. Party loyalty has undermined the system of institutional checks because party loyalty often trumps institutional loyalty. Members of Congress may support a president of their party, and oppose a president of the other party, more than they support Congress as an institution. The voting records of Supreme Court Justice also indicate strong support for the views of the political party of the president who nominated them. The congressional investigations of President Trump’s firing of Michael Flynn (President Trump’s National Security Advisor), FBI counter-terrorism investigations of Russian interference in the 2016 elections intended to help Trump, and congressional investigation of President Trump’s firing of the Director of the FBI, illustrate how partisanship has eroded institutional checks and balances. The Chair of the House of Representatives Permanent Select Committee on Intelligence, Devin Nunes (R-California), seemed more loyal to President Trump than to congressional investigative and oversight powers. The expansion of presidential power was enabled by the diminished institutional loyalty of members of Congress.

4.42 | Personal Skills

The fact that the Constitution vests the executive power in one person means that a president’s power will depend on personal skills, native intelligence, experience, character, leadership, and management styles. Presidential manage skills have become more important because the executive branch has become so large and complex. Presidents cannot assume that government bureaucrats, particularly the professional or career civil service employees, will automatically do what the President wants or even tells them what to do. Presidential political skills can also be effective by using powers of persuasion to get members of Congress to support them. The fact that personal skills vary from one incumbent to another is one reason why presidential power fluctuates even while formal power remains the same.
4.43 | Inaugural Addresses and Annual Messages

The President has formal occasions to communicate with Congress, the American people, and the rest of the world. The Inaugural Address is an opportunity to state goals and set the national agenda. The State of the Union address originates from the constitutional requirement that the President “shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.” President Obama’s 2013 Inaugural Address described globalism as a positive development that moved politics forward to a future world “without borders.” Present Trump’s 2017 Inaugural Address was very different in tone and substance. It promised a new nationalism that would end the “American carnage” caused by globalism. The State of the Union address an annual occasion to recount highlights of the past year and announce goals for the upcoming year.

4.44 | Events, Circumstances, Conditions

Presidential power is also affected by the political events, circumstances, and conditions facing the nation. A president whose political party also controls Congress is usually in a better position than one who has to deal with a Congress controlled by the other party. Divided control of the federal government sometimes produces gridlock, an inability of the House of Representatives, the Senate, and the president to agree on public policies.

Crises have historically resulted in an increase in presidential power. In times of crisis, the public and other government officials look to the president for leadership and give him leeway to select the appropriate policy responses to the crisis. Wars and other threats to national security, economic crises, and other emergency conditions have also tended to increase presidential power. The Great Depression of the 1930s created an expectation that the national government respond to a national economic emergency. The president became the person held responsible for maintaining economic prosperity. The modern president who does not appear to be acting decisively to address problems is likely to suffer a loss of political support or public approval.

Public opinion polling records the effects of events or circumstances on public approval of the president. George W. Bush is a good example of the impact of events on presidential popularity. He began his tenure in office with approval ratings of around 50%. His approval rating soared to nearly 90% immediately after the 9/11 terrorist attacks, his approval rating soared to nearly 90%. Then it sank to historic lows as the wars in Afghanistan and Iraq dragged
on and the Great Recession began. His approval rating was around 34% when he left office. President Obama’s approval rating increased as the economy recovered. Another reason why President Trump is unprecedented is because he began office with unprecedented low public approval ratings.

**APPROVE AND DISAPPROVE RATES**

![Graph showing approve and disapprove rates for different presidents from 1989 to 2010.]

**4.45 Public Opinion**

In a democracy, public opinion can serve as an important source of presidential power or an important limit on it. Strong public support adds to a president’s formal powers, while weak public support subtracts from it. One of the most widely reported measures of public opinion about the president is the regular survey of job approval ratings. The president’s popularity as measured by job approval is regularly measured and widely reported as a kind of presidential report card. Unlike the constitutional and statutory powers, which are fairly constant, public opinion is dynamic.

**OBAMA'S APPROVAL RATING**

![Graph showing Obama's approval rating from April 2009 to November 2010.]

...
President Obama’s approval ratings followed the familiar pattern of high initial approval, with eventual declines in approval ratings. Approval ratings are considered important indicators of a president’s ability to get their agenda enacted into law.

4.46 | Media

Presidents typically have a love-hate relationship with the media. Presidents love to use the media to get their message out, and presidents love favorable coverage of themselves and their administration. But presidents also hate bad press, which they tend to define as any critical media coverage of them or their administration. The love side of the relationship is evident in the eagerness of any administration to provide favorable photo opportunities that reinforce the image of presidential leadership. The hate side of the relationship is apparent in statements by presidents from Thomas Jefferson to Richard Nixon. President Jefferson’s Second Inaugural Address (March 4, 1805) included strong criticism of press coverage of his administration:

“During this course of administration, and in order to disturb it, the artillery of the press has been levelled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution so important to freedom and science, are deeply to be regretted, inasmuch as they tend to lessen its usefulness…[T]hey might, indeed, have been corrected by the wholesome punishments reserved and provided by the laws of the several States against falsehood and defamation; but public duties more urgent press on the time of public servants, and the offenders have therefore been left to find their punishment in the public indignation…..No inference is here intended, that the laws, provided by the State against false and defamatory publications, should not be enforced; he who has time, renders a service to public morals and public tranquility, in reforming these abuses by the salutary coercions of the law; but the experiment is noted, to prove that, since truth and reason have maintained their ground against false opinions in league with false facts, the press, confined to truth, needs no other legal restraint; the public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion.”

(Courtesy of The American Presidency Project, John Woolley and Gerhard Peters.)

Richard Nixon had a famously difficult relationship with the media during his entire political career. President Nixon’s relationship with the press became especially difficult when the press began investigating criminal activity related to Watergate and then reported on the widening scandal. The following excerpt from President Nixon’s News Conference on Oct. 26th 1973 reveals his disdain for the press corps:

Q. Mr. President, you have lambasted the television networks pretty well. Could I ask you, at the risk of reopening an obvious wound, you say after you have put on a lot of heat that you don’t blame anyone. I find that a little puzzling. What is it about the television coverage of you in these past weeks and months that has so aroused your anger?
THE PRESIDENT [to Robert C. Pierpoint, CBS News]. Don’t get the impression that you arouse my anger. [Laughter]
Q. I’m afraid, sir, that I have that impression. [Laughter]
THE PRESIDENT. You see, one can only be angry with those he respects.
4.5 | The Office: The Organization of the Executive Branch

The executive branch is organized around the various functions of the office of the presidency. The president is the head of the executive branch, with the vice-president and the white house staff under his direct supervision. The Executive Office of the President consists of the individuals who serve as the president’s policy advisors. These individuals also manage the various policy offices that are located in the executive branch. The final component of the president’s circle of advisors is the cabinet. The cabinet is an informal name for the heads of the fifteen executives departments—e.g., the Secretaries of State, Defense, Treasury and so on.

The growth of the executive branch has included what is commonly called the bureaucracy or the administrative state. As the chief executive officer, the president has a great deal of control over the administrative apparatus that produces regulations.

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Year</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary of State</td>
<td>1789</td>
<td>Foreign policy</td>
</tr>
<tr>
<td>Secretary of the Treasury</td>
<td>1789</td>
<td>Government funds and regulation of alcohol, firearms, and tobacco</td>
</tr>
<tr>
<td>Secretary of Defense</td>
<td>1789</td>
<td>National defense, overseeing military</td>
</tr>
<tr>
<td>Attorney General</td>
<td>1870</td>
<td>Represents the U.S. government in federal court; investigates and prosecutes violations of federal law</td>
</tr>
<tr>
<td>Secretary of the Interior</td>
<td>1849</td>
<td>Natural resources</td>
</tr>
<tr>
<td>Secretary of Agriculture</td>
<td>1889</td>
<td>Farmers, food-quality, food stamps and food security</td>
</tr>
<tr>
<td>Secretary of Commerce</td>
<td>1903</td>
<td>Business assistance and conducts the Census</td>
</tr>
<tr>
<td>Secretary of Labor</td>
<td>1913</td>
<td>Labor programs, labor statistics, enforcement of labor laws</td>
</tr>
<tr>
<td>Secretary of Health and Human Services</td>
<td>1953</td>
<td>Health and income security</td>
</tr>
<tr>
<td>Secretary of Housing and Urban Development</td>
<td>1965</td>
<td>Urban and housing programs</td>
</tr>
<tr>
<td>Secretary of Transportation</td>
<td>1966</td>
<td>Transportation and highway programs</td>
</tr>
<tr>
<td>Secretary of Energy</td>
<td>1977</td>
<td>Energy policy and research</td>
</tr>
<tr>
<td>Secretary of Education</td>
<td>1979</td>
<td>Federal education programs</td>
</tr>
<tr>
<td>Secretary of Veterans Affairs</td>
<td>1989</td>
<td>Programs for veteran’s assistance</td>
</tr>
<tr>
<td>Secretary of Homeland Security</td>
<td>2002</td>
<td>Issues relating homeland security</td>
</tr>
</tbody>
</table>
The Treaty of Paris (1783) ended the Revolutionary War. The United States emerged from the war as an independent country with the governmental structure that the Second Continental Congress drew up in 1777. The Articles of Confederation was a voluntary league of friendship among the states. The Articles government had inherent problems that became increasingly apparent with the end of the war and the defeat of the common enemy (Great Britain).

During the economic depression that followed the revolutionary war, the viability of the American government was threatened by political unrest in several states, most notably Shays’ Rebellion in Massachusetts. The Articles had created a weak federal government, one that consisted of a Congress but no president. The lack of an executive office was one of the perceived weaknesses of the Articles of Confederation. Individuals who presided over the Continental Congress during the Revolutionary period and under the Articles of Confederation had the title “President of the United States of America in Congress Assembled.” This title was often shortened to “President of the United States.” But these individuals had no important executive power. The Congress appeared institutionally incapable of functioning as a lawmaker for the nation, which was a barrier to the nation-wide development of commerce and economic development.

The Constitutional Convention of 1787 was convened to reform the Articles of Confederation, but the delegates decided to create an entirely new system of government. The long and lively debates about the nature and power of the presidency addressed the power problem of giving the president enough power to be effective while also limiting power so that the president could be held accountable. The creation of the executive was shaped both the colonial experiences under the British monarchy, which made delegates wary of executive power, and the weakness of the Articles of Confederation, which made delegates think that executive power was necessary. They ultimately created an executive with both considerable power and substantial limits within a legislative-centered system of government. They believed that this was how the executive was made safe for republican government.

At the close of the Revolutionary War, officers of the Continental Army met in Newburgh, New York, to discuss grievances and consider a possible insurrection against Congress. The army officers were angry about Congress’s failure to honor its promises to provide salaries, bounties and life pensions. The
officers heard rumors that they might not receive any compensation because the American government was going broke.

On March 10, 1783, an anonymous letter was circulated among the officers addressing those worries and calling for an unauthorized meeting of officers to be held the next day to consider possible military solutions to the problems of the civilian government and its financial woes. General Washington forbade the officers to attend the unauthorized meeting and suggested they meet a few days later, on March 15th, at the regular meeting of his officers. Meanwhile, another anonymous letter was circulated that suggested Washington was sympathetic to the claims of the disgruntled officers. On March 15, 1783, Washington’s officers gathered in a church building in Newburgh. General Washington unexpectedly showed up, personally addressed the officers, and appealed to their sense of responsibility to protect the young republic. See the Appendix, “George Washington Prevents the Revolt of the Officers.” Washington helped the U.S. avoid having a political military and a political commander in chief as president.

4.6 | The [S]election of the President

The constitutional qualifications to become president include being a natural-born citizen of the United States, at least thirty-five years old, and a resident in the United States for at least fourteen years. The Twenty-second Amendment also limits a president to serving two terms in office. The “natural-born” qualification means that some prominent individuals and successful politicians such as California Governor Arnold Schwarzenegger are not eligible to be president. And members of the “birther” movement question President Barack Obama’s eligibility to serve as president. There is some discussion today of whether the requirement that a president be a natural-born citizen should be changed so that naturalized citizens who have lived in the country for a long time would be eligible to become president.

The informal, political requirements include having some government experience. The majority of presidents had prior experience as vice presidents, members of Congress, governors, or generals. Thirty-one of forty-two presidents served in the military. President Ulysses Grant’s Civil War service as General-in-Chief and President Eisenhower’s distinguished military career as Allied Commander during WWII are examples of how military service is seen as a political qualification for the presidency. During presidential campaigns government experience, or in an anti-government political climate, the lack of government experience is presented as a political qualification for office. Membership in one of the two major political parties is also an informal political qualification. Candidates usually must receive the backing of either the Republican Party or the Democratic Party because the U.S. has a two-party system that makes it hard for third or minor party candidates to be successful. In 1992, third-party candidate Ross Perot received nearly 19% of the popular vote.
4.61 | Is This Any Way to [S]elect the President?

People commonly refer to the election of the president, but the Electoral College officially selects the president. The process of choosing the president is complicated. It involves both election—popular votes cast in the elections in fifty states—and selection—Electoral College votes. The United States is a republic or indirect democracy, but the voters do not directly elect the President. Presidents are chosen indirectly by the Electoral College. This process is complicated and has been criticized for years.

4.61 | ELECTIONS

Elections take place every four years on the Tuesday after the first Monday in November. Many states do provide early and absentee voting several weeks before the day of the election. The U.S. does not have a single, national election for President. Presidential elections are actually 50 separate elections because each state conducts an election for President.

4.62 | The Campaign

Presidential campaigns begin well before primary elections. A primary election is an election to determine party candidates for office. The two major political parties use primary elections to reduce the number of candidates in advance of their national nominating conventions. There was no incumbent in the 2016 presidential campaign, so there was an unusually large number of Republicans and Democrats running for their party nominations. There was an especially large number of Republicans running for the Republican nomination. The Republican Party held primary elections and caucuses to determine who would be the Republican Party’s nominee. Each party’s nominating convention formally selects the party nominee for president. The party’s presidential candidate chooses a vice presidential nominee and this choice is rubber-stamped by the convention. The party also establishes a platform on which to base its campaign. Although nominating conventions have a long history in the United States, their importance in the political process has greatly diminished. The fact that primaries determine which candidate
has the most delegates to the party convention means that modern conventions usually merely ratify the results of the primary elections, rather than actually choosing the party’s nominee. However, the national party conventions remain important for focusing public attention on the nominees and for energizing the parties for the general election.

Party nominees participate in nationally televised debates that are sponsored by the Commission on Presidential Debates. The Commission negotiates the terms of presidential debates, including determining the number of debates and the rules determining which candidates are allowed to participate in the debates. The rules typically exclude candidates other than the nominees of the two major parties. Ross Perot was a third party candidate who was allowed to participate in the 1992 debates, but the Libertarian Party candidates Gary Johnson and William Weld were excluded from the 2016 debates. Modern presidential campaigns rely heavily on the media.

Campaigns rely on a variety of communications media to communicate their messages. Radio and television ads “package” and “sell” candidates and parties to the general public. The Museum of the Moving Image shows campaign ads from the 1952 presidential campaign between Republican Dwight Eisenhower and Democrat Adlai Stevenson until today. These ads show how campaigns have changed over time. Changes in technology change campaign strategies. The development of social media has been incorporated into campaigns. President Obama’s campaigns relied heavily on new technologies to reach younger voters. Donald Trump’s campaign strategy incorporated traditional campaign events, the free media coverage he attracted, and direct or unfiltered communications using Twitter.

Trump’s style made the 2016 presidential election unusual. He ran as an outsider who defeated both the Republican Party establishment and the Democratic Party establishment. As a wealthy businessman, he claimed the financial resources to be independent of special interests by “self-funding” his campaign. A savvy marketer, Trump attracted media attention that he did not have to pay for. He mastered the social media style of sending out short but punchy comments about other candidates. This unorthodox, unfiltered style of communication exposed his political inexperience and revealed his strategy to appeal to voters by being politically incorrect rather than being controlled by professional campaign handlers and message massagers.

4.63 | Working the Refs

One of Donald Trump’s political strategies is working the refs. This phrase describes players or coaches who complain about, or complain to, the referees in order to get more calls to go their team’s way. Trump worked the refs during his presidential campaign and continues to do so for governing. During a campaign, the refs are the media and campaign analysts who report on who is ahead and who is behind, who has failed to meet expectations, met expectations, or exceeded expectations. As president, Trump famously worked the refs by calling some of the news media the “fake news” media. Working the refs also includes challenging the objectivity and credibility of the intelligence agencies (most prominently, the Central Intelligence Agency and the FBI), the Federal Reserve Board, the Bureau of Labor Statistics, the Environmental Protection Agency (on climate change), and the Congressional Budget Office, the nonpartisan office responsible for assessing the impact that the Republican replacement of Obamacare would have on the budget deficit. Challenging the objectivity of individual officials and agencies questions their legitimacy. This is different than saying that the FBI tends to be conservative because it is biased toward law enforcement, or that the Environmental Protection Agency or the Department of Education tend to be liberal because they support environmental protection and education.
Working the refs obviously applies to the courts, who ultimately decide the legality of many government policies. But working the refs also applies to the public and the press. President Trump’s social media strategy is intended to work around the mainstream or institutional press to communicate unfiltered with Twitter followers.

4.64 | The End of the Gaffe

The traditional expectation that presidents will be articulate and well-spoken individuals who can use language to clearly communicate ideas and arguments, supported by evidence, is weakening. These are less important components of what it means to be presidential. President Ronald Reagan earned his reputation as the great communicator. Presidents George H. W. Bush and George W. Bush earned their reputations as not gifted communicators because of their tendency to mangle syntax. After leaving office, George W. Bush jokingly acknowledged his reputation for malapropisms and making up words such as “strategery.” Technology changes the way people communicate. Electronic communications such as email and social media such as Twitter have made communication less formal and more casual. Traditionally, public communication from presidents meant that the president was speaking. Speaking meant a formal address as distinct from casual and personal communication. Donald Trump’s campaign rhetoric and his unconventional Tweeting presidency have been effective because the populist, anti-establishment mood made the official, formal speaking style seem contrived verbiage written by speech writers and political advisors. His casual speaking style and even bad English come across to his core supporters as “talking” straight from the heart rather than speaking. (McWhorter)

Stephen Wayne’s 10th edition of The Road to the White House 2016 describes the ways to get to the White House. It is now apparent that Madison Avenue and Hollywood Boulevard can take you to 1600 Pennsylvania Avenue. The PBS program American Experience: Reagan (1998) describes how President Reagan’s road to the White House included Hollywood Boulevard—his experience in film and television and the public image of him—and Madison Avenue—his advisors’ application of advertising and marketing skills to politics, particularly during the 1984 reelection campaign. The entertainment business and the advertising industry understood the political importance of creating and burnishing images. Reagan explained his appeal to voters: “They look at me and they see themselves.” President Reagan’s fixation on imagery did have a cost. During his second term, Reagan functioned more like a master of the ceremonial presidency than the chief executive—although this was partly due to medical problems such as Alzheimer’s rather than a political strategy. Donald Trump’s road to the White House also relied on celebrity status for name recognition. He then used the mainstream media to keep the media spotlight on him.

Presidential campaigns are long—and getting longer. Do the long campaigns contribute to voter fatigue? Do the long campaigns contribute to the comparatively low turnout in presidential elections? The large audiences for the Republican primary debates and the general election debates between Trump and Clinton can be interpreted as evidence of voter interest, not voter fatigue. The U.S. has by far the longest campaign season for selecting the head of government. Senator Ted Cruz announced that he was running on March 23, 2015 so the presidential campaign lasted 597 days. During that time, there could have been four Mexican elections, seven Canadian elections, 14 British elections, 14 Australian elections or 41 French elections.
The Electoral College may be the least-known government institution. The Founders disagreed on the way to select the president. Some favored a national popular vote; others wanted Congress to choose the president. The Electoral College was created because the Founders did not trust people enough to allow them to directly elect the president. In a time of limited public education, limited communication, and a fear of sectionalism in American politics, the Founders believed that the average voter could not be trusted to judge which of the presidential candidates would be best for the country. The Electoral College was intended to be a council of wise elders who would choose the best person from among those who received the most popular votes in the presidential election. The College would review the people's choices and then decide for itself which of their preferences would be best. The Electoral College no longer performs this role because of the development of political parties.

Although the Constitution would allow state legislators to select the members of the Electoral College, the states have provided for the members of the Electoral College to be chosen by popular vote. At state party conventions, the state political parties choose party loyalists to serve as members of the Electoral College. Whichever party’s candidate wins the most popular votes in the state gets to have its members cast the state’s Electoral College votes. The members of the Electoral College almost always cast their vote for their party’s candidate because the members of the Electoral College are chosen by the political party whose candidate received the most popular votes in that state.

Voters in each of the 50 states actually cast their votes for a slate of Electors chosen by the candidates’ political parties. The Electoral College actually selects the President. Each state has the same number of Electoral College votes as it has members in the Congress. There are 535 members of Congress, so the Electoral College consists of 535 members plus three for the District of Columbia so there is a total of 538 members of the Electoral College. When citizens cast their votes, the names of the presidential and vice presidential candidates are shown on the ballot. The vote, however, is actually cast for a slate of Electors chosen by the candidate’s political party. In most states, the ticket (the candidates for president and vice-president) that wins the most popular votes in a state wins all of that state’s Electoral College votes. Maine and Nebraska are the two exceptions to the winner-take-all rule. They give two electoral votes to the statewide winner and one electoral vote to the winner of each congressional district.

The winning set of electors meets at their state’s capital on the first Monday after the second Wednesday in December, a few weeks after the election, to vote, and sends a vote count to
Think about it!

This satirical news report on the Electoral College is accurate. Is this any way to select a President?

http://www.youtube.com/watch?v=BkqEdlRDKfo

4.64 | Is It Time for a Change?

Think About It!

What is the best way to choose a leader? Are there differences between “insiders” who are promoted up through the organizational ranks and “outsiders”? Is it a good idea to “roll the dice” with an outsider?


The Constitution originally provided that the U.S. Electoral College would elect both the President and the Vice President in a single election. The person with a majority would become President and the runner-up would become Vice President. The elections of 1796 and 1800 exposed the problems with this system. In 1800 the Democratic-Republican plan to have one elector vote for Jefferson and not Aaron Burr did not work; the result was a tie in the electoral votes between Jefferson and Burr. The election was then sent to the House of Representatives, which was controlled by the Federalist Party. Most Federalists voted for Burr in order to block Jefferson from the presidency. The result was a week of deadlock. Jefferson, largely as a result of Hamilton’s support, ultimately won. The Twelfth Amendment (ratified in 1804) required electors to cast two distinct votes: one for president and another for vice president. It explicitly precluded from being vice president those ineligible to be president: people under thirty-five years of age, those who have not inhabited the United States for at least fourteen years, and those who are not natural-born citizens.

The Electoral College remains controversial today because it is inconsistent with basic democratic principles. In a democracy, voters should have the right to choose their leaders. In a

Congress. The vote count is opened by the sitting vice president, acting in his capacity as President of the Senate, and read aloud to a joint session of the incoming Congress, which was elected at the same time as the president. Members of Congress can object to any state's vote count, provided that the objection is supported by at least one member of each house of Congress. A successful objection will be followed by debate; however, objections to the electoral vote count are rarely raised.

In the event that no candidate receives a majority of the electoral vote, the House of Representatives chooses the president from among the top three contenders. However, each state delegation is given only one vote, which reduces the power of the more populous states.
democracy, the candidate who gets the most popular votes should win the office. In 2000, the Democratic candidate Al Gore received the most popular votes, but Republican George Bush became president because he received the most Electoral College votes. In 2016, Democrat Hillary Clinton won the popular vote by almost three million votes, but Republican Donald Trump won the presidency by receiving the most Electoral College votes. The Electoral College also distorts representation because it is biased in favor of less populous states and against more populous states. The most populous state, California, only has one electoral vote for every 660,000 residents, while the least populous state, Wyoming, has one electoral vote for about every 170,000 residents. This means that a vote cast in one state is worth much more than a vote cast in another state. So how much is a vote for president worth? It varies a great deal depending on the state. The New York Times story “How Much is Your Vote Worth?” provides a chart describing the different vote values in the 50 states. 

One of the more innovative ways use technology to make the selection of the president more democratic is the creation of an electronic national primary election. The Americans Elect organization describes the current political system for choosing leaders as lacking democratic legitimacy and failing to serve the people very well. Their solution is to create an electronic, national primary election that gives voters more control over the selection of candidates and the political parties less control. What do you think of the idea? Or perhaps we could create an “Assembly of Experts for the Leadership?”

4.7 | The Bureaucracy

Americans love to hate the government bureaucracy—particularly the federal bureaucracy. Much of the federal bureaucracy is located within the executive branch, so it is the part of the federal government that the president as Chief Executive is responsible for managing. The following provides a brief definition of bureaucracy, a description of the federal bureaucracy, and explanation of who controls the federal bureaucracy.
4.71 | What is a Bureaucracy?

A bureaucracy is a large organization whose mission is to perform a specific function or functions. Bureaucracies are organizations with three distinctive characteristics:

- **Hierarchy.** A bureaucracy structured hierarchically. It has a chain of command. At the top of the hierarchy are the policy makers. At the bottom of the hierarchy are the policy followers. Individuals in organizations have supervisors with higher ranks within the chain of command.

- **Division of Labor.** A bureaucracy is based on the division of labor. Individuals perform specific tasks rather than having everyone do everything the organization does. The division of labor allows organizations to develop expertise.

- **Rules.** A bureaucracy works according to written rules and regulations that determine what tasks individuals are assigned. An organization that is overly bureaucratic, which has too many strict rules and regulations, is sometimes said to have too much “red tape.” Too many rules and regulations can limit an organization’s performance of its mission.

It is important to note that this definition of a bureaucracy is not limited to government. Bureaucracy is the most common way of organizing individuals to perform functions in the private sector and the public sector. Corporations in the for-profit sector and the non-profit sector are bureaucracies. Political parties and interest groups are private sector bureaucracies.

In the public sector (i.e., government), the bureaucracy is the term for some of the officials who are responsible for administering the laws. The elected officials (the president and members of Congress) are not considered members of the federal bureaucracy. The political appointees that run the 15 executive departments (e.g., the departments of state, treasury, commerce, defense, and justice) are not the bureaucracy. The federal bureaucracy is the professionals or career officials who work in the mid and lower tiers of an organization. These individuals are not elected or appointed: they typically receive their jobs based on civil service tests. The federal bureaucracy consists of the people who carry out the organization’s policies that are made by the upper management levels are the political appointees. Click on the organizational chart of any of the 15 executive departments to see the bureaucratic structure of the department.

The following figure represents a typical executive department bureaucratic organization.

![Executive Department Diagram]

- **Political Appointees** (Secretaries, Under-secretaries)
- **Policy makers**
- **Professionals** (Career Civil Servants)
- **Policy followers**
Chapter 4: The Presidency

4.72 Controlling the Bureaucracy

There are several reasons why it is important to control the bureaucracy. The most important reason for controlling the bureaucracy is because it is an unelected “fourth branch” of government with a great deal of policymaking (or rule making) power. The bureaucracy does not fit easily into the tripartite separation of powers into the legislative, executive, and judicial branches. The bureaucracy makes “laws.” Government agencies such as the Federal Communications Commission do not make legislation but administrative agencies do issue legally binding rules that have the same legal effect as laws passed by Congress.

So control of the bureaucracy is very important in a democracy. Congress creates the bureaucracy—the departments and agencies and commissions—therefore Congress can abolish it. Congress also uses its budget power to control agencies. The Senate exerts some control over the bureaucracy because presidential nominations for upper-level management positions require Senate confirmation. The president’s power as chief executive includes the power of appointment, which is the main tool for managing the federal bureaucracy.

It is also increasingly important to control the bureaucracy because of its size and complexity. The federal bureaucracy epitomizes the idea of big government! The U.S. still has only one president. The size of Congress has been fixed at 535 for more than a century. And the number of states has remained at 50 since Hawaii joined the union in 1959. But the federal government is now much bigger than it was a century ago because of the increase in the number of executive departments, agencies, bureaus, and independent regulatory commissions—and the regulations they produce. In organizational theory, the saying that personnel is power describes the importance of using the appointment power to staff the government in order to steer the government, staffing to control public policy. A president who is gifted with the ability to give great speeches can inspire support, but effective leadership requires paying attention to personnel policy, including the appointment of administrative officials.

4.8 Summary

The development of the U.S. system of government from a congress-centered system to a president-centered system is one of the most important changes that have occurred over the more than 200 years of the existence of the republic. The increased power of the president, and the personal nature of modern presidential power, makes the power problem with the presidency even more important. The challenge is to find ways to hold executive power accountable. The
personal and political nature of presidential power, and its roots in events, character, personal skills, and public opinion, presents a challenge for a system of government committed to the rule of law.

4.8 | Additional Resources

4.81 | Internet Resources

USA.gov provides information about the federal government, including the executive branch: https://www.usa.gov/branches-of-government#Executive_Departments

C-SPAN’s “The Executive Branch” provides information about the president and the presidency: https://www.c-span.org/executiveBranch/

The official Website of the White House is https://www.whitehouse.gov/

Brief biographies of your favorite or least favorite president and first lady are available at https://www.whitehouse.gov/1600/Presidents

The American Presidency Project hosted at the University of California, Santa Barbara, provides a great deal of useful information and original documents related to the presidency: http://www.presidency.ucsb.edu/

The Avalon Project at Yale provides a broad range of documents, including the Annual Messages to Congress and Inaugural Addresses: http://avalon.law.yale.edu/subject_menus/sou.asp.

4.82 | In the Library


**TERMS**

The rule of law
Imperial Presidency
Delegated powers
Implied powers
Electoral College
Primary elections

**STUDY QUESTIONS**

1. How has the power of the president changed relative to Congress?
2. What is the role of the president in the legislative process?
3. What factors caused the expansion of presidential power?
4. How has the president’s role as commander in chief of the military changed over time?
5. How do the president’s cabinet and staff assist the president in exercising his duties and achieving his goals?
6. How does public opinion affect the presidency? How does the president use public opinion to achieve his policy goals?
7. If you were redesigning the Constitution from scratch, what existing presidential powers would you retain, which would you get rid of, and which would you modify? Why?


6 http://www.opec.org/aboutus/history/history.htm


10 http://avalon.law.yale.edu/20th_century/tonkin-g.asp


16 http://www.npr.org/2017/01/20/510629447/watch-live-president-trumps-inauguration-ceremony