

## **The Executive Branch**

### **The President and the Bureaucracy**

The presidency is more than just a single person, it is a complex office. It is the only office at any level of government in this country that is elected nationally. If one were to look strictly at the Constitutional criteria specifying this office, it would appear to be much less powerful than most people believe. Still, today we look to this office as the central point of our government. The Founding Fathers, concerned with the concentration of a lot of power in a single office, intended to keep this office weak and place most of the authority of the new government in the legislature (Congress). To be effective the president must rely on his powers to persuade Congress to go along with his programs.

The Constitution says very little about the presidency. Article II establishes the office and states that the “executive Power shall be vested in a President of the United States of America”, and establishes that the term of the president shall be four years. It does not set any term limits on how long a person may continue to serve as president. Our first president, George Washington, established a precedent when he stepped down as president after two terms in office. No president ever served more than two terms until Franklin Roosevelt was elected to four terms from the 1930s to the 1940s. As a result of President Roosevelt serving for more than two terms, a constitutional amendment (the 22<sup>nd</sup> Amendment) was adopted in 1951.

The Constitution lays out the basic requirements that one must have in order to become president:

- 1) must be 35 years of age
- 2) a natural born U.S. citizen
- 3) a resident of the United States for at least 14 years

The Constitution then lays out specific powers that are granted to the president:

- 1) Commander in Chief of armed forces (remember, this does not give him the ability to declare war, only Congress can do that; it does allow him to commit troops to military actions)
- 2) Make treaties with other nations, subject to confirmation by a 2/3's vote of the U.S. Senate
- 3) Nominate foreign ambassadors, subject to confirmation by a simple majority of the Senate

- 4) Nominate federal judges, subject to confirmation by a simple majority of the Senate
- 5) Receive ambassadors of other nations (important because it confers diplomatic recognition of other governments)
- 6) May grant pardons for federal crimes (excepts impeachments)
- 7) Present to Congress “from time to time” information on the State of the Union
- 8) Convene both Houses of Congress on extraordinary occasions
- 9) Adjourn Congress if both the House and the Senate cannot agree on adjournment
- 10) Nominate officials as provided for by Congress (when new posts are created because Congress creates a new department or agency, the president is allowed to name the head of that post) subject to confirmation by a simple majority of the Senate
- 11) Fill administrative vacancies during Congressional recesses
- 12) Recommend legislation to Congress
- 13) Veto legislation, which could be overridden by a 2/3’s vote of both Houses of Congress

Compared to the powers given to Congress, the above are much less substantial. Please notice that a good number of the powers of the president are contingent upon approval by the Senate. This was indeed deliberate and part of the concept of separation of powers which we have discussed many times in class. Government power is to be, theoretically, limited.

### **Foundations of the Modern Presidency**

What has happened over time, however, is that the office of the president has gained considerable power and authority. Over the course of American history, the president’s constitutional powers have been extended in practice beyond the intentions of the Founding Fathers. Though only Congress can declare war, presidents have made war by sending troops into military action. Presidents have power over U.S. diplomacy and have surpassed Congress in functioning as the principle architect of foreign policy, using executive agreements as a device to bypass the Senate’s formal treaty making authority. Even the president’s authority to appoint administrators and the execute laws has exceeded the vision of the Founding Fathers. The power to execute laws enables presidents to determine how laws will be interpreted and applied. Presidents possess legislative authority not only to

use the veto but also to recommend proposals to Congress. For all these reasons, a more activist presidency has evolved during the modern era.

Your textbook discusses reasons why presidential powers have evolved over time. There are three key theories of presidential power that account for this, as well as a historical progression of expansion of power at the federal level:

- 1) The **Whig theory** of presidential power holds that the presidency is a limited or constrained office whose occupant was confined to the exercise of expressly granted constitutional authority. Most of the early presidents of this country followed this theory in how they exercised the power of the presidency.
- 2) The **stewardship theory** of presidential power calls for a strong, assertive presidential role that, in the words of Theodore Roosevelt, directs the president “to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws.” Most presidents since the turn of the 20<sup>th</sup> Century have been more of this model than previous presidents.
- 3) The **prerogative theory** of presidential power, which is not mentioned in the text, carries the role of the president into more assertive and aggressive areas, often going outside the Constitution and the nation’s laws. This theory of “paramount necessity” as defined by Abraham Lincoln and used by Franklin Roosevelt and Richard Nixon pushes the direction of the presidential exercise of power into imperial or dictatorial areas, raising legal and ethical questions regarding its use. Food for thought: Do you consider the presidency of George W. Bush to be of this type?
- 4) Originally the states were very strong in the new republic and the United States was not always an international power. Expansion of the federal government’s policymaking role, the evolution of a large and active government, and the broader national and international responsibilities of the United States require strong leadership from presidents.
- 5) Because of the president’s constitutional authority as chief diplomat and military commander plus the special demands of foreign policy leadership, the president, not Congress, has taken the lead in addressing the United States’ increased responsibilities in the world.

- 6) With increased regulatory and policy responsibilities, public pressure for leadership in the areas of the economy, education, environmental protection and other areas, presidential authority has grown in the domestic areas as well.

## **The Electoral College**

Perhaps no aspect of the presidency is as confusing as how it is that we go about choosing the president. The president is not chosen by direct popular election. Instead the Founding Fathers created a system of indirect election of the president known as the **Electoral College**. There were several reasons why the Founding Fathers chose to create this method of choosing the president, but two are more important than the others. First of all was the conflict between the states. Each of the states was very suspicious and jealous of the other states. With population differences there was concern that a direct election of the president would favor the states that had larger populations. Second, was a distrust of the will of the people. It was thought that the people might make an unwise decision depending on who ran for office. The Founding Fathers thus wanted a way to temper the will of the people. Originally the electors were to be chosen by the states, most probably each state's legislatures, and would act as the most informed of the citizens of the nation, thus choosing the most qualified leader.

By design each state was provided with the same number of electors as they had members of Congress (U.S. Representatives and Senators). After the popular election was held, the electors were to gather in the capital of each state to cast their ballots (this was to try to preclude bribery and/or corruption). The electors were not required to vote according to the outcome of the popular vote, though they could take it into consideration. Once the ballots of the electors were cast, they were sealed and sent to the U.S. capital where they were opened when the new Congress convened. A candidate for president had to receive a majority of the electoral votes cast. If no candidate received a majority, then the election was settled by the House of Representatives. This part of the electoral system survives to today.

After the presidency of George Washington, the results of the use of the Electoral College were mixed. The election of 1800 was the first to provide controversy. Thomas Jefferson and Aaron Burr both received equal numbers of electoral votes, and the House was required to settle the election. It took 36 ballots for the House to finally choose Jefferson as president, and

there were charges of corruption and deals to finally break the deadlock. The election of 1828 finally brought about some changes in the way the Electoral College functioned. In 1824 Andrew Jackson overwhelmingly won the popular vote and received the most electoral votes, but not a majority. The House of Representatives decided that John Quincy Adams was a better choice for president than Jackson and chose him, which left supporters of Jackson quite unhappy. In 1828 Jackson was finally elected president. At his behest, the states decided to change how electors voted. Electoral votes were now tied to the popular vote. A new provision called unit rule was implemented, which required that whichever candidate won the most votes in the popular vote then they were to be given all of the electoral votes from that state. Over time even this provision has had problems in that it is now theoretically possible for one candidate to win the popular vote, yet another candidate to win the electoral vote (which most recently happened in the 2000 election between George W. Bush and Al Gore). Though there has been considerable criticism of this system of choosing the president there have been no fundamental changes to how it works since Jackson's election in 1828.

### **Removal of the President**

The Founding Fathers were aware that under certain extraordinary circumstances a president might be required to be removed from office. Thus they created a process to provide for this. It is also the process by which federal judges can be removed from the bench. In short, it is referred to impeachment, but it is actually a two step process involving both houses of Congress. The Constitution states that a president "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Exactly what constitutes these transgressions has been subject of much debate among scholars over the years. Essentially, it comes down to what Congress believes about a president and his conduct in office.

The first step in the process of removal of a president from office is impeachment. This occurs in the House of Representatives. Again, the Constitution is vague on the exact process, but what has happened historically is that there have been hearings within the House followed by a vote. If a simple majority of the members of the House vote for impeachment, then the process moves to the Senate. At this point the Constitution states that this step constitutes a trial, and must be presided over

by the Chief Justice of the Supreme Court. At the end of the trial the members of the Senate vote for or against conviction. If, by a 2/3's vote of the members of the Senate, the president is found guilty, then he is removed from office and is not allowed to ever hold public office again.

No president has ever been removed from office. Two presidents, Andrew Johnson and William Clinton, both were impeached by the House, but failed conviction by the Senate (Johnson by a mere one vote), thus avoiding removal from office. President Richard Nixon, who was under investigation by the House and the Senate for crimes associated with the Watergate break-in, was forced to resign the presidency due to the fact that he knew he was going to be impeached and convicted. Rather than face the humiliating process he chose resignation instead.

### **Organization of the Presidency**

The president is often called the "chief executive" because he oversees the executive branch of government. In today's government this is a huge task. The modern presidency is a complex office and a very large organization. We cannot begin to understand the presidency without also having some type of understanding of the bureaucracy that serves underneath the president. When we speak of the growth of government, we mostly mean the growth of the executive branch. Before we start to consider what we mean by "bureaucracy", let's take a look at the organization of the presidency and the executive branch.

White House staff: most direct and personal services. Includes president's Chief of Staff, personal assistants, close personal advisors, press agents, legislative and group liaison aides, and other special assistants. (totals around 600 people who work in the White House). Presidents organize the White House staff the way they want them. Most presidents employ a hierarchical structure with the chief of staff at the top overseeing the rest of the staff.

Executive Office of the President. Provides support services to the president in several policy areas. Three major policymaking bodies are here: National Security Council (NSC), Council of Economic Advisors (CEA), and Office of Management and Budget. (several other small units also exist to serve the president, but these are the main ones in EOP).

National Security Council. A committee that links the president's key foreign and military policy advisors together. Formal members include the president, the vice-president, secretary of state, secretary of defense, and the president's national security advisor, who runs the council's staff. The advisor and the staff provide the president with information and policy recommendations on national security.

Council of Economic Advisors. Only three members, each appointed by the president, who advise him on economic policy. Prepare an annual report (Annual Report of the Council of Economic Advisors) and help the president make policy on inflation, unemployment, and other economic matters.

Office of Management and Budget. Used to be called Bureau of the Budget. A few appointees, but mostly career officials (approx. 600). Most important job is to prepare the president's budget. Reviews proposals from various agencies and determines whether they want to let an agency take the proposal to Congress. Reviews budgets from agencies and puts them into a single overall budget proposal to go to Congress. Also plays an important role in reviewing regulations proposed by departments and agencies.

## **Bureaucracy**

What is bureaucracy? Simply, it is a method of organizing people and work. It is based on the principles of hierarchical authority, job specialization, and formalized rules. As a form of organization, bureaucracy is often seen as the most efficient means of getting people to work together on tasks of great magnitude and complexity. Unfortunately, it is also prone to waste, complex and confusing rules, and rigidity.

Textbook: a major theme you should be aware of is the current initiative to "re-invent" government.

The U.S. bureaucracy employs more than 2.5 million people who have responsibility for administering thousands of programs. There are 5 general types of organizations within the bureaucracy:

- 1) The Cabinet. There are 14 (now 15) cabinet (executive) departments headed by a secretary who serves as a member of the president's cabinet and is responsible for establishing the department's general policy and overseeing its operations. Originally only 4:

State  
Treasury  
War (now called Defense)  
Justice  
Others today include:  
Energy  
Education  
Housing and Urban Development  
Health and Human Services  
Transportation  
Labor  
Commerce  
Agriculture  
Interior  
Veteran Affairs  
-  
Homeland Security

All of the heads are appointed by the president, subject to confirmation by the Senate. All have been created by Congress, but exist under the executive branch to oversee large policy areas.

- 2) Independent agencies. These have narrower areas of responsibility than cabinet departments. Examples include NASA, the CIA, and NOAA.
- 3) Regulatory agencies. Created when Congress recognizes the importance of close and continuous regulation of an economic activity. They can issue regulations, implement them, and judge compliance with them. Examples include the SEC, EPA, and NRC.
- 4) Government corporations. These charge clients for their services and are governed by a board of directors. They receive federal funding to help defray operating expenses, and their directors are appointed by the president with Senate approval. Examples include the U.S. Postal Service, and the FDIC.
- 5) Presidential commissions. Commissions (some permanent, some temporary) that provide ongoing recommendations to the presidents in particular areas of responsibility.

More than 90 percent of federal employees are hired through merit criteria. Merit hiring protects government workers from being fired for partisan reasons. Important to remember that federal employees have few rights of collective action.

The president has substantial appointment powers. All of the heads of these departments are appointed. The president also appoints directors and top deputies of federal agencies, members of federal commissions, and heads of regulatory agencies. In all the president appoints over 5000 positions. This allows him to have substantial influence over policy of all of these various departments and agencies.

However, this can also be a weakness. Hard to know 5000 people, and hard to control them all. Also, as we discuss the bureaucracy, it is important to remember that the overwhelming majority of them are not appointed but hired within a merit system, thus they are permanent employees usually more loyal to the organization than to the president.

The primary function of administrative agencies is policy implementation, which is to say that they carry out the authoritative decisions of Congress, the president, and the courts. The bureaucracy does not simply administer policy; it also makes it and judges it (**quasi-powers – mimic the powers of the three branches of government: quasi-legislative, quasi-executive, and quasi-judicial.**).

- 1) the bureaucracy initiates ideas for legislative programs.
- 2) Administrative agencies develop public policy in the process of implementing it. Through rule making, administrative agencies decide how the law will operate in practice.
- 3) Agencies are charged with delivery of services.
- 4) Agencies determine whether others are complying with policy.

The characteristics that we associate today with bureaucracy were first noted by a German sociologist named Max Weber. Was doing a study on authority, and found these common characteristics:

- 1) hierarchical authority structure. Hierarchy refers to an organizational arrangement that puts few people with maximum power at the top and many people with little power at the bottom.
- 2) Task specialization. Experts instead of amateurs perform technical jobs. People work on specific tasks rather than several things.
- 3) Development of extensive rules. These may seem nit-picking at times, but it allows the organization to handle similar cases in a similar manner instead of capriciously.
- 4) Operates on the merit principle. Entrance and promotion are awarded on the basis of demonstrated abilities rather than on “who you know”.
- 5) Behave impersonally. Allows all clients to be treated impartially. In theory, they are politically neutral.
- 6) Defined jurisdictions. These are created to accomplish definite and limited goals.

In reality, modern bureaucracies differ greatly from this model. Modern characteristics include:

- 1) instead of a single administrator heading an agency they are often headed by boards and commissions which act to diffuse authority and accountability.
- 2) They are often characterized by overlapping jurisdictions. Limits on goals and authority are obscured, which leads to confusion and competition among agencies. Often there is also competition over funding, and agencies can at times be characterized as being overzealous. Furthermore, despite the overlap, there are often times when items will fall between the cracks of various agencies.
- 3) Bureaucracies are not politically neutral. It is very difficult to get personnel to divorce themselves of feelings towards subjects within the political process.
- 4) Rules designed to ensure consistency and fairness sometimes contradict one another.
- 5) The role of the “expert” is often unclear. In addition, experts often disagree with one another, causing confusion over which path to follow.
- 6) There is often a reliance on managers to oversee policy implementation and to act as brokers between citizens and elected officials. Layers of management often isolate the citizen-customer from key decision makers, causing great frustration to the citizens involved in the process.

- 7) Elected officials, primarily the executive branch, frequently reorganize agencies in an attempt to make them more accountable to the legislative process.

Big government came about from a variety of factors. Among these are:

- 1) The Industrial Revolution. The mechanization of farms and ranches and the technological revolution led to the urbanization of the nation.
- 2) The combination of a pseudo-laissez-faire business philosophy and Social Darwinism eventually produced the conditions that led to an unpredictable boom-and-bust economy and widespread poverty.
- 3) Political developments emanating from these economic problems led eventually to national government intervention in an attempt to curb the worst excesses of big business and to protect those who were unable to protect themselves.

The first bureaucratic agency created to protect groups was the Interstate Commerce Commission (ICC) which was created in 1887 to regulate railroads, which had been pricing small farmers out of business by charging exorbitant freight rates.

The scope of government continued to expand after World War II primarily as the increasing complexity of society also created a need for governmental expansion. With the demand for new services and rapid population growth the size and scope of state and local government also increased.

The election of Ronald Reagan in 1980 signaled major political and ideological changes. The role of states in the American federal system was increased dramatically. Cuts in federal funding forced reductions in state and local social programs previously financed by the national government. Citizens began to question the high cost of governmental services and to demand more accountability from the administrative state.

Bureaucrats seek first survival and then growth for three basic reasons:

- 1) To protect their jobs.
- 2) To promote their organization's programs.
- 3) To serve their clientele.

**Clientele groups** are the groups that are supposed to be regulated by the bureaucratic agency. Regulation frequently becomes promotion as the relationship between the two matures.

A **civil service system** is one in which workers are hired on merit (performance on written tests or other forms of examinations) and are evaluated on the basis of their job performance.

Bureaucrats often have considerable **administrative discretion**. They are relatively free to use their own judgment as to just how the laws will be carried out.

**Goal displacement** is the shifting of bureaucratic orientation, the replacement of one goal for another. In this case the public interest is forgotten and the agencies' interests and those of clientele groups become paramount.