

10.1 The President: Upholding, Implementing, and Enforcing the Law



Image 10.1 Photo of President Biden and Senator Sanders Meeting with Young Workers at the White House

Learning Objectives

- Explain the reasoning for the design of the Presidency and its relationship to the legislature.
- Analyze the way presidents have expanded presidential power.
- Describe presidential authority to fill positions in the executive branch as well as limitations.
- Identify the power presidents have to effect policy change without congressional approval.
- Explain how presidents persuade others in the political system to support their initiatives.
- Explain why presidents tend to lead more in foreign policy than in domestic policy.
- Describe the concept of shared power in the U.S. foreign policy-making process and key actors.

Chart 10.1 Learning Objectives on the Role of the President

The presidency is the most visible position in the U.S. government. During the Constitutional Convention of 1787, delegates accepted the need to empower a relatively strong and vigorous chief executive—bound by checks from the other branches as well as the *Constitution*. Presidents must work with the other branches to function effectively as they uphold, implement, and enforce the laws.

The President: How does the president function as the chief executive?

Since its invention at the Constitutional Convention of 1787, the presidential office has gradually become more powerful, giving the president more leadership options at home and abroad. The chief executive's role has evolved as presidents have confronted challenges in domestic and foreign policy in war and peace, and with the overall rise of the federal government's power.

Deliberations of the 1787 Constitutional Convention

The *Articles of Confederation* did not provide for an executive branch.^[1] The idea of a presidency was proposed early in the Constitutional Convention in Philadelphia, as part of James Madison's proposal for a federal government, which became known as the Virginia Plan.

In his initial draft of the Virginia Plan, Madison offered a rather sketchy outline of the executive branch, leaving unspecified whether what he termed the "national executive" would be an individual or a set of people.

He proposed that Congress select the executive, whose powers and authority and even service term length were left largely undefined. He also proposed a "council of revision" consisting of the national executive and members of the national judiciary, which would review laws passed by the legislature and have the power of veto.^[2] Madison admitted that thinking about the executive branch was not fully developed and subject to change by the convention.^[3]

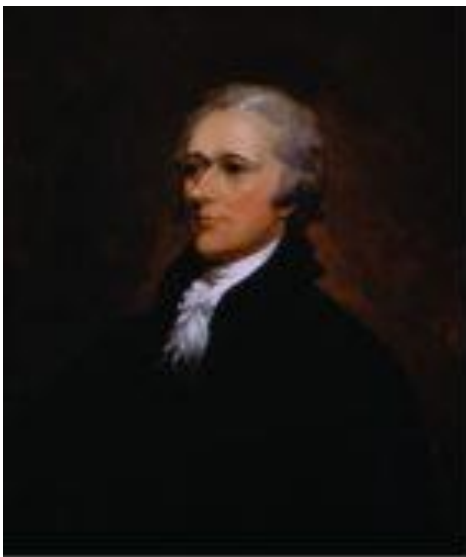
In fact, the Madison Virginia Plan was modified through early deliberations of the convention, which agreed that the executive would be a single person, elected for a single term of seven years by the legislature, empowered to veto legislation, and subject to impeachment and removal by the legislature.

The dependence and independence of the executive from the legislature would be a subject of debate for most of the 1787 Convention.^[4]

William Paterson proposed an alternate model, typically referred to as the small-state or New Jersey Plan. This plan called for merely amending the *Articles of Confederation* to create an executive branch comprised of a committee elected by a unicameral Congress for a single term.

This executive committee would be particularly weak because it could be removed from power at any point if a majority of state governors desired.

Alternatively, Alexander Hamilton's suggestion presented, in a five-hour speech, that an executive position with very broad powers should be entrusted to a single individual who would serve for life—an elected monarch, this suggestion was ignored and therefore rejected by the convention.



(a)



(b)

Image 10.2 Portraits of Alexander Hamilton and George Washington (Credit: Library of Congress)

Consider the Original

Alexander Hamilton, Federalist No. 70 Excerpt

“Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws, to the protection of property [...] to justice; [and] to the security of liberty [...].”

“A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice a bad government [...].”

“In the conduct of war, [...] the energy of the Executive is the bulwark of the national security [...].”

Chart 10.2 Excerpt from Federalist Paper No. 70

Debate and discussion continued throughout the summer. Delegates eventually settled upon a single executive, but they remained at a loss for how to select that person. Pennsylvania’s James Wilson, who had triumphed on the issue of a single executive, at first proposed the direct election of the president. When delegates rejected that idea, he responded with the suggestion that electors, chosen throughout the nation, should select the executive. Over time, Wilson’s idea gained ground with delegates who were uneasy at the idea of an election by the legislature, which presented the opportunity for intrigue and corruption. The idea of shorter term of service combined with eligibility for reelection also became more attractive to delegates.

The framers of the Constitution struggled to find the proper balance between giving the president the power to perform the job on one hand and opening the way for a president to abuse power and act like a monarch on the other.

Eventually the idea of using electors selected directly or indirectly by the people emerged as the way to select a president, rather than having the selection made by a legislative body. Writing Federalist No. 68, Hamilton praised the decision of the convention to not make selection of the president dependent on any “preestablished body... who might be tampered with [...].”^[5]

Although not mentioned in the *Constitution*, we have come to call these **electors**, the **Electoral College**, although they never gather together in one place to vote. In fact, the Constitution’s framers intentionally did not want them to gather together and constitute a single body.^[6] While this process of electors casting “electoral votes” is discussed more fully in the chapter on participation and elections, today, the electoral system consists of 538 people called electors, who formally cast votes for the election of the president and vice president on a state-by-state basis. The number of electors, granted to each state by the *Constitution*, equals the total number of representatives and senators that state has in the U.S. Congress or, in the case of Washington, DC, as many electors as it would have if it were a state. The number of representatives; and, therefore electoral votes, may fluctuate based on state population, which

is determined every ten years by the U.S. Census. Despite provisions for the election of a vice president (to serve in case of the president's death, resignation, or removal through impeachment), and apart from the suggestion that the vice president should be responsible for presiding over the Senate, the framers left the vice president's role undeveloped. As a result, the influence of the vice presidency has varied dramatically depending on the role the vice president is given by the president.

The delegates also outlined who was eligible for election and how Congress might remove the president. Article II of the *Constitution* delineates the requirements—the chief executive must be at least thirty-five years old and a “natural born” citizen of the United States (or a citizen at the time of the Constitution's adoption) who has been an inhabitant of the United States for at least fourteen years.^[3] While Article II also states that the term of office is four years and does not expressly limit the number of times a person might be elected president, after Franklin D. Roosevelt was elected four times (from 1932 to 1944), the new Twenty-Second Amendment limited the presidency to two four-year terms.

Impeachment of the President

An important means of ensuring that no president could become tyrannical and abuse their power was built into the *Constitution* a clear process for removing the chief executive—**impeachment**. Impeachment is the act of charging a government official with serious wrongdoing; the *Constitution* calls this wrongdoing high crimes and misdemeanors.

The method the framers designed required two steps and both chambers of the Congress. First, the House of Representatives could impeach the president by a simple majority vote. In the second step, the Senate could remove him or her from office by a two-thirds majority, with the chief justice of the Supreme Court presiding over the trial. Upon conviction and removal of the president, if that occurred, the vice president would become president.

Four presidents have faced impeachment proceedings in the House; none has been both impeached by the House and removed by the Senate. In the wake of the Civil War, President Andrew Johnson faced congressional contempt for decisions made during Reconstruction. President Richard Nixon faced a likely impeachment in the House for his cover-up of key information relating to the 1972 break-in at the Democratic Party's campaign headquarters at the Watergate hotel and apartment complex. Nixon may have also been “convicted” and removed by the Senate, since there was strong bipartisan consensus for his impeachment and removal. Instead, he resigned before the House and Senate could exercise their constitutional prerogatives.

In the 1990s President Bill Clinton, was charged with perjury and obstruction of justice for false testimony as a defendant in a sexual harassment lawsuit. Clinton was impeached for lying under oath about an extramarital affair and sexual harassment of a White House intern. The most recent impeachments were of President Donald Trump, who was impeached twice by the House, but not convicted by the Senate. The second impeachment charge of incitement of insurrection related to a protest at the Capitol had some bipartisan support. Impeachment remains a rare event and removal of a president has never occurred. The fact that a president *can* be impeached and removed is a reminder of

the executive role in the broader system of shared powers. However, the fact that legislative impeachment and removal from office can only occur for violations considered “high crimes and misdemeanors” means that the legislature does not simply remove a president for purely political reasons.^[7]

Consider the Original



Letter From George Washington to Major General Robert Howe

17 August 1779

“Few men have virtue to withstand the highest bidder.”

Washington / painted by T. Hicks N.A. ; engraved by H. Wright Smith.
Summary: Print showing George Washington, full-length portrait, standing, facing slightly left, with Mount Vernon in the left background. (Credit: T. Hicks and H. Wright Smith; Library of Congress)

To Major General Robert Howe; National Archives, Founders.archives.gov/documents/Washington/03-22-02-0139. [\[1\]](#)

Washington / painted by T. Hicks N.A. ; engraved by H. Wright Smith.
Summary: Print showing George Washington, full-length portrait, standing, facing slightly left, with Mount Vernon in the left background. Contributor Names: Smith, Henry Wright, 1828-, engraver; Hicks, Thomas, 1823-1890, artist; "Creating the United States," the Library of Congress, Washington, D.C., 2011-2012; <http://hdl.loc.gov/loc.pnp/pp.print>; Digital Id; pga 03318; //hdl.loc.gov/loc.pnp/pga.03318 pga 03319; //hdl.loc.gov/loc.pnp/pga.03319; Rights Advisory: No known restrictions on publication. [\[2\]](#)

Chart 10.3 Excerpt from A Letter Between Washington and Howe

The President: Formal and Informal Powers

A president’s powers can be divided into two categories: direct actions through the **formal** institutional powers of the office (explicitly stated in the Constitution, delegated by Congress, or implied as an extension of the executive powers clause) and **informal** powers (persuasion and negotiation) essential to working with the legislative branch. When a president governs alone through direct action, especially when based upon implied or inherent powers, it may break a policy deadlock or establish new grounds for action, but it may also spark opposition that might have been handled differently through negotiation and discussion.

In 1960, political scientist Richard Neustadt put forward the thesis that presidential power is the power to persuade, a process that takes many forms and is expressed in various ways including behind the scenes discussions and attempts to use presidential popularity to influence public policy decision making.^[8]

Presidential Powers

Formal	Informal
Enumerated/Explicit Constitutionally Delegated Power	Persuasion Power: Private Use
Commander-in-Chief of the Armed Forces of the U.S. Negotiate Treaties with Foreign Entities Appoint Ambassadors, Judges/Justices, Officers of the U.S. State of the Union Address Power to Pardon Without Conditions Power to Fill Vacancies Receive Representatives of Foreign Nations	Informal Communication One-On-One Negotiation with Members of Congress Use of White House Legislative Liaison Office to Lobby Congress— Lobbying Individual Congressional Members
Congressionally Delegated Power	
Implementation/Execution of Laws	Persuasion Power: Public Use
Implied/Inherent Power	
Establish a Cabinet Executive Privilege (Withholding Information from Congress) Executive Orders Presidential Proclamations/Memorandum Executive Agreements Signing Statements	Public Speaking Engagements/Advocating for Public Policy Agenda Political Rallies Use of Media and Other Communication to Shape Public Opinion Use of Social Media Advocacy for Policy Positions and Agenda on WhiteHouse.gov Attempts to Enhance Personal Popularity to Influence Congress

Chart 11.4 Illustration of Formal and Informal Powers of the President

Formal Explicit Power Enumerated in the *Constitution*

The *Constitution* that emerged from the deliberations in Philadelphia treated the powers of the presidency concisely. The president is commander-in-chief of the armed forces of the United States, negotiate treaties with the advice and consent of the Senate, and receive representatives of foreign nations.

Charged to “take care that the laws be faithfully executed,” the president was given broad power to pardon those convicted of federal offenses, except for officials removed through the impeachment process.^[8]

Consider the Original

Excerpts from *The Constitution of the United States of America, Article II*

Section 1: The executive Power shall be vested in a president...

Section 2: The President shall be Commander in Chief... with the Advice and Consent of the Senate, to make Treaties... appoint Ambassadors... Judges of the supreme Court, and all other Officers of the United States...

Section 3: He... [the president] shall take care that the Laws be faithfully executed... he shall receive ambassadors and other public ministers... He shall from time to time give Congress Information of the State of the Union, and recommend to their Consideration such Measures... [laws] he shall judge necessary...

<https://www.archives.gov/founding-docs/constitution-transcript>

Chart 10.5 Excerpt for Article II of the US Constitution

The opening sentence of Article II of the Constitution states that the President is head of the Executive branch and has specific constitutional powers sometimes executed completely independently, while other powers require Congressional approval.

The president is commander-in-chief of the armed forces of the United States, negotiates treaties with other nations, appoints ambassadors with the advice and consent of the Senate, and receives representatives of foreign nations. These four **explicit** or **enumerated** powers related to the presidential role in foreign policy and international relations.

The president also nominates federal judges, including Supreme Court justices, as well as other federal officials, and makes appointments to fill military leadership positions. There are many judicial appointments and nominations of other federal officials. In recent decades two-term presidents have nominated well over three hundred federal judges while in office.^[10] New presidents nominate close to five hundred top officials to their Executive Office of the President, key agencies (such as the Department of Justice), and regulatory commissions (such as the Federal Reserve Board), whose appointments require Senate majority approval.^[11]

The president may not be able to appoint key members of his or her administration without Senate confirmation, but he or she can demand the resignation or removal of cabinet officers, high-ranking appointees (such as ambassadors), and members of the presidential staff. During Reconstruction, Congress tried to curtail the



Image 10.3 Photo of President Ford Pardoning President Nixon

He is speaking before the House Judiciary Subcommittee on Criminal Justice meeting explaining his reasons. While the pardon was unpopular with many and may have cost Ford the election two years later, his constitutional power to issue it is indisputable. (Credit: modification of work by the Library of Congress.)

president's removal power with the Tenure of Office Act (1867), which required Senate concurrence to remove presidential nominees who took office upon Senate confirmation. Andrew Johnson's violation of that legislation led to his 1868 impeachment. Subsequent presidents secured legislative modifications before the Supreme Court ruled in 1926 that the Senate had no right to impair the president's removal power.^[12] In the case of Senate failure to approve presidential nominations, the president is empowered to issue recess appointments (made while the Senate is in recess) that continue in force until the end of the next session of the Senate (unless the Senate confirms the nominee).

The president also exercises the **power of pardon** without conditions. Once used sparingly—apart from Andrew Johnson's wholesale pardons of former Confederates during the Reconstruction period—the pardon power has become more visible in recent decades.

President Gerald Ford has the unenviable reputation of being the only president to pardon another president (his predecessor Richard Nixon, who resigned after the Watergate scandal). President Jimmy Carter also issued a great number of pardons, including several for draft dodging during the Vietnam War. President Reagan was reluctant to use the pardon, as was President George H. W. Bush. President Clinton pardoned few people for much of his presidency but did make several last-minute controversial pardons. Barack Obama made extensive use of commutations with a focus on reducing punishments for those convicted of certain drug crimes. In fact, Obama's commutations were the most of any President in U.S. history.^{[13] [14]}

The President was given broad power to pardon those convicted of federal offenses, except for official removed through the impeachment process.

Under constitutional provisions, the chief executive presents to Congress information about the **state of the union**; may **veto** legislation (although a two-thirds super-majority in both houses of Congress can override that veto); and makes recommendations for legislation and policy and calls on the department heads to provide reports and offer opinions.

Charged to "take care that the laws be faithfully executed," the president receives considerable power by the authority delegated by the Constitution to implement laws passed by Congress, known as delegated power.^[15] While some of this authority may have been requested by the President as part of a presidential legislative agenda, obviously **delegated power** has been accumulated over many years because Congress has passed laws giving the President power.

From George Washington on, presidents began acting to expand upon both formal, constitutionally explicit/specified powers or to expand the interpretation of congressionally **delegated** powers. For example, Washington established a **cabinet** or group of advisers to help him administer his duties. This cabinet consisted of the most senior appointed officers of the executive branch, despite the fact that the *Constitution* does not mention the concept of a cabinet. In the *Constitution*, the President is authorized to "require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices."^[16] The *Constitution* does not provide for an **explicit** forum where the principal officers' opinions can be obtained less formally—without writing—

such as a formal Cabinet; but, Washington believed that the cited constitutional provision **implied** a grant of authority to create such an entity.^[17]

Likewise, as the United States sought to take a stand in the evolving European conflicts, in 1793 President Washington issued a neutrality proclamation extending his rights as diplomat-in-chief far more broadly than had at first been conceived. These are examples of what has been called **inherent power** or **implied power**, which are claimed extensions of either enumerated constitutional powers or delegated congressional powers.^[18]

Actions of the Executive

Presidents further developed the concept of implied or inherent powers with the concept of **executive privilege** as the right to withhold information from Congress, the judiciary, or the public. This right, not enumerated in the *Constitution*, was first asserted by George Washington to curtail inquiry into executive branch actions.^[19] The more general defense of its use by White House officials and attorneys ensures that the president can secure candid advice from his advisers and staff members.

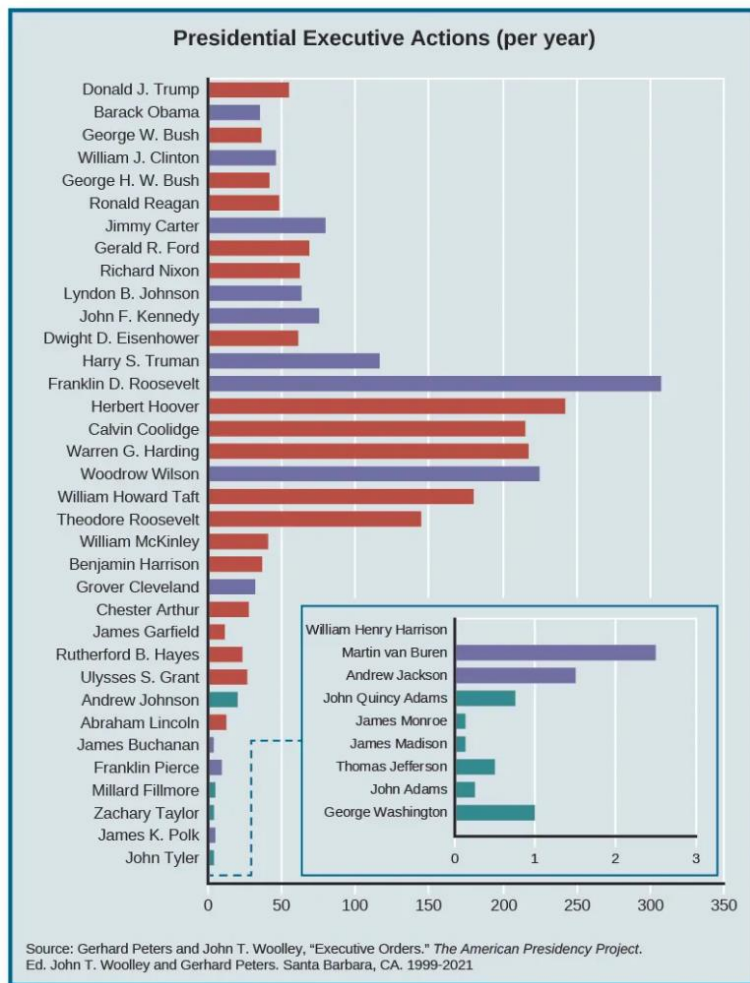


Chart 10.6 Presidential Executive Actions Graph

Over time presidents have increased use of implied or inherent powers, especially using **executive orders**. Constitutionally, a president issues executive orders 1) to carry out a constitutionally authorized enumerated power as commander-in-chief; 2) in order to implement laws with power specifically delegated by Congress; and 3) in order to carry on the internal business of the executive branch. Executive orders establishing rules binding on states and/or the people can be constitutional challenged in U.S. Federal Court for exceeding the authority given the president by Congress. Since only Congress has the authority to make laws under the constitutionally assigned separation of powers, the president's role is to implement or enforce the laws not to make the laws.

Executive actions were unusual until the late nineteenth century. They became common in the first half of the twentieth century but have been growing less popular for the last few decades because they often get overturned in court if the Congress has not given the president prior delegated authority. (Credit: OpenStax included image)

If through an executive order, a president has interpreted the authority given them by Congress by some law too broadly and in a

manner not intended by Congress, the executive order could be declared unconstitutional. For example, in 2023, the Supreme Court over turned President Biden's attempt to cancel student loan debt by executive order.^[20]

Chief Justice John G. Roberts, Jr., in the majority opinion, wrote that Congress could not possibly have meant to allow implementation to “rewrite the statute from the ground up” to forgive loans. “However broad the meaning of ‘waive or modify,’ that language cannot authorize the kind of exhaustive rewriting of the statute that has taken place here,” Roberts wrote.^[21]

A president usurping congressional authority for law-making is a potential tyrant or dictator. Now, presidents offer their own interpretation of legislation via **signing statements** (discussed later in this chapter) directed to the bureaucratic entity charged with implementation. For foreign policy, Congress permitted the widespread use of **executive agreements** to formalize international relations, so long as important matters still came through the Senate in the form of treaties.^[22] Again, to be constitutionally binding on the American people, agreements with foreign entities require the status of a treaty, subject to congressional checks on executive power.

While many important decisions were once made at the state and local levels, the increasing complexity and size of the domestic economy have led people in the United States to look to the federal government more often for solutions. Concurrently, the rising profile of the United States on the international stage elevates the president as the leader of the nation, as diplomat-in-chief, and as commander-in-chief.

Finally, with the rise of electronic mass media, a president who once depended on newspapers and official documents to distribute information beyond an immediate audience can now bring that message directly to the people via radio, television, and social media. President Donald Trump's use of Twitter™ is an example of expanding presidential communications. President Biden, however, has not been a significant user of Twitter™.

Informal Power of Persuasion

The framers of the *Constitution*, concerned about the excesses of British monarchical power, made sure to design the presidency within a network of checks and balances controlled by the other branches of the federal government. Such checks and balances encourage consultation, cooperation, and compromise in policymaking. This is most evident at home, where the *Constitution* makes it difficult for either Congress or the chief executive to prevail unilaterally, at least when it comes to constructing policy. Although much is made of political stalemate and obstructionism in national political deliberations today, the framers did not want to make it too easy to get things done without a great deal of support for such initiatives.

It is left to the president to employ a strategy of negotiation, persuasion, and compromise in order to secure policy achievements in cooperation with Congress. In 1960, political scientist Richard Neustadt put forward the thesis that presidential power is the power to persuade, a process that takes many forms and is expressed in various ways.^[23] Yet the successful employment of this technique can lead to significant and durable successes.

For example, legislative achievements tend to be of greater duration because they are more difficult to overturn or replace, as the case of health care reform under President Barack Obama suggests. Obamacare has faced court cases and repeated (if largely symbolic) attempts at change from within the Congress. Overturning it will take a new president who opposes it, together with a Congress that can pass the dissolving legislation.

In some cases, cooperation is essential, as when the president nominates and the Senate confirms persons to fill vacancies on the Supreme Court, an increasingly contentious area of friction between branches.

While Congress cannot populate the Court on its own, it can frustrate the president's efforts to do so. Presidents who seek to prevail through persuasion, according to Neustadt, target Congress, members of their own party, the public, the bureaucracy, and, when appropriate, the international community and foreign leaders. Of these audiences, perhaps the most obvious and challenging is Congress.



Read “Power Lessons for Obama” at this [website](#) to learn more about applying Richard Neustadt's framework to the leaders of today.

Much depends on the balance of power within Congress: Should the opposition party hold control of both houses, it will be difficult indeed for the president to realize his or her objectives, especially if the opposition is intent on frustrating all initiatives. However, even control of both houses by the president's own party is no guarantee of success or even of productive policymaking. For example, neither Bill Clinton nor Barack Obama achieved all they desired despite having favorable conditions for the first two years of their presidencies. In times of divided government (when one party controls the presidency and the other controls one or both chambers of Congress), it is up to the president to cut deals and make compromises that will attract support from at least some members of the opposition party without excessively alienating members of his or her own party. Both Ronald Reagan and Bill Clinton proved effective in dealing with divided government—indeed, Clinton scored more successes with Republicans in control of Congress than he did with Democrats in charge.

It is more difficult to persuade members of the president's own party or the public to support a president's policy without risking the dangers inherent in going public. There is precious little opportunity for private persuasion while also going public in such instances, at least directly. The way the president and his or her staff handle media coverage of the administration may afford some opportunities for indirect persuasion of these groups. It is not easy to persuade the federal bureaucracy to do the president's bidding unless the chief executive has made careful appointments. When it comes to diplomacy, the president must relay some messages privately while offering incentives, both positive and negative, in order to elicit desired responses, although at times, people heed only the threat of force and coercion.

While presidents may choose to go public to put pressure on other groups to cooperate, most of the time they “stay private” as they attempt to make deals and reach agreements out of the public eye. The tools of negotiation have changed over time. Once chief executives played patronage politics, rewarding friends while attacking and punishing critics as they built coalitions of support. But the advent of civil service

reform in the 1880s systematically deprived presidents of that option and reduced its scope and effectiveness. Although the president may call upon various agencies for assistance in lobbying for proposals, such as the Office of Legislative Liaison with Congress, it is often left to the chief executive to offer incentives and rewards. Some of these are symbolic, like private meetings in the White House or an appearance on the campaign trail.

The president must also find common ground and make compromises acceptable to all parties, thus enabling everyone to claim they secured something they wanted.

Complicating Neustadt's model of successful exercise of power of persuasion, is that many of the ways he claimed presidents could shape favorable outcomes require "going public," in an attempt to influence public opinion or use presidential popularity to influence congressional action.

However, this can produce mixed results. For example, there may be less opportunity for, or attention on, private persuasion in Washington with member of Congress if a president also goes public making speeches across the nation.

Political scientist Fred Greenstein touted the advantages of a "hidden hand presidency," in which the chief executive did most of the work behind the scenes, wielding both the carrot and the stick.^[24] Greenstein singled out President Dwight Eisenhower as particularly skillful in such endeavors.

Informal Power of Opportunity and Legacy

What often shapes a president's performance, reputation, and ultimately legacy depends on circumstances that are largely out of his or her control. Did the president prevail in a landslide or was it a closely contested election? How much support does the president's party enjoy, and is that support reflected in the composition of both houses of Congress, just one, or neither? Will the president face a Congress ready to embrace proposals or poised to oppose them? Whatever a president's ambitions, it will be hard to realize them in the face of a hostile or divided Congress, and the options to exercise independent leadership are greater in times of crisis and war than when looking at domestic concerns alone.

Then there is what political scientist Stephen Skowronek calls "political time."^[25] Some presidents take office at times of great stability with few concerns. Unless there are radical or unexpected changes, a president's options are limited, especially if voters hoped for a simple continuation of what had come before. Other presidents take office at a time of crisis or when the electorate is looking for significant changes. Then there is both pressure and opportunity for responding to those challenges. Some presidents, notably Theodore Roosevelt, openly bemoaned the lack of any such crisis, which Roosevelt deemed essential for him to achieve greatness as a president.

People in the United States claim they want a strong president. What does that mean? At times, scholars point to presidential independence, even defiance, as evidence of strong leadership. Thus, vigorous use of the veto power in key situations can cause observers to judge a president as strong and independent,

although far from effective in shaping constructive policies. Nor is such defiance and confrontation always evidence of presidential leadership skill or greatness. When is effectiveness a sign of strength, and when are we confusing being headstrong with being strong? Sometimes, historians and political scientists see cooperation with Congress as evidence of weakness, as in the case of Ulysses S. Grant, who was far more effective in garnering support for administration initiatives than scholars have given him credit for.

These questions overlap with those concerning political time and circumstance. While domestic policymaking requires far more give-and-take and a fair share of cajoling and collaboration, national emergencies and war offer presidents far more opportunity to act vigorously and at times independently. This phenomenon often produces the rally around the flag effect, in which presidential popularity spikes during international crises. A president must always be aware that politics, according to Otto von Bismarck, is the art of the possible, even as it is his or her duty to increase what might be possible by persuading both members of Congress and the general public of what needs to be done.

Basic Functions of the Executive Branch

Domestic Policy

As previously noted, the function of the executive branch is implementation and enforcement of laws made by Congress per constitutionally assigned powers. However, at times, the lines of authority leading to action on policies can be somewhat blurred.^[26] Presidents take action to advance policy objectives addressing national issues and problems. They may choose to issue executive orders, proclamations, or memoranda to achieve policy goals. Proclamations typically deal with largely ceremonial concerns, while a memorandum typically attracts less attention than more direct orders.

Executive orders direct government agencies to pursue action as an extension of authority granted by congressional action. Likewise, signing statements can be viewed as a claimed extension of power of the president's executive authority—agreeing to a specified course of action when implementing and enforcing legislation.

National Security, Foreign Policy, and War

Presidents often justify the use of executive orders in cases of national security or as part of their war powers. In addition to mandating emancipation and the internment of Japanese Americans, presidents have issued orders to protect the homeland from internal threats. Most notably, Lincoln ordered the suspension of the privilege of the writ of habeas corpus in 1861 and 1862 before seeking congressional legislation to undertake such an act. Presidents hire and fire military commanders; they also use their power as commander-in-chief to aggressively deploy U.S. military force. Congress rarely has taken the lead over the course of history, with the War of 1812 being the lone exception. Pearl Harbor was a salient case where Congress did make a clear and formal declaration when asked by FDR. However, since World



Image 10.4 Photo of President Bush on Aircraft Carrier

War II, it has been the president and not Congress who has taken the lead in engaging the United States in military action outside the nation's boundaries, most notably in Korea, Vietnam, and the Persian Gulf.

By landing on an aircraft carrier and wearing a flight suit to announce the end of major combat operations in Iraq in 2003, President George W. Bush was carefully emphasizing his presidential power as commander-in-chief. (Credit: OpenStax; Tyler J. Clements)

Executive agreements are formal agreements negotiated between two countries but not ratified by a legislature as a treaty must be. As such, they are not treaties under U.S. law, which require two-thirds of the Senate for ratification. Treaties, presidents have found, are particularly difficult to get ratified.

And with the fast pace and complex demands of modern foreign policy, concluding treaties with countries can be a tiresome and burdensome chore.

That said, some executive agreements do require some legislative approval, such as those that commit the United States to make payments and thus are restrained by the congressional power of the purse.



The [American Presidency Project](#) has gathered data outlining presidential activity, including measures for executive orders and signing statements.

The Role of the President in Foreign Policy

When the media cover a domestic controversy, such as social unrest or police brutality, reporters consult officials at different levels and in branches of government, as well as think tanks and advocacy groups. In contrast, when an international event occurs, such as a terrorist bombing in Paris or Brussels, the media flock predominately to one actor—the president of the United States—to get the official U.S. position.

In the realm of foreign policy and international relations, the president occupies a leadership spot that is much clearer than in the realm of domestic policy. This dual domestic and international role has been described by the **two presidencies thesis**. This theory originated with University of California–Berkeley professor Aaron Wildavsky and suggests that there are two distinct presidencies, one for foreign policy and one for domestic policy, and that presidents are more successful in foreign than domestic policy. Let's look at the reasoning behind this thesis.

The Constitution names the president as the commander-in-chief of the military, the nominating authority for executive officials and ambassadors, and the initial negotiator of foreign agreements and treaties. From the president's constitutional authority to officially receive ambassadors, a lead role in diplomacy is derived, that is to conduct meetings with world leaders and convening international summits.

The president is the agenda-setter for foreign policy and may move unilaterally in some instances. Beyond the Constitution, presidents were also gradually given more authority to enter into international agreements without Senate consent by using the executive agreement. The passage of the War Powers Resolution in 1973, though intended as a statute to rein in executive power and reassert Congress as a check on the president, effectively gave presidents two months to wage war however they wish. Given all these powers, we have good reason to expect presidents to have more influence and be more successful in foreign than in domestic policy.

A second reason for the stronger foreign policy presidency has to do with the informal aspects of power. In some eras, Congress will be more willing to allow the president to be a clear leader and speak for the country. For instance, the Cold War between the Eastern bloc countries (led by the Soviet Union) and the West (led by the United States and Western European allies) prompted many to want a single actor to speak for the United States. A willing Congress allowed the president to take the lead because of urgent circumstances. Much of the Cold War also took place when the parties in Congress included more moderates on both sides of the aisle and the environment was less partisan than today.

A phrase often heard at that time was, “Partisanship stops at the water’s edge.” This means that foreign policy matters should not be subject to the bitter disagreements seen in party politics.



(a)



(b)

Image 10.5 Photos of President Carter and Bush Conducting Foreign Affair Events

President Jimmy Carter meets with Egypt's Anwar El Sadat (left) and Israel's Menachem Begin (right) at Camp David in 1978 (a).

President George H. W. Bush (right) dines with Mikhail Gorbachev (left) at the Malta Summit in 1989 (b).

(Credit b: modification of work by the National Archives and Records Administration)

The Many Actors in Foreign Policy

A variety of actors carry out the various and complex activities of U.S. foreign policy: White House staff, executive branch staff, and congressional leaders.

The White House staff members engaged in foreign policy are likely to have very regular contact with the president about their work. The national security adviser heads the president's **National Security Council**, a group of senior-level staff from multiple foreign policy agencies and is generally the president's top foreign policy adviser. Also reporting to the president in the White House is the director

of the Central Intelligence Agency (CIA). Even more important on intelligence than the CIA director is the director of national intelligence, a position created in the government reorganizations after 9/11, who oversees the entire intelligence community in the U.S. government. The Joint Chiefs of Staff consist of six members, one each from the Army, Navy, Air Force, and Marines, plus a chair and vice chair. The chair of the Joint Chiefs of Staff is the president's top uniformed military officer. In contrast, the secretary of defense is head of the entire Department of Defense but is a nonmilitary civilian. The U.S. trade representative develops and directs the country's international trade agenda. Finally, within the Executive Office of the President, another important foreign policy official is the director of the president's Office of Management and Budget (OMB). The OMB director develops the president's yearly budget proposal, including funding for the foreign policy agencies and foreign aid.

In addition to those who work directly in the White House or Executive Office of the President, several important officials work in the broader executive branch and report to the president in the area of foreign policy. Chief among these is the secretary of state. The secretary of state is the nation's chief diplomat, serves in the president's cabinet, and oversees the Foreign Service. The secretary of defense, who is the civilian (nonmilitary) head of the armed services housed in the Department of Defense, is also a key cabinet member for foreign policy (as mentioned above).

A third cabinet secretary, the secretary of homeland security, is critically important in foreign policy, overseeing the massive Department of Homeland Security.

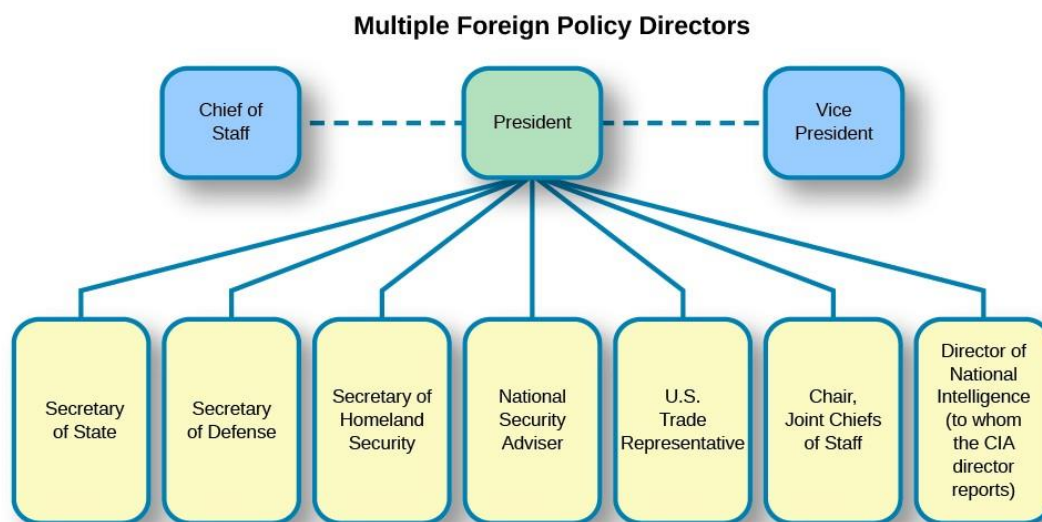


Chart 10.7 Organizational Chart for Foreign Policy Directors

The final group of official key actors in foreign policy is in the U.S. Congress. The Speaker of the House, the House minority leader, and the Senate majority and minority leaders are often given updates on foreign policy matters by the president or the president's staff. They are also consulted when the president needs foreign policy support or funding. However, the experts in Congress who are most often called on for their views are the committee chairs and the highest-ranking minority members of the relevant House and Senate committees. In the House, that means the Foreign Affairs Committee and the

Committee on Armed Services. In the Senate, the relevant committees are the Committee on Foreign Relations and the Armed Services Committee. These committees hold regular hearings on key foreign policy topics, consider budget authorizations, and debate the future of U.S. foreign policy. While presidents are more empowered by the Constitution in foreign rather than domestic policy, they nonetheless must seek approval from Congress on a variety of matters; chief among these is the basic budgetary authority needed to run foreign policy programs.

Appointments

Most foreign policy–related appointments, such as secretary of state and the various undersecretaries and assistant secretaries, as well as all ambassadors, must be confirmed by a majority vote of the Senate. Presidents seek to nominate people who know the area to which they’re being appointed and who will be loyal to the president rather than to the bureaucracy in which they might work. They also want their nominees to be readily confirmed. Typically, when the party in the White House changes, more new appointments are made than when the party does not change, because the incoming president wants to put in place people who share his or her agenda. This was the case in 2009 when Democrat Barack Obama succeeded Bush and again when Republican Donald Trump succeeded Obama.

Foreign Policy and Shared Power

Policy Output	Presidential Role	Congressional Role
Public Laws	proposes, signs into law	proposes, approves for passage
Agency Reauthorizations	proposes, signs into law	approves for passage
Foreign Policy Budget	proposes, signs into law	authorizes/appropriates for passage
Treaties	negotiates, ratifies	Senate consents to treaty with 2/3 majority vote
Executive Agreements	negotiates, approves	none unless funding is required
Congressional-Executive Agreements	negotiates	approves by majority vote
Declaration of War	proposes	approves by majority vote
Military Use of Force	carries out operations at will; with notification to Congress; 60 day limit	approves for operations beyond sixty day limit
Presidential Appointment	nominated candidates	Senate approves by majority vote

Chart 10.8 Illustration of Policy Outputs and the Presidential and Congressional Roles

While presidents are more empowered by the Constitution in foreign than in domestic policy, they nonetheless must seek approval from Congress on a variety of matters; chief among these is the basic budgetary authority needed to run foreign policy programs. Indeed, most if not all of the foreign policy

instruments require inter-branch approval to go into effect. Such approval may sometimes be a formality, but it is still important. Even a sole executive agreement often requires subsequent funding from Congress in order to be carried out, and funding calls for majority support from the House and Senate. Presidents lead, to be sure, but they must consult with and engage the Congress on many matters of foreign policy. Presidents must also delegate a great deal in foreign policy to the bureaucratic experts in the foreign policy agencies.

Not every operation can be run from the West Wing of the White House. At bottom, the United States is a separation-of-powers political system with authority divided among executive and legislative branches, including in the foreign policy realm. The table shows the formal roles of the president and Congress in conducting foreign policy.

The main lesson of the table is that nearly all major outputs of foreign policy require a formal congressional role in order to be carried out. Foreign policy might be done by executive say-so in times of crisis and in the handful of sole executive agreements that pertain to major issues (like the Iran Nuclear Agreement). In general, however, a consultative relationship between the branches in foreign policy is the usual result of their constitutional sharing of power. A president who ignores Congress on matters of foreign policy and does not keep them briefed may find later interactions on other matters more difficult. Probably the most extreme version of this potential dynamic occurred during the Eisenhower presidency.

When President Dwight D. Eisenhower used too many executive agreements instead of sending key ones to the Senate as treaties, Congress reacted by considering a constitutional amendment (the Bricker Amendment) that would have altered the treaty process as we know it. Eisenhower understood the message and began to send more agreements through the process as treaties.^[27]

Shared power creates an incentive for the branches to cooperate. Even in the midst of a crisis, such as the Cuban Missile Crisis in 1962, it is common for the president or senior staff to brief congressional leaders in order to keep them up to speed and ensure the country can stand unified on international matters. That said, there are areas of foreign policy where the president has more discretion, such as the operation of intelligence programs, the holding of foreign policy summits, and the mobilization of troops or agents in times of crisis. Moreover, presidents have more power and influence in foreign policymaking than they do in domestic policymaking. It is to that power that we now turn.

The Rising Challenge by Congress to Presidential Foreign Policy Leadership

Does the thesis's expectation of a more successful foreign policy presidency apply today? While the president still has stronger foreign policy powers than domestic powers, the governing context has changed in two key ways. First, the Cold War ended in 1989 with the demolition of the Berlin Wall, the subsequent disintegration of the Soviet Union, and the eventual opening up of Eastern European territories to independence and democracy.

These dramatic changes removed the competitive superpower aspect of the Cold War, in which the United States and the USSR were dueling rivals on the world stage. The absence of the Cold War has led to less of a rally-behind-the-president effect in the area of foreign policy.

Second, beginning in the 1980s and escalating in the 1990s, the Democratic and Republican parties began to become polarized in Congress. The moderate members in each party all but disappeared, while more ideologically motivated candidates began to win election to the House and later the Senate. Hence, the Democrats in Congress became more liberal on average, the Republicans became more conservative, and the moderates from each party, who had been able to work together, were edged out. It became increasingly likely that the party opposite the president in Congress might be more willing to challenge his initiatives, whereas in the past it was rare for the opposition party to publicly stand against the president in foreign policy.

Finally, several analysts have tried applying the two presidencies thesis to contemporary presidential-congressional relationships in foreign policy. Is the two presidencies framework still valid in the more partisan post-Cold War era? The answer is mixed. On the one hand, presidents are more successful on foreign policy votes in the House and Senate, on average, than on domestic policy votes. However, the gap has narrowed. Moreover, analysis has also shown that presidents are opposed more often in Congress, even on the foreign policy votes they win.^[28]

Democratic leaders regularly challenged Republican George W. Bush on the Iraq War and it became common to see the most senior foreign relations committee members of the Republican Party opposing the foreign policy positions of Democratic president Barack Obama. Such challenging of the president by the opposition party simply didn't happen during the Cold War.

Therefore, it seems presidents no longer enjoy unanimous foreign policy support as they did in the early 1960s. They must work harder to get a consensus and are more likely to face opposition. Still, because of their formal powers in foreign policy, presidents are overall more successful on foreign policy than on domestic policy.

The Perspective of House and Senate Members

Congress is a bicameral legislative institution with 100 senators serving in the Senate and 435 representatives serving in the House. How interested in foreign policy are typical House and Senate members?

While key White House, executive, and legislative leaders monitor and regularly weigh in on foreign policy matters, the fact is that individual representatives and senators do so much less often. Unless there is a foreign policy crisis, legislators in Congress tend to focus on domestic matters, mainly because there is not much to be gained with their constituents by pursuing foreign policy matters.^[29]

Domestic policy matters resonate more strongly with the voters at home. A sluggish economy, increasing health care costs, and crime matter more to them than U.S. policy toward North Korea, for example. In an open-ended Gallup poll question from early 2016 about the "most important problem" in the United States, fewer than 15 percent of respondents named a foreign policy topic (half of those respondents mentioned immigration).

These results suggest that foreign policy is not at the top of many voters' minds. In the end, legislators must be responsive to constituents in order to be good representatives and to achieve reelection.^[30]

However, some House and Senate members do wade into foreign policy matters. First, congressional party leaders in the majority and minority parties speak on behalf of their institution and their party on all types of issues, including foreign policy. Some House and Senate members ask to serve on the foreign policy committees, such as the Senate Committee on Foreign Relations, the House Foreign Affairs Committee, and the two defense committees. These members might have military bases within their districts or states and hence have a constituency reason for being interested in foreign policy. Legislators might also simply have a personal interest in foreign policy matters that drives their engagement in the issue. Finally, they may have ambitions to move into an executive branch position that deals with foreign policy matters, such as secretary of state or defense, CIA director, or even president.



(a)



(b)

Image 10.6 Photos of Senators During Budget Hearings

Senator Bob Corker (R-TN) (a), the chairman of the Senate Committee on Foreign Relations, and Senator Ben Cardin (D-MD) (b), the ranking Democrat on the committee, each addressed Secretary of State John Kerry during the February 2016 discussion of the Obama administration's 2017 federal budget hearings. (Credit a, b: modification of work by the U.S. Department of State)

Public Laws and Foreign Policy

Many statutes affect what the government can do in the foreign policy realm, including the National Security Act, the Patriot Act, the Homeland Security Act, and the War Powers Resolution.

The National Security Act governs the way the government shares and stores information, while the Patriot Act (passed immediately after 9/11) clarifies what the government may do in collecting information about people in the name of protecting the country. The Homeland Security Act of 2002 authorized the creation of a massive new federal agency, the Department of Homeland Security, consolidating powers that had been under the jurisdiction of several different agencies. Their earlier lack of coordination may have prevented the United States from recognizing warning signs of the 9/11 terrorist attacks.

The **War Powers Resolution** was passed in 1973 by a congressional override of President Richard Nixon's veto. The bill was Congress's attempt to reassert itself in war-making. Congress has the power to declare war, but it had not formally done so since Japan's 1941 attack on Pearl Harbor brought the United

States into World War II. Yet the United States had entered several wars since that time, including in Korea, in Vietnam, and in focused military campaigns such as the failed 1961 Bay of Pigs invasion of Cuba.

The War Powers Resolution created a new series of steps to be followed by presidents in waging military conflict with other countries.

Its main feature was a requirement that presidents get approval from Congress to continue any military campaign beyond sixty days. The overall effect was to strengthen the role of the president in war-making. After all, the law clarified that presidents could act on their own for sixty days before getting authorization from Congress to continue, and many smaller-scale conflicts are over within sixty days. Before the War Powers Resolution, the first approval for war was supposed to come from Congress. In theory, Congress, with its constitutional war powers, could act to reverse the actions of a president once the sixty days have passed. However, a clear disagreement between Congress and the president, especially once an initiative has begun and there is a “rally around the flag” effect, is relatively rare. More likely are tough questions about the campaign to which continuing congressional funding is tied.

Reauthorization of the Foreign Policy Bureaucracy

All federal agencies, including those dedicated to foreign policy, face reauthorization every three to five years. If not reauthorized, agencies lose their legal standing and the ability to spend federal funds to carry out programs. Agencies typically are reauthorized, because they coordinate carefully with presidential and congressional staff to get their affairs in order when the time comes. However, the reauthorization requirements do create a regular conversation between the agency and its political principals about how well it is functioning and what could be improved. The federal budget process is an important annual requirement that affects all areas of foreign policy. The foreign policy and defense budgets are part of the discretionary budget, or the section of the national budget that Congress vets and decides on each year.

Foreign policy leaders in the executive and legislative branches must advocate for funding from this budget, and while foreign policy budgets are usually renewed, there are enough proposed changes each year to make things interesting. In addition to new agencies, new cross-national projects are proposed each year to add to infrastructure and increase or improve foreign aid, intelligence, and national security technology.

Agreements

International agreements represent another of the broad-based foreign policy instruments/tools. The United States finds it useful to enter into **international agreements** with other countries for a variety of reasons and on a variety of different subjects. These agreements run the gamut from bilateral agreements about tariffs to multinational agreements among dozens of countries about the treatment of prisoners of war. One recent multinational pact was the seven-country Iran Nuclear Agreement in 2015, intended to limit nuclear development in Iran in exchange for the lifting of long-standing economic sanctions on that country.



The ministers of foreign affairs and other officials from China, France, Germany, the European Union, Iran, Russia, and the United Kingdom join Secretary of State John Kerry (far right) in April 2015 to announce the framework that would lead to the multinational Iran Nuclear Agreement. (Credit: modification of work by the U.S. Department of State)

Image 10.7 US Secretary of State at Meeting with other Foreign Ministers

The format that an international agreement takes has been the point of considerable discussion in recent years.

The U.S. *Constitution* outlines the **treaty** process in Article II. The president negotiates a treaty, the Senate consents to the treaty by a two-thirds vote, and finally the president ratifies it. Despite that constitutional clarity, today over 90 percent of the international agreements into which the United States enters are not treaties but rather executive agreements.^[31]

Executive agreements are negotiated by the president, and in the case of sole executive agreements, they are simultaneously approved by the president as well. On the other hand, congressional-executive agreements, like the North American Free Trade Agreement (NAFTA), are negotiated by the president and then approved by a simple majority of the House and Senate (rather than a two-thirds vote in the Senate as is the case for a treaty). In the key case of *United States v. Pink* (1942), the Supreme Court ruled that executive agreements were legally equivalent to treaties provided they did not alter federal law.^[32] Most executive agreements are not of major importance and do not spark controversy, while some, like the Iran Nuclear Agreement, generate considerable debate. Many in the Senate thought the Iran deal should have been completed as a treaty rather than as a sole executive agreement.

TREATY OR EXECUTIVE AGREEMENT?

Should new international agreements into which the United States enters be forged through the Article II treaty process of the U.S. Constitution, or through executive agreements? This question arose again in 2015 as the Iran Nuclear Agreement was being completed. That pact required Iran to halt further nuclear development and agree to nuclear inspections, while the United States and five other signatories lifted

long-standing economic sanctions on Iran. The debate over whether the United States should have entered the agreement and whether it should have been a treaty rather than an executive agreement was conducted in the news media and in many political forums.

Your view on the form of the pact will depend on how you see executive agreements being employed. Do presidents use them to circumvent the Senate (as the “evasion hypothesis” suggests)? Or are they an efficient tool that saves the Senate Committee on Foreign Relations the work of processing hundreds of agreements each year?

Politicians’ opinions about the form of the Iran Nuclear Agreement fell along party lines. Democrats accepted the president’s decision to use an executive agreement to finalize the pact, which they tended to support. Republicans, who were overwhelmingly against the pact, favored the use of the treaty process, which would have allowed them to vote the deal down. In the end, the president used an executive agreement and the pact was enacted.

The downside is that an executive agreement can be reversed by the next president. Treaties are much more difficult to undo because they require a new process to be undertaken in the Senate for the president to gain approval.

Foreign Policy Emergencies

In foreign policy emergencies, many quick decisions need to be made. These sharply focused foreign policy emergencies tend to be exclusively the province of the president, including the deployment of troops and/or intelligence agents in a crisis, executive summits between the president and other heads of state on targeted matters of foreign policy, presidential use of military force, and emergency funding measures to deal with foreign policy crises. These measures of foreign policy are more quickly enacted and demonstrate the “energy and dispatch” that Alexander Hamilton, writing in the *Federalist Papers*, saw as inherent in the institution of the presidency. Emergency spending does involve Congress through its power of the purse, but Congress tends to give presidents what they need to deal with emergencies. That said, the framers were consistent in wanting checks and balances sprinkled throughout the *Constitution*, including in the area of foreign policy and war powers.

The Executive Branch: Structure and Function

It is one thing to win an election; it is quite another to govern, as many frustrated presidents have discovered. Critical to a president’s success in office is the ability to make a deft transition from the previous administration, including naming a cabinet and filling other offices.

The new chief executive must also fashion an agenda, which he or she will often preview in general terms in an inaugural address. Presidents usually embark upon their presidency benefiting from the nation’s renewed hope and optimism, although often unrealistic expectations set the stage for subsequent disappointment.

Transition and Appointments

In the immediate aftermath of the election, the incoming and outgoing administrations work together to help facilitate the transfer of power. While the General Services Administration oversees the logistics of the process, such as office assignments, information technology, and the assignment of keys, prudent candidates typically prepare for a possible victory by appointing members of a transition team during the lead-up to the general election. The success of the team's actions becomes apparent on inauguration day, when the transition of power takes place in what is often a seamless fashion, with people evacuating their offices (and the White House) for their successors.



Read about [presidential transitions](#) as well as explore other topics related to the transfer of power at the [White House Transition Project website](#).

It is often said among the president-elect's more important tasks is the selection of a "cabinet," that is the heads of the major departments of the federal government and several other key positions that are structurally at the top of the executive branch organization. George Washington's cabinet was made up of only four people, the attorney general and the secretaries of the Departments of War, State, and the Treasury. Currently, however, there are twenty-four members of the cabinet, including fifteen Department heads, including the Secretaries of Labor, Agriculture, Education, and others. In addition to the heads of key federal departments, the Cabinet is also made up of the head of the Office of Management and Budget (OMB), the ambassador to the United Nations, the Vice President, and several others designated by the President.

The most important members of the official cabinet—the heads of the Departments of Defense, Justice, State, and the Treasury (echoing Washington's original cabinet)—receive the most attention from the president, the Congress, and the media. However, the President and his personal staff would more often work with each of these members or others in the cabinet separately or in smaller groups depending on the subject or issue. That is to say, because of the large size of the current cabinet, with such differing levels of expertise, cabinet meetings themselves are not generally advisory and the cabinet meets relatively infrequently as a total body.^[33]

When selecting cabinet level positions—key officials who run the federal government agencies and bureaucracy, presidents consider ability, expertise, influence, and reputation. More recently, some presidents have also tried to balance political and demographic representation (gender, race, religion, and other considerations) to produce a cabinet that is capable as well as descriptively representative, meaning that those in the cabinet reflect the U.S. population.

The Cabinet Room, shown here during a cabinet meeting on January 31, 2012, adjoins the Oval Office in the West Wing of the White House. (Credit: The White House; OpenStax included image)

Once the new president has been inaugurated and can officially nominate people to fill cabinet positions, the Senate confirms or rejects these nominations by majority vote. At times, though rarely, cabinet nominations have failed to be confirmed or have even been withdrawn because of questions raised about the past behavior of the nominee.^[34]



Image 10.8 Photo of Cabinet Meeting

The Senate has been known to occasionally block or slow appointments, not because of the quality of the nominee, but rather as a general protest against the policies of the president and/or as part of the increasing partisan bickering that occurs especially when the presidency is controlled by one political party and the Senate by another. Moreover, because of Senate rules of debate, even a minority party can at least delay or slow down presidential appointments such as was done at the front-end of the Trump administration.

However, because of a change in Senate rules in 2013, such obstructionist delaying tactics can no longer permanently block a nominee if the President's own party is in the majority. Under the leadership of Nevada Senator Harry Reid, the Senate changed its rules to allow 51 votes for Senate approval of presidential nominees.^[35]

Consider the Original

Nov 21 2013

COCHRAN OPPOSES DEMOCRATS' "NUCLEAR OPTION"

Mississippi Senator Calls New Filibuster Rule a Mistake That Diminishes Constitutional Responsibilities

WASHINGTON, D.C. – U.S. Senator Thad Cochran (R-Miss.) today issued the following statement regarding his strong opposition to the Senate Democratic majority's decision to implement the so-called "nuclear option" to limit the rights of the minority in the consideration of the President's nominees.

"The Democratic majority's action to overturn nearly 225 years of precedent will transform how the United States Senate conducts its business, and not for the better. Allowing a simple majority to end debate is a mistake and greatly diminishes the Senate's responsibility to provide advice and consent as set out in the Constitution. The Senate was never intended to operate like the House of Representatives or to serve as a rubber stamp for any President. This historic institution and the American people have lost something very important and special."

Senate.gov, <https://www.cochran.senate.gov/public/index.cfm/news-releases?ID=ca10c9dd-39c8-4483-98ce-1c87fbd87552>

Chart 10.9 Excerpt from Senator Cochran on "Nuclear Option"

The Vice President' Role

In recent administrations, a very visible member of the president's cabinet is the vice president. However, the vice president's importance is a relatively recent occurrence and clearly dependent on the president. Throughout most of the nineteenth and into the twentieth century, the vast majority of vice presidents took very little action in the office unless fate intervened. Few presidents consulted with their running mates. Indeed, until the twentieth century, many presidents even had little to do with the naming of their running mate at the nominating convention.

But in the 1970s, starting with Jimmy Carter, presidents made a far more conscious effort to make their vice presidents part of the governing team, placing them in charge of increasingly important issues. Sometimes, as in the case of Bill Clinton and Al Gore, the partnership appeared to be smooth if not always harmonious. In the case of George W. Bush and his very experienced vice president Dick Cheney, observers speculated whether the vice president might have exercised too much influence. Barack Obama's choice for a running mate and subsequent two-term vice president, former Senator Joseph Biden, was picked for his experience, especially in foreign policy. President Obama relied on Vice President Biden for advice throughout his tenure. Vice President Michael Pence, with both experience as a governor and a congressman, was selected by President Trump. Vice President Pence meets regularly with Republican members of Congress on legislative matters. The vice presidency is no longer quite as weak as it once was, and a capable vice president can do much to augment the president's capacity to govern across issues if the president so desires.^[36]

Also subject to Senate approval are several non-cabinet subordinate administrators in the various departments of the executive branch, as well as the administrative heads of several agencies and commissions. These include the heads of the Internal Revenue Service, the Central Intelligence Agency, the Office of Management and Budget, the Federal Reserve, the Social Security Administration, the Environmental Protection Agency, the National Labor Relations Board, and the Equal Employment Opportunity Commission. **The Office of Management and Budget (OMB)** is the president's own budget department. In addition to preparing the executive budget proposal and overseeing budgetary implementation during the federal fiscal year, the OMB oversees the actions of the executive bureaucracy.

Not all the non-cabinet positions are open at the beginning of an administration, but presidents move quickly to install their preferred choices in most roles when given the opportunity. Finally, new presidents usually take the opportunity to nominate new ambassadors, whose appointments are subject to Senate confirmation. New presidents make thousands of new appointments in their first two years in office. All the senior cabinet agency positions and nominees for all positions in the Executive Office of the President are made as presidents enter office or when positions become vacant during their presidency. Federal judges serve for life. Therefore, vacancies for the federal courts and the U.S. Supreme Court occur gradually as judges retire.

Other presidential selections are not subject to Senate approval, including the president's personal staff (whose most important member is the White House chief of staff) and various advisers (most notably the national security adviser).

The **Executive Office of the President**, created in 1939 during the term of Franklin D. Roosevelt (FDR), now contains a number of advisory bodies, including the Council of Economic Advisers, the National Security Council, the OMB, and the Office of the Vice President. Presidents also choose political advisers, speechwriters, and a press secretary to manage the politics and the message of the administration. In recent years, the president's staff has become identified by the name of the place where many of its members work: the West Wing of the White House. These people serve at the pleasure of the president, and often the president reshuffles or reforms his staff during his term. Just as government bureaucracy has expanded over the centuries, so has the White House staff, which under Abraham Lincoln numbered a handful of private secretaries and a few minor functionaries. A recent report pegged the number of employees working within the White House over 450.^[37] When the staff in nearby executive buildings of the Executive Office of the President are added in, that number increases four-fold.

The overwhelming majority of confirmations are routine, only rarely do holdups occur. When they do, the *Constitution* allows for a small presidential loophole called the recess appointment.

The relevant part of Article II, Section 2 of the *Constitution* notes, "The President shall have the Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."^[38] The purpose of this provision was to give the president the power to temporarily fill vacancies during times when the Senate was not in session and could not act. However, presidents have typically used this loophole to get around a Senate that is inclined to either obstruct or be cautious. The Senate changed its rules to allow for a pro forma session or short meeting held with the understanding that no work will be done. These sessions have the effect of keeping the Senate officially in session while functionally in recess.

Forging an Agenda

Having secured election, the incoming president must soon decide how to deliver upon what was promised during the campaign. The chief executive must set priorities, chose what to emphasize, and formulate strategies to get the job done. He or she labors under the shadow of a measure of presidential effectiveness known as the first hundred days in office, a concept popularized during Franklin Roosevelt's first term in the 1930s. While one hundred days is too short a time for any president to boast of any real accomplishments, most presidents do recognize that they must address their major initiatives during their first two years in office. This is the time when the president is most powerful and is given the benefit of the doubt by the public and the media, especially if he or she enters the White House with a politically aligned Congress, as Barack Obama did. This early period in an administration is sometimes called the honeymoon period, but its length can vary by presidential popularity. For example, President Obama's honeymoon was quite short—perhaps six months—while President Trump, based upon low approval ratings experienced virtually no honeymoon period.

However, recent history suggests that even one-party control of Congress and the presidency does not ensure efficient policymaking. This difficulty is due as much to divisions within the governing party as to obstructionist tactics skillfully practiced by the minority party in Congress.

The incoming president must deal to some extent with the outgoing president's last budget proposal. While some modifications can be made, it is more difficult to pursue new initiatives immediately. Most presidents are well advised to prioritize what they want to achieve during the first year in office and not lose control of their agenda. At times, however, unanticipated events can determine policy, as happened in 2001 when nineteen hijackers perpetrated the worst terrorist attack in U.S. history and transformed U.S. foreign and domestic policy in dramatic ways under President George W. Bush.

Moreover, a president must be sensitive to what some scholars have termed “political time,” meaning the circumstances under which he or she assumes power. Sometimes, the nation is prepared for drastic proposals to solve deep and pressing problems that cry out for immediate solutions, as was the case following the 1932 election of FDR at the height of the Great Depression. Most times, however, the country is far less inclined to accept revolutionary change. Being an effective president means recognizing the difference.^[39]

The first act undertaken by the new president—the delivery of an **inaugural address**—can do much to set the tone for what is intended to follow. While such an address may be an exercise in rhetorical inspiration, it also allows the president to set forth priorities within the overarching vision of what he or she intends to do. Franklin Roosevelt used his first inaugural address to boldly proclaim that the country need not fear the change that would deliver it from the grip of the Great Depression, and he set to work immediately enlarging the federal government to that end.



Listen to [clips](#) of the most famous inaugural address in presidential history at the *Washington Post* website.

QUESTIONS TO CONSIDER

1. What can get in the way of coordination and compromise between branches?

[Show Answer](#)

ideology, opposing policy positions, disagreement on the scope of government, etc.

2. How do presidents work to fulfill their campaign promises once in office?

[Show Answer](#)

compromise with Congress; use executive agreements and orders; appeal directly to the people; etc.

3. What role has technology played increasing the power and reach of presidents?

[Show Answer](#)

presidents may make use of social media and technology to provide information directly to the people

4. When might they prefer passing a formal policy through Congress as a bill?

[Show Answer](#)

if a president does not want future opposition to easily dismantle policy objectives

5. What do you think about a cabinet secretary serving presidents from two different political parties?

[Show Answer](#)

personal opinion

6. Why do treaties require congressional approval?

[Show Answer](#)

consent of the governed is required to make an action binding on the American people; Congress provides our consent

TERMS TO REMEMBER

cabinet—a group of advisors to the president, consisting of the most senior appointed officers of the executive branch who head the fifteen executive departments

executive agreement—an international agreement between the president and another country made by the executive branch and without formal consent by the Senate; not binding on the American people without congressional consent

delegated power—power granted to the president by act of Congress

Executive Office of the President—the administrative organization that reports directly to the president and made up of important offices, units, and staff of the current president and headed by the White House chief of staff

executive order—a rule or order issued by the president without the cooperation of Congress and having the force of law

executive privilege—the president's right to withhold information from Congress, the judiciary, or the public

explicit (enumerated) power—presidential power specifically written in the *Constitution*

impeachment—the act of charging a government official with serious wrongdoing, which in some cases may lead to the removal of that official from office

implied (inherent) power—power claimed by the president as an extension of a constitutional provision or a delegated authorization of Congress

National Security Council (NSC)—advisors to the president on issues of foreign policy and national security

Office of Management and Budget (OMB)—an office within the Executive Office of the President charged with producing the president's budget, overseeing its implementation, and overseeing the executive bureaucracy

persuasion power—power of the president to influence policy debates by influencing public opinion; interpersonal negotiations with members of Congress

rally around the flag effect—a spike in presidential popularity during international crises

signing statement—a statement a president issues with the intent to influence the way a specific bill the president signs should be enforced

treaty—international agreement entered by the U.S. that requires presidential negotiation; two-thirds consent of the Senate; and final ratification by the president

two-presidents thesis—thesis proposed by Wildavsky that two presidencies exist—one for foreign and one for domestic policy arenas; positing presidents are more successful in foreign policy

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10.2 The President: The Public Presidency



Image 10.9 First Lady Jill Biden Advocates for Educational Opportunities
(Credit: The White House at [whitehouse.gov/administration/dr-jill-biden/](https://www.whitehouse.gov/administration/dr-jill-biden/))

Learning Objectives

- Explain how technological innovations have empowered presidents.
- Identify ways in which presidents appeal to the public for approval.
- Explain how the role of first ladies changed over the course of the twentieth century.

Chart 10.10 Learning Objectives on the Public Face of the Presidency

With the advent of motion picture newsreels and voice recordings in the 1920s, presidents began to broadcast their message to the general public. Franklin Roosevelt, while not the first president to use the radio, adopted this technology to great effect. Over time, as radio gave way to newer and more powerful technologies like television, the Internet, and social media, other presidents have been able magnify their voices to an even-larger degree. Presidents now have far more tools at their disposal to shape public opinion and build support for policies. However, the choice to “go public” does not always lead to political success; it is difficult to convert popularity in public opinion polls into political power. Moreover, the modern era of information and social media empowers opponents at the same time that it provides opportunities for presidents.

The Shaping of the Modern Presidency

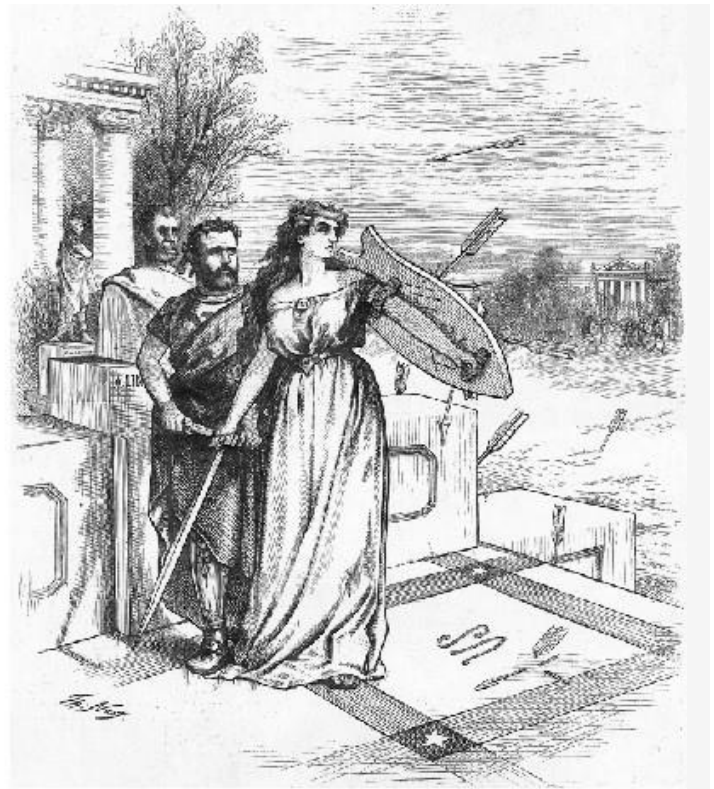
From the days of the early republic through the end of the nineteenth century, presidents were limited in the ways they could reach the public to convey their perspective and shape policy. Inaugural addresses and messages to Congress, while circulated in newspapers, proved clumsy devices to attract support even when a president used plain blunt language. Some presidents undertook tours of the nation, notably George Washington and Rutherford B. Hayes. Others promoted good relationships with newspaper editors and reporters, sometimes going so far as to sanction a pro-administration newspaper.

One president, Ulysses S. Grant, cultivated political cartoonist Thomas Nast to present the president's perspective in the pages of the magazine *Harper's Weekly*.¹⁴

Abraham Lincoln experimented with public meetings recorded by newspaper reporters and public letters that would appear in the press, sometimes after being read at public gatherings. Most presidents gave speeches, although few proved to have much immediate impact, including Lincoln's memorable Gettysburg Address.



(a)



(b)

Image 10.10 Lincoln and Grant Make Use of Modern Media for Their Times

While President Abraham Lincoln was not the first president to be photographed, he was the first to use the relatively new power of photography to enhance his power as president and commander-in-chief. Here, Lincoln poses with Union soldiers (a) during his visit to Antietam, Maryland, on October 3, 1862. President Ulysses S. Grant cultivated a relationship with popular cartoonist Thomas Nast, who often depicted the president in the company of "Lady Liberty" (b) in addition to relentlessly attacking his opponent Horace Greeley. (Credit: Library of Congress; OpenStax included images)

Theodore Roosevelt came to the presidency in 1901, at a time when movie newsreels were becoming popular. Roosevelt, who had always excelled at cultivating good relationships with the print media,

eagerly exploited this new opportunity as he took his case to the people with the concept of the presidency as **bully pulpit**, a platform from which to push his agenda to the public.^[2] The White House Press office was started. His successors followed suit, and they discovered and employed new ways of transmitting their message to the people in an effort to gain public support for policy initiatives. With the popularization of radio in the early twentieth century, it became possible to broadcast the president's voice into many of the nation's homes. Most famously, FDR used the radio to broadcast his thirty "fireside chats" to the nation between 1933 and 1944.

In the post-World War II era, television began to replace radio as the medium through which presidents reached the public.

This technology enhanced the reach of the handsome young president John F. Kennedy and the trained actor Ronald Reagan. At the turn of the twenty-first century, the new technology was the Internet. The extent to which this mass media technology can enhance the power and reach of the president to impact public opinion has yet to be fully realized.

Going Public: Promise and Pitfalls

The concept of going public involves the president delivering a major television address in the hope that Americans watching the address will be compelled to contact their House and Senate member and that such public pressure will result in the legislators supporting the president on a major piece of legislation. Technological advances have made it more efficient for presidents to take their messages directly to the people than was the case before mass media. Presidential visits can build support for policy initiatives or serve political purposes, helping the president reward supporters, campaign for candidates, and seek reelection.

"Going public" is closely aligned with power to persuade as previously attributed to Richard Neustadt's work on presidential power. Rather than bargaining solely with members of Congress alone, the president is essentially attempting to use his popularity to rally a broad coalition of supporters for some policy initiative. Public popularity is a resource of power for presidents, and they generally pay close attention to their public approval ratings. The concept, simply put, is that a more popular president is a more powerful president. Likewise, a president with a low popularity is assumed to have difficulty rallying even members of his own party in Congress to support policy initiatives.^[3]

Despite its pervasive use by recent presidents; it remains an open question, however, whether choosing to go public actually enhances a president's political position in battles with Congress. Political scientist George C. Edwards goes so far as to argue that taking a president's position public serves to polarize political debate, increase public opposition to the president, and complicate the chances to get something done. It replaces deliberation and compromise with confrontation and campaigning. Edwards believes the best way for presidents to achieve change is to keep issues private and negotiate resolutions that preclude partisan combat. Going public may be more effective in rallying supporters than in gaining additional support or changing minds.^[4]



Image 10.11 Photo of President Reagan at the Berlin Wall

With the advent of video technology and cable television, the power of the president to reach huge audiences increased exponentially. President Ronald Reagan, shown here giving one of his most famous speeches in Berlin, was an expert at using technology to help mold and project his presidential image to the public. His training as an actor certainly helped in this regard. (Credit: OpenStax included image)

Today, it is possible for the **White House** to take its case directly to the people via websites like White House Live, where the public can watch live press briefings and speeches.

The First Lady (First Gentleman?): The Changing Public Role

The president is not the only member of the First Family who can attempt to advance

an agenda by going public. First ladies increasingly exploited the opportunity to gain public support for an issue of deep interest to them. Before 1933, most first ladies served as private political advisers to their husbands. In the 1910s, Edith Bolling Wilson took a more active but still private role assisting her husband, President Woodrow Wilson, afflicted by a stroke, in the last years of his presidency. The degree of public advocacy now varies by respective first ladies and the issues they choose to focus upon. It was Eleanor Roosevelt in the 1930s and 1940s who really opened the door for first ladies to move from a behind-the-scenes role to a more public and active role.

Eleanor Roosevelt took an active role in championing civil rights, becoming in some ways a bridge between her husband and the civil rights movement. She coordinated meetings between FDR and members of the NAACP, championed anti-lynching legislation, openly defied segregation laws, and pushed the Army Nurse Corps to allow black women in its ranks. She also wrote a newspaper column and had a weekly radio show. Lady Bird Johnson in the mid and late 1960s endorsed an effort to beautify public spaces and highways in the United States. She also established the foundations of what came to be known as the Office of the First Lady, complete with a news reporter, Liz Carpenter, as her press secretary.

Betty Ford took over as first lady in 1974 and became an avid advocate of women's rights, proclaiming that she was pro-choice when it came to abortion and lobbying for the ratification of the Equal Rights Amendment (ERA). The public role of the first lady reached a new level with Hillary Clinton in the 1990s when her husband put her in charge of his efforts to achieve health care reform, a controversial decision that did not meet with political success. Her successors, Laura Bush in the first decade of the twenty-first century and Michelle Obama in the second, returned to the roles played by predecessors in advocating less controversial policies: Laura Bush, a former librarian, advocated literacy and education; while Michelle Obama emphasized physical fitness and healthy diet and exercise. Melania Trump, former first



Image 10.12 First Lady Jill Biden

First Lady, Jill Biden (Credit: obamawhitehouse.archives.gov/administration/jill-biden)

lady of the US, focused attention on well-being for youth and advocating against cyberbullying. Jill Biden has continued championing the causes that have defined her public life, including support for military families, educational opportunities, and ending cancer.

The public and political profiles of first ladies remain high, and in the future, the president's spouse will have the opportunity to use that unelected position to advance policies that might well be less controversial and more appealing than those pushed by the president.

QUESTIONS TO CONSIDER

1. In what ways have first ladies expanded the role?

Show Answer

by becoming more public and outspoken, by becoming more active and more engaged with the American people on selected and self-identified issues

2. How were presidents in the eighteenth and nineteenth centuries likely to reach the public? How did this change in the twentieth century? Has anything changed in the early twenty-first century?

Show Answer

print media, letters, public appearances moving later to radio and television; followed by internet, social media, and instantly accessible forms of communication

TERMS TO REMEMBER

bully pulpit—Theodore Roosevelt's notion of the presidency as a platform from which the president could push an agenda

going public—a term for when the president delivers a major television address in the hope that public pressure will result in legislators supporting the president on a major piece of legislation

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