

The imperial presidency

Pages 372 to 374 in your book discuss the evolution of the presidency over time. There, the concept of 'strong presidents' is introduced, despite that the bulk of American Presidents did not exercise their powers in such a way that would be characterized as 'strong' or 'imperial.' In fact, Congress as a branch was far more powerful than the presidency for much of American history. But actions taken in the early 20th century has inflated the powers of the presidency. Here is an examination of the various powers of the Presidency.

Power	Constitutional Origins	Evaluation	Example	Check
Chief Executive	<p>Vestment Clause A2S1C1</p> <p>Faithful Execution Clause A2S1C8</p> <p>Take Care Clause A2S3C1</p>	<p>The President must faithfully execute the laws proscribed by Congress and operate according to the rule of law or face impeachment. In order to fulfill this duty, the presidency has evolved a suite of Presidential directives. Many of these are published in either the <i>Federal Register</i> or the <i>Weekly Compilation of Presidential Directives</i>. Many are sensitive, and are not. The following is a sampling of directives.</p> <ul style="list-style-type: none"> • Executive Orders: Directed to and governs the actions by the bureaucracy regarding the general execution of federal laws. EOs must operate within the scope of federal law proscribed by Congress. Occasionally, EOs are broader statements in times of emergency that are rooted in the presidents' other Constitutional powers or other statutory law • Proclamations: Advisory declarations directed the activities and interests of private individuals. • Presidential Signing Statements: Addendums attached at the signing of a bill that generally comment on the language of the law and the president's interpretation therein, increasingly also used to declare beliefs that the law is unconstitutional and the president does not intend to enforce provisions. 	<p>Executive Orders:</p> <ul style="list-style-type: none"> • Obama's EO on Guns • FDR's EO 9066 on Japanese Internment • George Washington's Thanksgiving Proclamation of 1789 • George W. Bush's PSS on H.R. 2863 <p>Notable court cases challenging Presidential Directives</p> <ul style="list-style-type: none"> • <i>Korematsu v US (1944)</i>: SCOTUS ruled EO was constitutional - public safety outweighed individual rights. Actions by the DOJ sought to eliminate <i>Korematsu</i> as precedent • <i>Hamdan v Rumsfeld (2005)</i>: extended <i>Habeas</i> rights to detainees, ignoring Bush's PSS. 	<p>Formal:</p> <ul style="list-style-type: none"> • Impeachment • Judicial review • Power of the Purse <p>Informal</p> <ul style="list-style-type: none"> • Congressional oversight • Legislative vetoes
Chief Administrator	<p>Nominations Clause A2S2C3</p> <p>Recess Appointments A2S2C4</p> <p>Commissions Clause A2S3C1</p>	<ul style="list-style-type: none"> • The establishment of the federal bureaucracy is a joint operation between Congress and the President. In general, Congress authorizes the creation of the agency with wide latitude to enforce law. The president then appoints individuals to the most powerful positions, and once confirmed by the Senate, the president commissions them to execute the law. The president can do minor reorganizations of the bureaucracy through <i>Presidential Reorganization Plans</i>. • Nominations have recently become stalling tactics, as key vacancies in the Supreme Court, the District Court of Appeals, and high ranking executives have been held up 	<ul style="list-style-type: none"> • Reagan's rejected nomination of Robert Bork • Bush's botched nomination of Harriet Miers • <i>National Labor Relations Board v Canning (2014)</i>: the pro forma session does not create a recess long enough to trigger a recess appointment 	<p>Formal:</p> <ul style="list-style-type: none"> • Confirmation of appointees • Judicial Review • Impeachment <p>Informal:</p> <ul style="list-style-type: none"> • <i>Pro forma</i> sessions • Congressional oversight • Filibusters • Senatorial Courtesy

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		<p>in exchange for other political horse trades. Presidents have taken advantage of Senate recesses to appoint controversial or essential personnel. The Senate has responded by using the <i>pro forma</i> session to avoid such appointments.</p> <ul style="list-style-type: none"> Nominations for positions like circuit court judges and other positions in the states have relied upon senatorial courtesy, or allowing the senior senator of the federal vacancy's location in to suggest or advise on key appointments. Other key positions allow congressional advisement, in addition to opinion from the rest of the issue network. 		
Chief of State	Ambassadors Clause A2S3C1	<p>The President has the distinction of recognizing ambassadors of other nations. In part, this clause has evolved to mean that the President is the "living symbol" of our nation, having to represent our nation during national holidays, celebrations, and periods of mourning. They speak to and for American citizens, and thus their conduct at home and abroad has a degree of majesty (Think of the song played when the POTUS enters into the room; <i>Pomp and Circumstance</i>). This majesty resides in the current president, while the former presidents also have a higher degree of recognition and responsibility. They often go on to serve their communities in various ways, from Jimmy Carter's Carter Center to George Bush and Bill Clinton helping with Haitian relief and other disaster relief funds.</p>	<ul style="list-style-type: none"> <i>United States v Belmont</i> (1937): President is the sole instrument for international agreements 	<p>Formal:</p> <p>Informal:</p> <ul style="list-style-type: none"> Junkets & fact finding missions Invitations to speak to joint sessions
Commander in Chief	Commander in Chief Clause A2S2C1	<p>The president is the sole commander-in-chief, notable that he is a citizen. This power enables him to engage military forces in hostility. There is not limitation in war making in the Constitution (as there is expressly against the states in A1S10C3). Traditionally, the president engages in events with a clear and present danger, as the president's powers are limited by Congress's Power of the Purse, declaration of war, and granting letters of Marque and Reprisal. Today, the president regularly engages in missions that are not war as declared by Congress, but are funded by Congress through the War Powers Resolution of 1974 and 2001. Thus, the president responds to threats to our security (not necessarily direct threats) or to those of our allies quickly and effectively while Congress has oversight.</p>	<p>Examples:</p> <ul style="list-style-type: none"> War Powers Resolution of 1974 and 2001 	<p>Formal</p> <ul style="list-style-type: none"> Power of the Purse Article I Section 8 powers of military appropriation Power to declare war <p>Informal:</p> <ul style="list-style-type: none"> War Powers Resolution
Chief Diplomat	Advise and Consent Clause A2S2C2 Ambassadors Clause A2S3C1	<ul style="list-style-type: none"> Recognition, treaties, & agreements: The president is the only place in Washington that negotiations with foreign dignitaries can happen. Negotiations to establish international cooperation take place in the executive branch. This includes treaties, executive agreements, trade agreements, and other international agreements. Treaties require Senate 2/3rds senate approval. The prospect of treaties failing (Think Wilson's Treaty of 	<p>Events:</p> <ul style="list-style-type: none"> Obama's JCOPA with Iran Senator Tom Cotton's letter to Iran negating the Joint Comprehensive Plan of Action (not a treaty or an EA, still requires 	<p>Formal:</p> <ul style="list-style-type: none"> Confirmation Treaties Impeachment <p>Informal:</p> <ul style="list-style-type: none"> Power of the purse

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		<p>Versailles) means that presidents opt for executive agreements (a treaty that does not require Senate approval but pursuant to a treaty or a act of Congress). All happen under the watchful eye of the President. Despite this, the President is rarely involved in the particulars of negotiating deals, but will be involved in the final stages.</p> <ul style="list-style-type: none"> • Sanctions: the President may be involved in cutting formal ties with foreign nations. This can involve trade sanctions, embargos, elevated import taxes, and even revoking recognition of the state. Removing foreign dignitaries en masse or as an individual means changing their legal status to persona non grata, essentially evicting them from the country. 	legislative action.	<ul style="list-style-type: none"> • Congressional junkets/fact finding missions • Congressional oversight
Chief Legislator	<p>Presentment Clause A1S7C2</p> <p>State of the Union Clause A2S3C1</p> <p>Recommendations Clause A2S3C1</p> <p>Convening of Congress Clause A2S3C1</p>	<p>The president campaigns on platforms of sweeping national change, and their ability to get that legislation to pass is a key barometer of their success as a president. They use the State of the Union to introduce major new policy agendas to the public, and work diligently through key advisors in the White House Office, Executive Office of the President, Cabinet, and executive agencies to see legislation passed. The president can only present ideas to Congress. If Congress fails to act, the next best thing they can do is use Presidential directives to change the way law is executed while still faithfully executing that law. The president has the final step of the legislative process through the presentment clause, which empowers the president as a single individual to prevent or promote key legislation. Finally, if Congress fails to act on legislation and adjourns, the president can convene Congress and request action.</p>	<p>Examples:</p> <ul style="list-style-type: none"> • Teddy Roosevelt's Square Deal • FDR's New Deal and first 100 days • LBJ's Great Society • Reagan's Tax Cut • Obama's Affordable Care Act 	<p>Formal:</p> <ul style="list-style-type: none"> • Veto process (<i>not to be confused with legislative vetoes</i>) • Lack of Executive check to force legislative action <p>Informal:</p> <ul style="list-style-type: none"> • Legislative process • Congressional oversight • Issue networks • Going public with media
Chief of Party	NO CONSTITUTIONAL ORIGIN	<p>As the leader of the party in power, the President is the single most recognizable party member. There is a duality in this informal power.</p> <ul style="list-style-type: none"> • Party structure: The president commands influence and sway over Congress through personal contact with leadership and swing votes for their agenda. Much of this is fostered through personal connections, party building social events for legislators, or by intimidation. In elections, the effect of the popularity (or lack thereof) of the president's name often effects downballot offices who ride the coattails. The president can command power by "building the bench," or finding up and comers from the party in the government to who can run for office after their term to solidify the current president's legacy by continuing or even furthering successful policy. The president would do this by delegating key policy agendas or helping move these individuals into the national spotlight. The president also works with the party organization and the party in the electorate to 	<p>Examples:</p> <ul style="list-style-type: none"> • LBJ's role in passing the Civil Rights Act of 1964 and the Voting Rights Act of 1965 • FDR's fireside chats • Obama's use of social media to have White House open houses 	<p>Informal:</p> <ul style="list-style-type: none"> • Oppositional party's use of media through party leadership • Oppositional party structure in Congress • Campaign finance laws • Media access

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		<p>prepare financially (via fundraising) and strategically (endorsements, access to party information) for elections</p> <ul style="list-style-type: none"> • Bully pulpit: The ability to command the public's attention with legislative agendas make the president most suitable as the party leader. Presidents can use digital technology for transparency and public dialogue, as well as deliver presidential addresses to ask the public to pressure Congress. Additionally, the president can target key players in issue networks to try and mobilize support for key legislation. 		
Judicial Powers	<p>Pardons & Reprieves A2S2C1</p> <p>Nominations Clause A2S2C3</p>	<ul style="list-style-type: none"> • Nominations: The president's legacy is often protected by the kinds of judges appointed during their term. Key judge ships are vacancies on the Supreme Court, who can declare the president's hallmark policies unconstitutional or protect them through precedent. Judges in the circuit courts of appeals, particularly the DC Circuit Court (often called the second highest in the land) are equally important. The president does have to keep in mind their nominees have to make it through the Senate, and the partisan environment in that chamber helps determine in large part the kind of judge appointed. • Clemency & Reprieves: The President also can postpone or cancel the punishment of the incarcerated. <ul style="list-style-type: none"> ○ Pardons: forgiving a person convicted of a crime by removing or mitigating the rest of their punishment while restoring their civil rights ○ Commuting a sentence: reducing a sentence while not nullifying the conviction of the individual ○ Amnesty: A pardon to a class of people prior to trial, usually for a political offense. 	<ul style="list-style-type: none"> • Jimmy Carter's granting of amnesty to draft dodgers • Clinton pardon controversy, including his brother-in-law. Pardoned 140 people on the last day as a way to protest incarceration of non-violent offenders 	<p>Formal:</p> <p>Informal:</p> <ul style="list-style-type: none"> • Public ridicule

Final thoughts:

1. Do we live in an age of imperial presidents who are more powerful than the other two branches? Why or why not?
2. Can you think of a power that the president **does not have** that may make the government more active in producing policy?
3. Would this be beneficial or detrimental to our democracy, respecting majority rule and minority rights? Why or why not?

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