THE DEVELOPMENT AND EXPANSION OF PRESIDENTIAL POWER

EACH PRESIDENT BRINGS to the position not only a vision of America, but also expectations about how to use presidential authority. Through 2005, the forty-two men who have held the nation's highest office have been a diverse lot. (While there have been forty-three presidents, only forty-two men have held the office: Grover Cleveland served as the twenty-second and twenty-fourth president because he was elected to nonconsecutive terms in 1884 and 1892.) Most presidents find accomplishing their goals much more difficult than they envisioned. After President John F. Kennedy was in office two years, for example, he noted publicly that there were "greater limitations

judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities . . . and to the continued use of such forces." This is an attempt to return to the constitutional principle that waging war is to be shared by both branches of government.

- **The War Powers Act is an additional check on the president's authority as commander in chief.** The act is an attempt to prevent future presidents from engaging in hostilities of questionable importance to U.S. national security and to force deliberation within the government in regard to armed conflict. For example, had Congress known of President Lyndon B. Johnson's use of faulty or intentionally misleading information to increase U.S. military involvement in Vietnam after the Gulf of Tonkin incident, U.S. involvement in Southeast Asia may have taken a different, less costly path in both lives and expenditures.

Arguments Against the War Powers Act

- **International relations can be so volatile that the president must be able to act quickly without hindrance.** Alexander Hamilton argued that the reasons for war are "infinite" and that the United States must have an institution that can react quickly and with force to defend the United States. He found this energy in government in the executive—and the American executive was created to act quickly without relative interference during exceptional times of crisis.
- **The Supreme Court has upheld an expanded interpretation of the president's authority. In *U.S.* v. *Curtiss-Wright*** (1936), the Court found that the president and "not Congress has the better opportunity of knowing the conditions which prevail in foreign countries, and especially this is true during times of war. He has his confidential sources of information. . . . Secrecy in respect of information gathered by them may be highly necessary and the premature disclosure of it productive of harmful results." Thus, the Court concluded that the president is uniquely responsible in the area of foreign policy and war making.
- **During times of conflict, it is the president's duty to "preserve, protect and defend" the Constitution, and thus the country it governs, and it is the executive's prerogative to decide the means to do so.** During extraordinary times, the president must take extraordinary means to defend the state without undue interference from Congress. *Federalist No. 8* argues: "It is the nature of war to increase the executive at the expense of the legislative authority" as this is considered a natural shift in power. A historical example is President Abraham Lincoln's use of presidential power during the Civil War and a current example would be the war on terrorism.

Questions

1. Is the War Powers Act unconstitutional? Does Congress have the constitutional right to limit the war-making power of the executive? If so, what implications does this have for U.S. national security?
2. Do the American people have the right and need to specific information and intelligence regarding matters of war and peace? Doesn't the representative principle mean elected officials are charged with making certain decisions without informing the public, especially when that information may be confidential in nature?

Selected Readings

Louis Fisher. *Presidential War Power.* Lawrence: University Press of Kansas, 2004.

John Hart Ely. *War and Responsibility: Constitutional Lessons of Viet Nam and Its Aftermath.* Princeton, NJ: Princeton University Press, 1995.

upon our ability to bring about a favorable result than I had imagined."[15] Similarly, as he was leaving office, President Harry S Truman mused about what surprises awaited his successor, Dwight D. Eisenhower, a former general: "He'll sit here and he'll say, 'Do this! Do that!' And nothing will happen. Poor Ike—it won't be a bit like the army. He'll find it very frustrating."[16]

A president's authority is limited by the formal powers enumerated in Article II of the Constitution and by the Supreme Court's interpretation of those constitutional provisions. How a president wields these powers is affected by the times in which the president serves, his confidantes and advisers, and the president's personality and leadership abilities. The 1950s postwar era of good feelings and economic prosperity presided over by the grandfatherly former war hero Dwight D. Eisenhower, for

TABLE 8.5 The Best and the Worst Presidents

Who was the best president and who was the worst? Many surveys of scholars have been taken over the years to answer this question, and virtually all have ranked Abraham Lincoln the best. A 2000 C-SPAN survey of fifty-eight historians, for example, came up with these results:

Ten Best Presidents	*Ten Worst Presidents*
1. Lincoln (best)	1. Buchanan (worst)
2. F. Roosevelt	2. A. Johnson
3. Washington	3. Pierce
4. T. Roosevelt	4. Harding
5. Truman	5. W. Harrison
6. Wilson	6. Tyler
7. Jefferson	7. Fillmore
8. Kennedy	8. Hoover
9. Eisenhower	9. Grant
10. L. Johnson (10th best)	10. Arthur (10th worst)

Source: Susan Page, "Putting Presidents in Their Place," *USA Today* (February 21, 2000): 8A.

instance, called for a very different leader from the one needed by the Civil War–torn nation governed by Abraham Lincoln. Furthermore, not only do different times call for different kinds of leaders; they also often provide limits, or conversely, wide opportunities, for whoever serves as president at the time. Crises, in particular, trigger expansions of presidential power. The danger to the union posed by the Civil War in the 1860s required a strong leader to take up the reins of government. Because of his leadership during this crisis, Lincoln is generally ranked by historians as the best president (see Table 8.5).

Establishing Presidents' Authority: Washington, Adams, and Jefferson

The first three presidents, and their conceptions of the presidency, continue to have a profound impact on American government. When President George Washington was sworn in on a cold, blustery day in New York City on April 30, 1789, he took over an office and a government that were yet to be created. Eventually, a few hundred postal workers were hired and Washington appointed a small group of Cabinet advisers and clerks. During Washington's two terms, the entire federal budget was only about $40 million, or approximately $10 for every citizen in America. In contrast, in 2004, the federal budget was $2.3 trillion, or $7,900, for every man, woman, and child.

George Washington set several important precedents for future presidents:

Rate the Presidents

- He took every opportunity to establish the primacy of the national government. In 1794, for example, Washington used the militia of four states to put down the Whiskey Rebellion, an uprising of 3,000 western Pennsylvania farmers opposed to the payment of a federal excise tax on liquor. Leading those 1,500 troops was Secretary of the Treasury Alexander Hamilton, whose duty it was to collect federal taxes. Washington's action helped establish the idea of federal supremacy and the authority of the executive branch to collect the taxes levied by Congress.
- Washington began the practice of regular meetings with his advisers (called the Cabinet), thus establishing the Cabinet system.
- He asserted the prominence of the role of the chief executive in the conduct of foreign affairs. He sent envoys to negotiate the Jay Treaty to end continued hostilities with Great Britain. Then, over senatorial objection, he continued to assert his authority first to negotiate treaties and then simply to submit them to the Senate for its approval. Washington made it clear that the Senate's function was limited to approval of treaties and did not include negotiation with foreign powers.
- He claimed the inherent power of the presidency as the basis for proclaiming a policy of strict neutrality when the British and French were at war. Although the Constitution is silent about a president's authority to declare neutrality, Washington's supporters argued that the Constitution granted the president **inherent powers**—that is, powers that can be derived or inferred from what is formally described in the Constitution. Thus, they argued, the president's power to conduct diplomatic relations could be inferred from the Constitution. Since neither Congress nor the Supreme Court later disagreed, this power was presumed added to the list of specific, enumerated presidential powers found in Article II.

inherent powers
Powers of the president that can be derived or inferred from specific powers in the Constitution.

Like Washington, the next two presidents, John Adams and Thomas Jefferson, acted in ways that were critical to the development of the presidency as well as to the president's role in the political system. Adams's poor leadership skills, for example, heightened the divisions between Federalists and Anti-Federalists and probably quick-

ened the development of political parties (see chapter 12). Soon thereafter, Jefferson used the party system to cement strong ties with the Congress and expanded the role of the president in the legislative process. Like Washington, he claimed that certain presidential powers were inherent and used those inherent powers to justify his expansion of the size of the nation through the Louisiana Purchase in 1803.

Incremental Expansion of Presidential Powers: 1809–1933

Although the first three presidents made enormous contributions to the office of the chief executive, the very nature of the way government had to function in its formative years caused the balance of power to be heavily weighted in favor of a strong Congress. Americans routinely had close contacts with their representatives in Congress, while to most citizens the president seemed a remote figure. Members of Congress frequently were at home, where they were seen by voters; few citizens ever even gazed on a president.

By the end of Jefferson's first term, it was clear that the Framers' initial fear of an all-powerful, monarchical president was unfounded. The strength of Congress and the relatively weak presidents who came after Jefferson allowed Congress quickly to assert itself as the most powerful branch of government. In fact, with but few exceptions, most presidents from James Madison to Herbert Hoover failed to exercise the powers of the presidency in any significant manner.

Andrew Jackson was the first president to act as a strong national leader, representing more than just a landed, propertied elite. By the time Jackson ran for president in 1828, eleven new states had been added to the union, and the number of white males eligible to vote had increased dramatically as property requirements for voting were removed by nearly all states. The election of Jackson, a Tennessean, as the seventh president signaled the end of an era: he was the first president not to be either a Virginian or an Adams. His election launched the beginning of Jacksonian democracy, a concept that embodied the western, frontier, egalitarian spirit personified by Jackson, the first common man to be elected president. The masses loved him, and legends were built around his down-to-earth image. Jackson, for example, once was asked to give a postmastership to a soldier who had lost his leg on the battlefield and needed the job to support his family. When told that the man hadn't voted for him, Jackson responded: "If he lost his leg fighting for his country, that is vote enough for me."[17]

Jackson used his image and personal power to buttress the developing party system by rewarding loyal followers of his Democratic Party with presidential appointments. He frequently found himself at odds with Congress and made extensive use of the veto power. His veto of twelve bills surpassed the combined total of nine vetoes used by his six predecessors. Jackson also reasserted the supremacy of the national government (and the presidency) by facing down South Carolina's nullification of a federal tariff law.

Abraham Lincoln's approach to the presidency was similar to Jackson's. Moreover, the unprecedented emergency of the Civil War allowed Lincoln to assume powers that no president before him had claimed. Because Lincoln believed he needed to act quickly for the very survival of the union, he frequently took action without first obtaining the approval of Congress. Among many of Lincoln's legally questionable acts:

- He suspended the writ of *habeas corpus,* which allows those in prison to petition to be released, citing the need to jail persons even suspected of disloyal practices.
- He expanded the size of the U.S. army above congressionally mandated ceilings.
- He ordered a blockade of southern ports, in effect initiating a war without the approval of Congress.
- He closed the U.S. mails to treasonable correspondence.

Lincoln argued that the inherent powers of his office allowed him to circumvent the Constitution in a time of war or national crisis. Since the Constitution conferred

on the president the duty to make sure that the laws of the United States are faithfully executed, reasoned Lincoln, the acts enumerated above were constitutional. He simply refused to allow the nation to crumble because of what he viewed as technical requirements of the Constitution.

The Growth of the Modern Presidency

Before the days of instantaneous communication, the nation could afford to allow Congress, with its relatively slow deliberative processes, to make most decisions. Furthermore, decision making might have been left to Congress because its members, and not the president, were closest to the people. As times and technology have changed, however, so have the public's expectations of anyone who becomes president. For example, the breakneck speed with which so many cable news networks as well as their Internet sites report national and international events has intensified the public's expectation that, in a crisis, the president will be the individual to act quickly and decisively on behalf of the entire nation. Congress often is just too slow to respond to fast-changing events—especially in foreign affairs.

In the twentieth and twenty-first centuries, the general trend has been for presidential—as opposed to congressional—decision making to be more and more important. The start of this trend can be traced to the four-term presidency of Franklin D. Roosevelt (FDR), who led the nation through several crises. This growth of presidential power and the growth of the federal government and its programs in general are now criticized by many. To understand the basis for many of the calls for reform of the political system being made today, it is critical to understand how the growth of government and the role of the president occurred.[18]

New Deal
The name given to the program of "Relief, Recovery, Reform" begun by President Franklin D. Roosevelt in 1933 to bring the United States out of the Great Depression.

FDR took office in 1933 in the midst of a major crisis—the Great Depression—during which a substantial portion of the U.S. workforce was unemployed. Noting the sorry state of the national economy in his inaugural address, FDR concluded: "This nation asks for action and action now." To jump-start the American economy, FDR asked Congress for and was given "broad executive powers to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe."[19]

Just as Abraham Lincoln had taken bold steps on his inauguration, Roosevelt also acted quickly. He immediately fashioned a plan for national recovery called the **New Deal,** a package of bold and controversial programs designed to invigorate the failing American economy (these are discussed in detail in chapter 3).

Photo courtesy: AP/Wide World Photos

■ President Franklin D. Roosevelt delivering one of his famous fireside chats to the American people. Roosevelt projected the voice and image of such a vigorous and active president that no one listening to him or seeing him in the newsreels would have guessed that he used a wheelchair as a result of polio.

Roosevelt served an unprecedented twelve years in office; he was elected to four terms but died shortly after beginning the last one. During his years in office, the nation went from the economic war of the Great Depression to the real international conflict of World War II. The institution of the presidency changed profoundly and permanently as new federal agencies were created to implement New Deal programs as the executive branch became responsible for implementing a wide variety of new programs.

Not only did FDR create a new bureaucracy to implement his pet programs, but he also

personalized the presidency by establishing a new relationship between the president and the people. In his radio addresses, or fireside chats, as he liked to call them, he spoke directly to the public in a relaxed and informal manner about serious issues.

To his successors, FDR left the modern presidency, including a burgeoning federal bureaucracy (see chapter 9), an active and usually leading role in both domestic and foreign policy and legislation, and a nationalized executive office that used technology—first radio and then television—to bring the president closer to the public than ever before.