

**THE PRESIDENCY:
A STUDY OF THE POWER**

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BY

MARVIN D. DENISON

“The executive Power shall be vested in a President to the United States of America.” (Article II, Section II, U. S. Constitution) With the above words the office of the President was created. In the over two hundred years since, this one phrase has engaged scholars, politicians, and the general public who have written and orated to the height (or depth) of their ability regarding the actual meaning of that simple statement. With due deference to all that has gone before, this paper will attempt to look at the contemporary President, his powers, and the historical growth of those powers, along with some discussion of the debate over what constitutes lawful Presidential power.

The constitution is the obvious place to start in looking at Presidential power. Article II outlines the powers and duties of the President.

1. Commander in Chief of the Army and Navy and state militia when called into actual service of the U.S.
2. Power to grant reprieves and pardons except in cases of impeachment.
3. Power, by and with advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.
4. Appoint, again with Senate confirmation, ambassadors, ministers, and consuls, Judges of the Supreme Court , and all other officers of the U.S.
5. Power to fill vacancies that occur during recess of the Senate.
6. Recommend to the Congress measures; convene both or either

house on extraordinary occasions.

7. Receive ambassadors and other public ministers.

8. Take care that the laws be faithfully executed.

There are, then, five areas of Constitutional power granted to the President: Chief of State, Chief Executive, Commander-in-Chief, Chief Legislator and Chief Diplomat.

As Chief of State, the President must preside over seemingly endless lists of duties and functions. Everything is included, from holding concerts in the White House and hosting diplomatic receptions, to having pictures taken with the official Thanksgiving turkey and rolling eggs on the lawn once year. These purely ceremonial and at times trivial things are expected by the American people and contribute to the "All-American Boy" image we demand of our President.

The President is also Chief Executive and Chief Legislator. These two areas take up much of the President's time. Congress, even a hostile one, looks to the President for some kind of legislative leadership, even if they fully intend to defeat his measures. As Chief Executive, the President must oversee the entire executive branch of government. Ultimately, final decisions on departmental policy reach the President, or reach the department from the President. A vital part of the contemporary President's duties concern the various executive departments. Not the least of the duties of the departments is working with the White House staff in drafting the budget and specific portions of the President's legislative program concerned with the particular department.

As Commander-in-Chief, the President is at the top of the military chain of command. He appoints officers and makes promotions. Only the President can order the use of our offensive capabilities. One point should be made, however. The president only controls troops. Congress sets troop levels, determines which grades of officers are to be appointed, controls qualifications for officers, and determines how much money will be spent for the military.

Article I, Section 8, of the Constitution: *The Congress shall have power...(Clause 11) To declare war...* However, this has been the exception, not the rule when it comes to actual use of our military forces. Beginning with with President John Adams in 1798, over 200 times Presidents have used military force without formal declarations from Congress. From the Barbary pirates to the Persian Gulf with dozens of stops in between, the Commander-in-Chief has used his troops. Some of the stops were quick and simple; some were prolonged and complex. However, not until 1973 did Congress attempt to limit this traditional freedom of action. The War Powers Resolution requires Congressional notification (within 48 hours) of combat abroad; a 60 day deadline (with 30 day extension for safe withdrawal); and an immediate end to combat if Congress so votes. Every President since has objected to this legislation as unconstitutional, but the issue has never been pushed to the Supreme Court. Congress has seemed usually content to be informed and somewhat involved, at least for appearances sake, in the decisions to use troops.

Finally, the President serves as Chief Diplomat. The recent China talks and the much publicized on-going peace process with Israel and her neighbors are only two examples. Our veto of a new term for the United

Nations' Secretary General was specifically on the order of the President.

The President, of course, possesses many powers outside of the Constitutionally stated ones. Many of these powers have been delegated to the President by the Congress. As early as 1809, the Supreme Court upheld the right of Congress to delegate powers to the Executive. (U.S. vs. Brig Aurora). Once the precedent was established, the Court has generally upheld Congressional actions that over the years have enhanced the power of the executive. As has been established by Court cases, the Congress may delegate authority whenever it is necessary to achieve the desired result.

Probably the most dramatic delegation of powers was the Lend-Lease Act of 1941. This act gave President Roosevelt the sole authority to determine what was vital to the nation's security and procure "defense articles" to be transferred to any nation the President deemed vital to U.S. security and to do so on any terms deemed satisfactory by the President.

Not only the Congress, but the Supreme Court has served over the years to expand Presidential power. One of the most widely known of the cases involving Presidential authority came in 1936. In this case, (U.S. vs. Curtis-Wright Export Corp.) the Court at one time both affirmed the Federal governments right to act outside of enumerated powers in foreign affairs and referred to the "plenary and exclusive power of the President as the sole organ of the Federal government in the field of international relations."

This one Court opinion frees the President to do virtually anything he

wants as the exclusive representative of the United States in foreign affairs. There is much truth to Harry Truman's assertion, "I make American Foreign Policy."

The Court also strengthens the President at times by not accepting certain cases. Traditionally, the Court has refused to take "political" cases. Of course, the Court decides what constitutes a "political" case. During crisis periods when the President was exercising tremendous authority, the Court has usually remained out until the crisis has passed. Especially during times of war and grave crisis situations, the President has been able to use his powers virtually unhindered by the Court. Clinton Rossiter has observed that, "the Court's power of judicial review is least useful when most needed."

Adding to the Presidential power and prestige are several factors not even implied in the Constitution. The first additional aspect is that of Party Leader. The President is the recognized head of his political party. He dictates to party machinery by his selections of the national chairperson. As we have just seen, an incumbent President running for re-election can virtually write the party platform and run the nominating convention. In many cases the President is in a position to select the party nominee if the President cannot or does not run for re-election. It is from members of his own party that a President usually chooses his cabinet, and a definite factor in appointments is party loyalty.

As a direct result of his appointing the department head, the President gains control of the vast Federal bureaucracy. Everything from the Central Intelligence Agency to the Agriculture Department is under the White House. This can prove to be of major importance in many ways.

Two of these can be vital to the President's success. A bureaucracy loyal to the President can get programs and ideas implemented much faster than one antagonistic to the boss or to a program. This ability to get action out of the bureaucracy can be of greatest necessity, especially near elections.

The President has also assumed the role of, in Rossiter's terms, Manager of the Prosperity. This aspect of Presidential power in the post World War Two world began with the Employment Act of 1946. It was the first acknowledgement after the "New Deal" of the Federal government's role and particularity the President's responsibility in maintaining a stable and prosperous economy. A continuation of these ideas of government was evidenced with President Nixon's New Economic Policy of the early 1970s.

Increasingly the the 20th Century, the Presidency has taken on greater and greater responsibilities in conjunction with the growing dominance of the United States in world affairs. Now the President is emerging from the "leader of the Free World" to leader of the only global superpower, from a purely practical standpoint. In this role, virtually any Presidential action can have global effects.

This vast Presidential power and prestige did not occur overnight, but has been growing throughout our history. From the first Washington administration, the Presidency has undergone a steady, if a times fitful, growth in power. This is a result of several basic forces at work. One force was the developing party structure and the necessity of a guide and leader of the Federal government. This leadership fell to the President almost immediately. As the Congress organized around party, any outside leadership was vital. The President was the obvious, and

only, practical outside leadership to which the Congress could turn.

Another influence on the growth of the Presidency has been the men who have held the office. There is no doubt that as the Constitution was being drafted, the delegates considered George Washington as the only choice for the first President. Scholars are in general agreement that no finer choice could have been made. Washington brought dignity and his own prestige to the new office and profoundly affected the nation's thinking about the office and influenced how all Presidential office holders after him regarded the position. Washington believed in the notion of a strong executive. He used the powers of the position to consciously set precedent. Especially in foreign affairs, several actions of Washington did set a lasting pattern of conduct for future officeholders. He negotiated executive agreements, recognized governments, proclaimed national policy and dismissed foreign diplomats.

From this base of firm effective leadership, the Presidency grew. Each strong President has upped the power of the office a notch or two. This new power has normally remained with the office. The weaker Presidents that have often followed aggressive executives have still had more power at their disposal than any of their predecessors. Congress has frequently sought to restore the widely proclaimed historic balance between Congress and President, at at times, especially after Lincoln's "dictatorship" ended, has almost seized the Presidency. Yet, the growth of Presidential power remained with the office only waiting for someone strong enough to use it and in using it, advance the power even further.

Washington, Jefferson, Jackson, Lincoln, Wilson, both Roosevelts, and Truman are most often cited as being strong Presidents. Each built on the other and added something of himself to the office. A period of adjustment and absorption often has followed these cycles of growth.

Presidential power has been helped by a fundamental change in attitude toward government. The 20th century has seen a complete reversal of the traditional attitude on the part of the public regarding what they want from their government. The substitution of *laissez-faire* theory of government with the idea that government should be active and involved with many aspects of everyday life, from setting health standard to regulating television, has resulted in the President being in a position to become the spokesman for this changed idea of government and to reap political advantage from it.

These above events and developments have helped to create the strong Presidency now in existence. This occurrences prompted a continuing debate over what should constitute proper Presidential functions. During the term of every aggressive President, there have been elements of the population screaming about dictators and tyrants occupying the oval office. Recently, these arguments were heard over our deployments to Bosnia and the Persian Gulf. Yet, these debates had familiar ring. They were heard during the thirties, and many other times when a President has assumed extraordinary powers to deal with grave situations.

Traditionally, the argument and debate over Presidential powers has been the old "State's Rights" versus national control argument, only on a different level. Traditionally, also, regarding strong or weak Presidents, the liberals and conservatives lined up on opposite sides.

The liberals argued for a strong central government and a strong President, while the conservatives took the opposing point of view. While recognizing the problems inherent in such broad labels as “conservative” and “liberal”, especially in the 1990s, these labels have been used widely to distinguish groups and it is in their traditional context that I use them here.

Now, we are in the unprecedented situation of having the only President to face the reality of the 22nd Amendment to the Constitution. Just to refresh your memory, the 22nd Amendment was passed in 1947 by the Republican controlled 80th Congress to prevent another Franklin Roosevelt-ish assault on the Presidency. It was the original term limit bill, although it applied to only one office--The Presidential office! Simply put, it limits all Presidents to two elections. They need not be consecutive! It further limits anyone serving out another's term to one election if that service exceeds half a normal term. So, the maximum length of time anyone can serve as President is ten years, minus one second. To make it somewhat acceptable to Harry Truman, Congress exempted him from its limiting provisions. Harry still vigorously opposed it! Since Truman had decided to retire to Independence in 1952, and therefore the only possible third term left the active political scene, the first election even subject to potential limits would not occur until 1960. And, sure enough, it did! Right on schedule, but the effected President was not a liberal Democrat, but Dwight Eisenhower! (I love it when what goes around comes around). The next President eligible to be limited turned out again to be Republican--Ronald Reagan in 1988.

My point is this, from its adoption in 1951, only Republicans have been limited (Eisenhower and Reagan). Bill Clinton in the year 2000 is the first Democrat even potentially to suffer from such a limit--and in reality the first of either party since both Ike and Reagan were unlikely third-term candidates in any event. The intervening 45+ years and thirteen Presidential elections before this amendment could possibly play a role in our Presidential politics proves, to me anyway, that political vindictiveness and Constitutional construction should not be mixed!

However, since I seem to have started one paper and concluded another and am dangerously close violating the no-politics rule under the guise of future history, I better close. Thank you very much.