

EDITION

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Essentials



CHAPTER 11

The Presidency

Chapter Goals

- Identify the expressed, implied, delegated, and inherent powers of the presidency.
- Describe the institutional resources presidents have to help them exercise their powers.
- Explain how modern presidents have become even more powerful.

The Presidency

The framers of the Constitution wanted an “energetic” presidency, capable of quick, decisive action.

However, when George Washington was sworn in as the first president in 1789, the presidency was a less powerful office than it is today.



Establishing the Presidency

Constitutional Basis of the Presidency

Article 2 Section 1 of the Constitution

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years...

Establishing the Presidency

Constitutional Basis of the Presidency

- The president's oath of office empowers the chief executive to “*preserve, protect and defend the Constitution of the United States.*”
- On the basis of Article II, presidents have three types of powers: *expressed, implied, and delegated.*
- A fourth type of power, *inherent power*, does not appear in Article II, but is based on the obligations that comes with the office.

The Oath of Office



The president's oath of office empowers the chief executive to “*preserve, protect and defend the Constitution of the United States.*”

Who Can become President

The Process of Becoming President

The Constitution specifies only three conditions to be eligible for the presidency:

One must be a “natural-born citizen”

One must be at least 35 years old

And, one must have resided in the U.S. for at least 14 years before taking office. (Art. 2, Sect.1)

Who Can become President

Experience

- Presidential candidates may be expected to have experience as an elected Governor, Senator, Congressman, etc.
- However, there is no real correlation between experience in government or the military and performance in the White House.
- Lincoln had less experience than other U.S. Presidents James Buchanan or Andrew Johnson, who were his contemporaries, but he was an incomparably greater president. Lincoln was a State Legislator and Congressman.
- There is little evidence that experience gained in office builds in a way that makes a president increasingly effective over time.

Who Can become President

Pay

- The Constitution authorizes Congress to award the president “a Compensation,” which can be neither increased or decreased during the presidential term.
- This was \$25,000 for our first seventeen presidents.
- Then it jumped in increments to \$200K
- It did not reach its current level, \$400K, until 2001.

Perks

- Living in the White House
 - 24/7 chef
 - Pool, bowling alley, etc.
- Camp David Retreat
- Great health care
- Fleets of cars and aircraft
- Generous pension when you leave office.
- Money for travel, office, staff, and 10 years of Secret Service protection

Presidential Tenure

Tenure and Succession

- Presidents serve a 4year terms.
- 22nd Amendment limited them to serving two terms.
- 4 have died in office from illness
(Harrison, Taylor, Harding, Roosevelt)
- 4 have been assassinated
(Garfield, McKinley, Lincoln, Kennedy)
- Presidents can be removed by impeachment and conviction.
- House impeaches - **Article 2 Section 4**
- Senate holds the trial; requires two-thirds of members -
Article 1 Section 3
- Cumbersome process

Presidential Tenure

Tenure and Succession

- Should a president be removed, die, resign, or become incapacitated, his replacement is provided for by the Constitution and supplemental laws.

Article 2 Section 1

- Left for Congress
 - to make provisions for filling the vacated vice presidency – 25th Amendment
 - and dealing with a situation in which both the presidency and vice presidency were vacated.

Presidential Tenure

Tenure and Succession

- Not until 1947, two years after the death of FDR had put Harry Truman into the White House, did Congress pass the Presidential Succession Act.
 - Established the order of succession of federal officeholders should both the president and vice president be unable to serve.
 - Speaker of the House
 - President pro tempore of the Senate
 - Cabinet Secretaries – starting with Secretary of State, Treasury, Defense, Attorney General, etc.
 - Never been used.

Presidential Tenure

Tenure and Succession

- The 25th Amendment directs the president to name a vice president acceptable to majorities in the House and Senate if the vice presidency falls vacant.

Nixon – Gerald Ford

Gerald Ford – Nelson Rockefeller

Presidential Tenure

Tenure and Succession

Issue of succession after the terrorist attacks of 2001

- Emergency plan established by Eisenhower
- Goal: to provide continuity of government in case of a nuclear attack.
- Shadow government of from 75 to 100 senior executive branch officials (serving in a rotation system) were removed to a secret fortified location outside the capital where they lived and worked underground 24 hours a day.

Election of the President

Constitution establishes a republican solution for selecting President: *(form of government, not the party)*

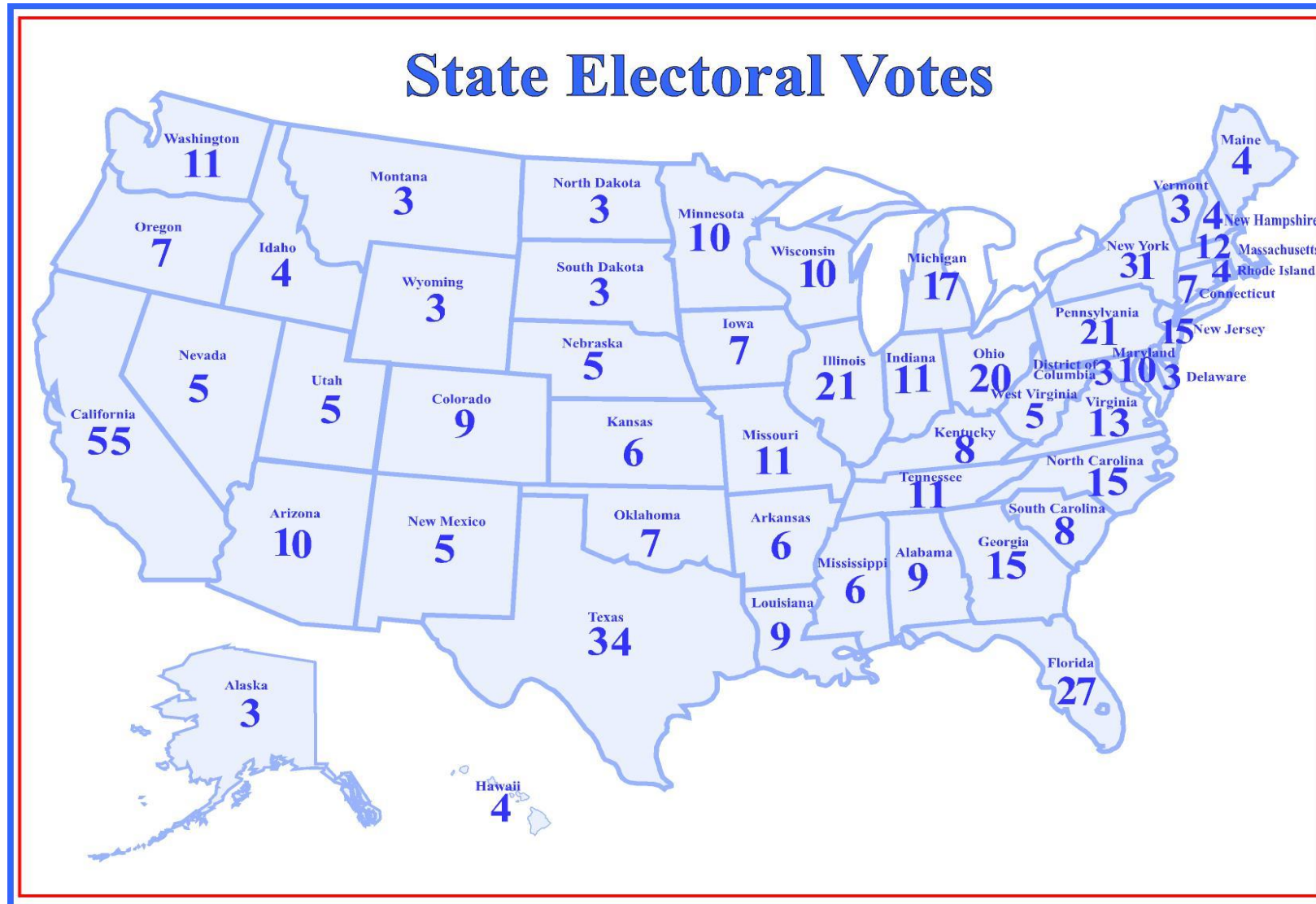
- States conduct nominating and general elections.
- State legislatures would select slates of electors based on the number of Representatives and Senators a state has (*Florida gets 27 electors*)
- The state legislature will select 27 electors from both parties and is composed of individuals who are politically active and are members of the state and county parties, and who may sit on state advisory boards.

Election of the President

Constitution establishes a republican solution for selecting President: *(form of government, not the party)*

- On election day voters will choose one of the slates of electors offered by the legislature, by voting for the candidate of their choice.
- The candidate with the most votes in the state will win the states electoral votes.
- The candidate with the most electoral votes wins the presidency.
- If a majority of electors could not agree, the decision would be made by the U.S. House of Representatives.

Election of the President



Constitutional Powers of the Presidency

Presidents derive their official authority from four sources:

- **Expressed powers** (stated in the Constitution) Article 2 Sec 2 & 3
 - Commander In Chief
 - Chief Executive
 - Chief Diplomat
 - Chief Legislator
 - Head of state and Government
 - Judicial power / Chief Law Enforcement Officer
- **Implicit / Implied powers** -necessary to allow presidents to exercise their expressed powers (which are implied through interpretation of Federal law)
 - Appointment and Removal of appointees

Constitutional Powers of the Presidency

Presidents derive their official authority from four sources:

- **Inherent powers** (not expressed but inferred in the constitution)
Hiring Aids, personal advisors, issuing executive orders, rescinding previous presidential orders. Prerogative of executive.
- **Delegated / Statutory powers**
Granted to Congress by the Constitution but given to the president by various statutes.
 - Budget making
 - Enforcing immigration law
 - Enforcing drug laws

Constitutional Powers of the Presidency

Head of State

- President is both head of state and head of government.
- Represents not just the executive branch, but the whole of the country.

Head of State



REUTERS/Alamy Stock Photo

Constitutional Powers of the Presidency: Military Power

Commander in Chief:

- President is commander in chief of the Army and Navy and the state militia of the states when called into service of the United States.
- Armed forces under civilian control.
- Ultimate military decision maker.
- Heads the nation's intelligence network-FBI, CIA, NSC
- Can deploy troops up to 60 days without congressional approval. Must get congressional approval to continue military operations.
- Can deploy troops domestically in an emergency, to enforce a federal judicial order, or to protect federally guaranteed civil rights

Constitutional Powers of the Presidency: Executive Power

Chief Executive

- President must make sure that all laws are faithfully executed.
- Enforce the acts of congress, judgements of the federal courts and treaties signed by the United States.
- Article II, Section II provides that the president will appoint, remove and supervise all executive officers.
- Has power to appoint ambassadors, ministers and all federal judges with the advice and consent of the Senate.
- Presidents can assert executive privilege as part of their broader executive powers.
 - Courts have supported the claim that confidential communications between a president and close advisers should not be revealed without the consent of the president.

Constitutional Powers of the Presidency: Diplomatic Power

Chief Diplomat

- Chief foreign policy negotiator.
- Appoints ambassadors with the advice and consent of the Senate.
- Receives ambassadors and other public ministers
- Diplomatic recognition of foreign governments as legitimate.
- Proposal treaties for ratification to the Senate
- Executive Agreements with other heads of state that do not require Senate approvals but can be refused funding.

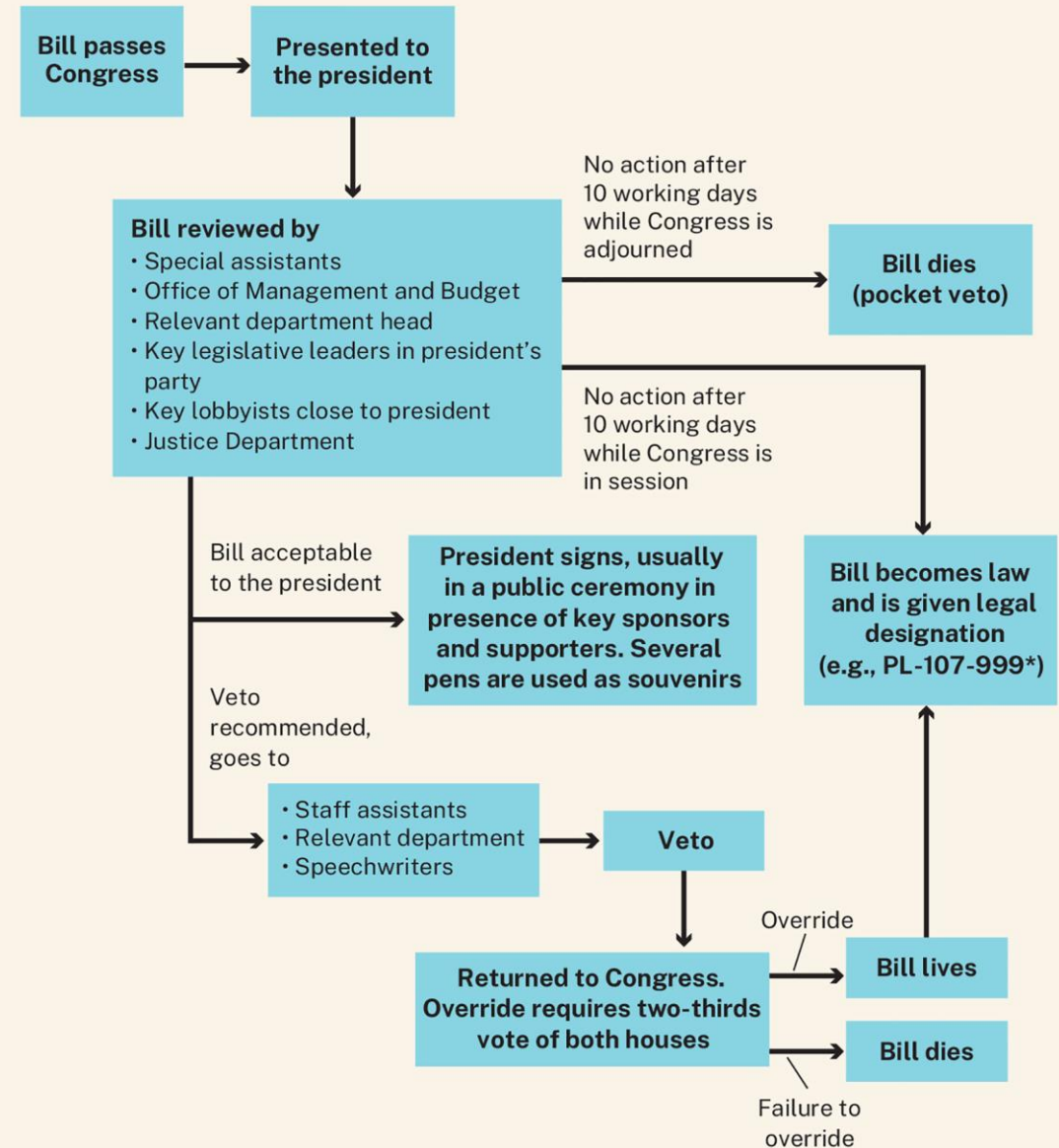
Constitutional Powers of the Presidency: Legislative Power

Chief Legislator

- Addresses Congress State of the Union **Article 2, Section 3**
- Submits proposals for legislation
- Signs bills into law
- Saying No to Legislation
 - Veto legislation- rejects legislation /can be override by a 2/3 vote of congress.
 - Pocket veto – bill is rejected if not signed within 10 days after being submitted.

The Veto Process

FIGURE 11.1 | The Veto Process



*PL — public law; 107 — number of Congress (107th was 2001–02); 999 — number of the law.

Constitutional Powers of the Presidency: Judicial Power

Chief Law Enforcement Officer

- Ensures that all laws are enforced, and the Judicial authority of the United States is respected.
- The president can commute an individual's prison sentence.
- The president can grant pardons, reprieves, and amnesty on behalf of a particular person or a large group of people.
 - President Andrew Johnson gave full amnesty to southerners after the Civil War.
 - President Ford famously pardoned Richard Nixon.
 - President Trump pardoned former Arizona sheriff Joe Arpaio.
 - President Obama commuted the sentences of several hundred nonviolent drug offenders.

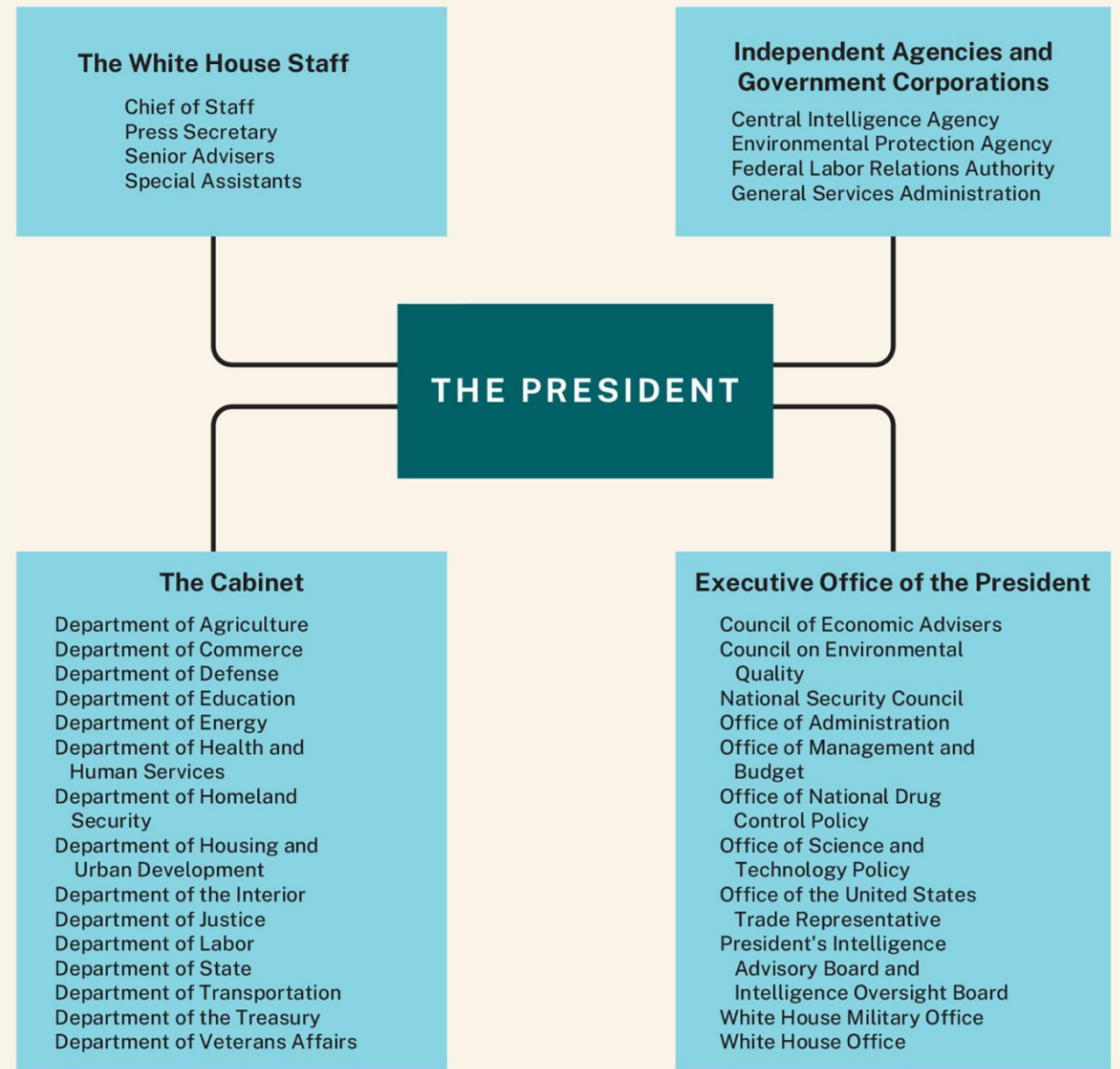
Institutional Resources of Presidential Power: The Cabinet

The Cabinet

- Origin: early presidents had a secretary who would store the president's papers in a cabinet.
- The Cabinet: heads of the major executive branch departments.
- Members of the Cabinet
 - Original Members were State, Treasury, War, Attorney General.
 - Today there are 15 department secretaries
- Presidential Use of Cabinets
 - Used as an administrative tool. Not use to advise.

The Presidency as an Institution

FIGURE 11.2 | The Institutional Presidency



Institutional Resources of Presidential Power: The EOP

The Executive Office of the President

Permanent agencies that perform specific management tasks for the president

- The White House Office
 - Chief of Staff- manages presidential staff / chief adviser
 - Permanent Campaign-CREP
- The Office of Management and Budget (OMB)
 - Must approve every proposal from an executive agency that requires spending
- The National Security Council (NSC)
 - Advises the president on National Security concerns
- Policy Czars – individuals appointed to coordinate action in one specific area.

Institutional Resources of Presidential Power: White House Staff

White House staff: analysts and advisers to the president, each of whom is often given the title “special assistant”

- Staff provide the president with broad judgments and advice that are more political than the advice offered by the Cabinet departments or Executive Office of the President.
- Staff are appointed directly by the president, without Senate approval.

Institutional Resources of Presidential Power: Vice President

The Vice President's Job

- The vice presidency is a constitutional peculiarity that exists for two purposes only:
 - to succeed the president in case of death, resignation, or incapacity.
 - to preside over the Senate and cast a tie-breaking vote when necessary.
- The vice president's main value to the president is electoral:
 - The VP is often chosen to help the president win election by providing regional balance and possible ideological balance.

Institutional Resources of Presidential Power: Vice President

Presidential Succession

- Vice-President assumes the presidency if the President dies in office.

The Twenty-fifth Amendment

- Passed in 1967 and establishes the process in case the president dies or becomes incapacitated.
- If president is incapacitated, he must inform congress in writing.
- Allows for VP and the majority of the cabinet to inform congress that the president is incapacitated.

When the Vice Presidency Becomes Vacant

- Allows for a new VP to be nominated and take office when confirmed by both chambers of congress.

Institutional Resources of Presidential Power: The President's Party

The President as Chief of Party

- When the president's party controls Congress and they share policy goals, the president can have tremendous influence if the party is cohesive.

The President's Power to Persuade – Bully Pulpit

Constituencies and Public Approval

- Presidential Constituencies
- Public Approval
- Public Opinion Polls
- Presidents must carefully cultivate their public image

Who Are Americans?: Who Are America's Presidents

WHO ARE AMERICANS?

Who Are America's Presidents?

American presidents have all been men. Until the election of Barack Obama in 2008, they had all been White. As the data show, a majority of presidents have come from the eastern United States, with Virginia producing the most American presidents, especially in the nation's first decades.

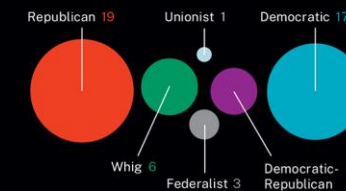
Gender



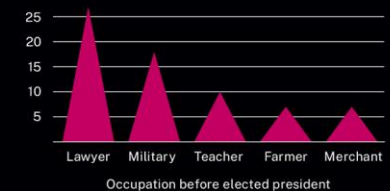
Race



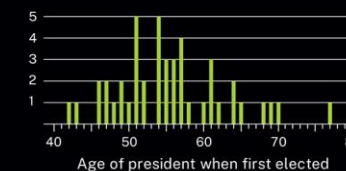
Party*



Top Occupations**



Age



Region†



NOTE: Grover Cleveland served as America's 22nd and 24th presidents. He is counted only once in the demographic data here, thus the total number of people who have served as U.S. president is 45.

* Some presidents switched parties during their political careers, thus the numbers sum to more than 45.

** This chart reflects the top nonpolitical careers of U.S. presidents. (All presidents except George Washington and Donald Trump had previous political and/or public service experience.) Presidents may have had more than one occupation, and some occupations do not appear on this list, thus the numbers do not sum to 45.

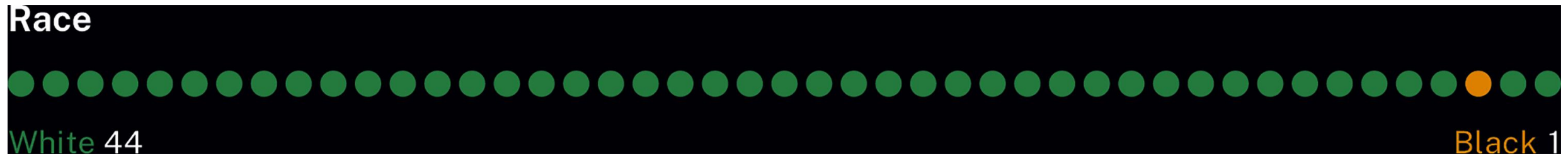
† Andrew Jackson was born in the Waxhaw area, on the North Carolina–South Carolina border.

SOURCES: Roper Center, www.ropercenter.uconn.edu/elections/common/pop_vote.html; David Leip, <http://uselectionatlas.org/RESULTS/>; the American Presidency Project, www.presidency.ucsb.edu/showelection.php?year=1840; Miller Center, University of Virginia, <http://millercenter.org/president> (accessed 3/17/14).

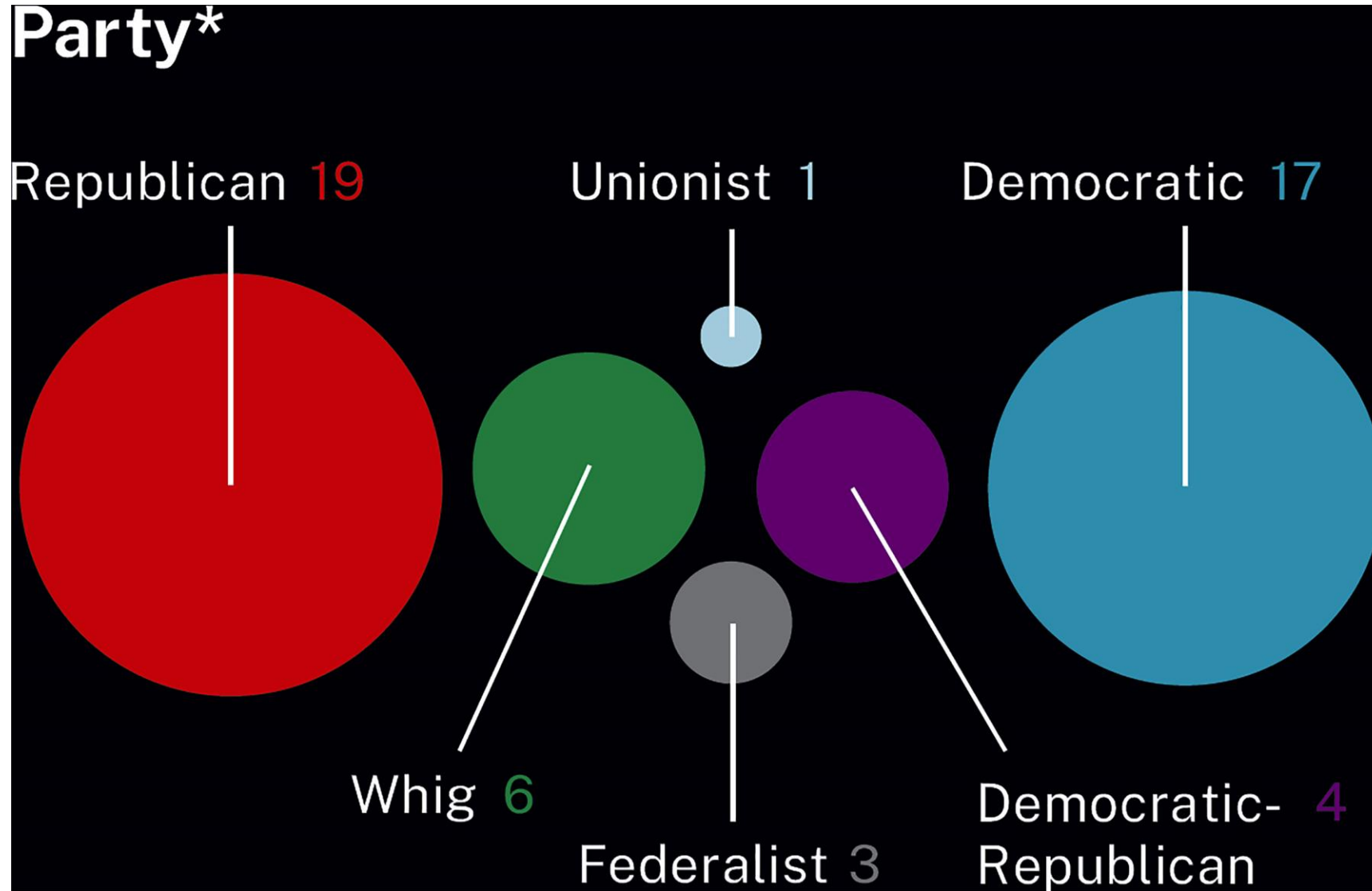
Who Are America's Presidents? by Gender



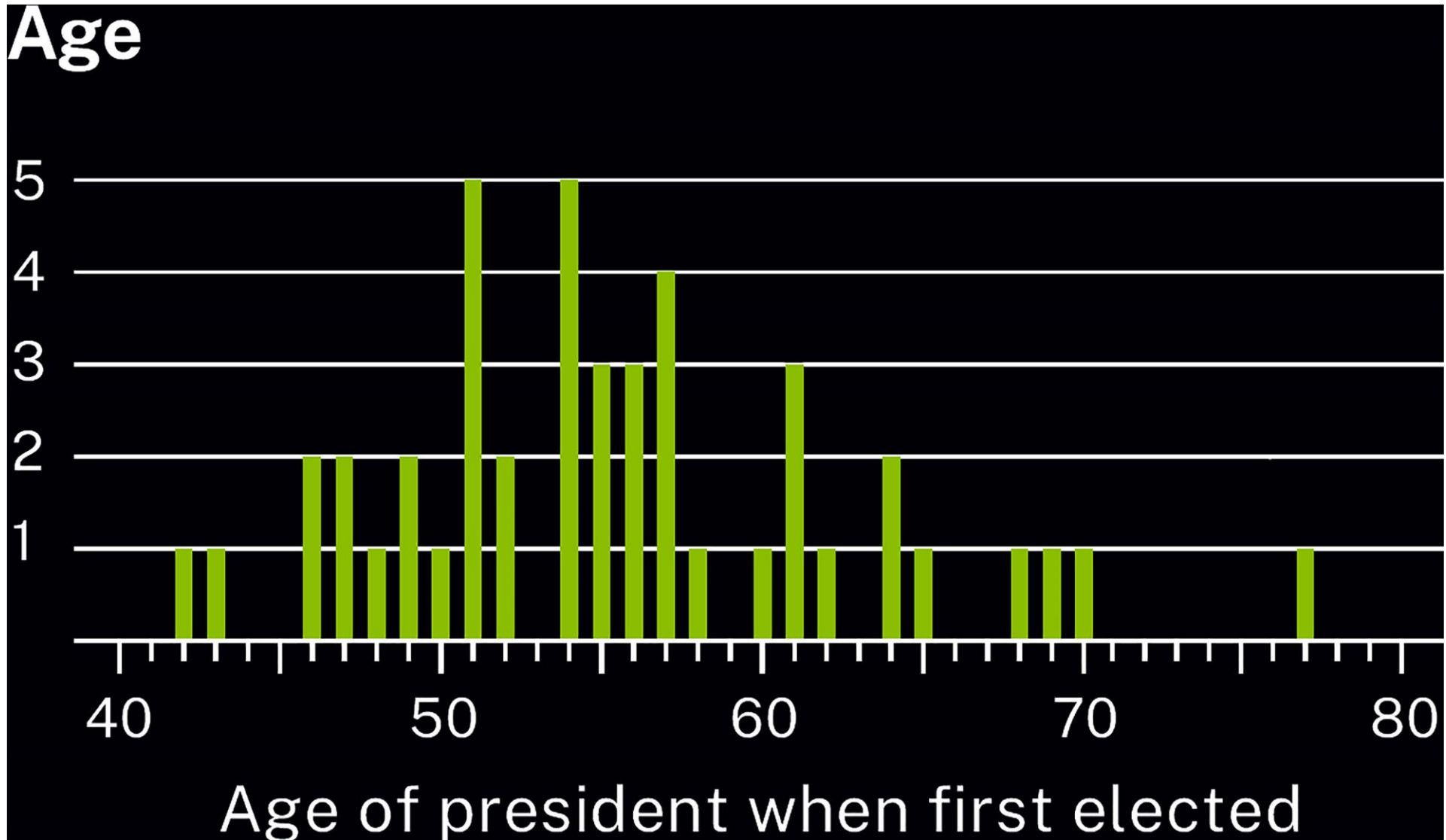
Who Are America's Presidents? by Race



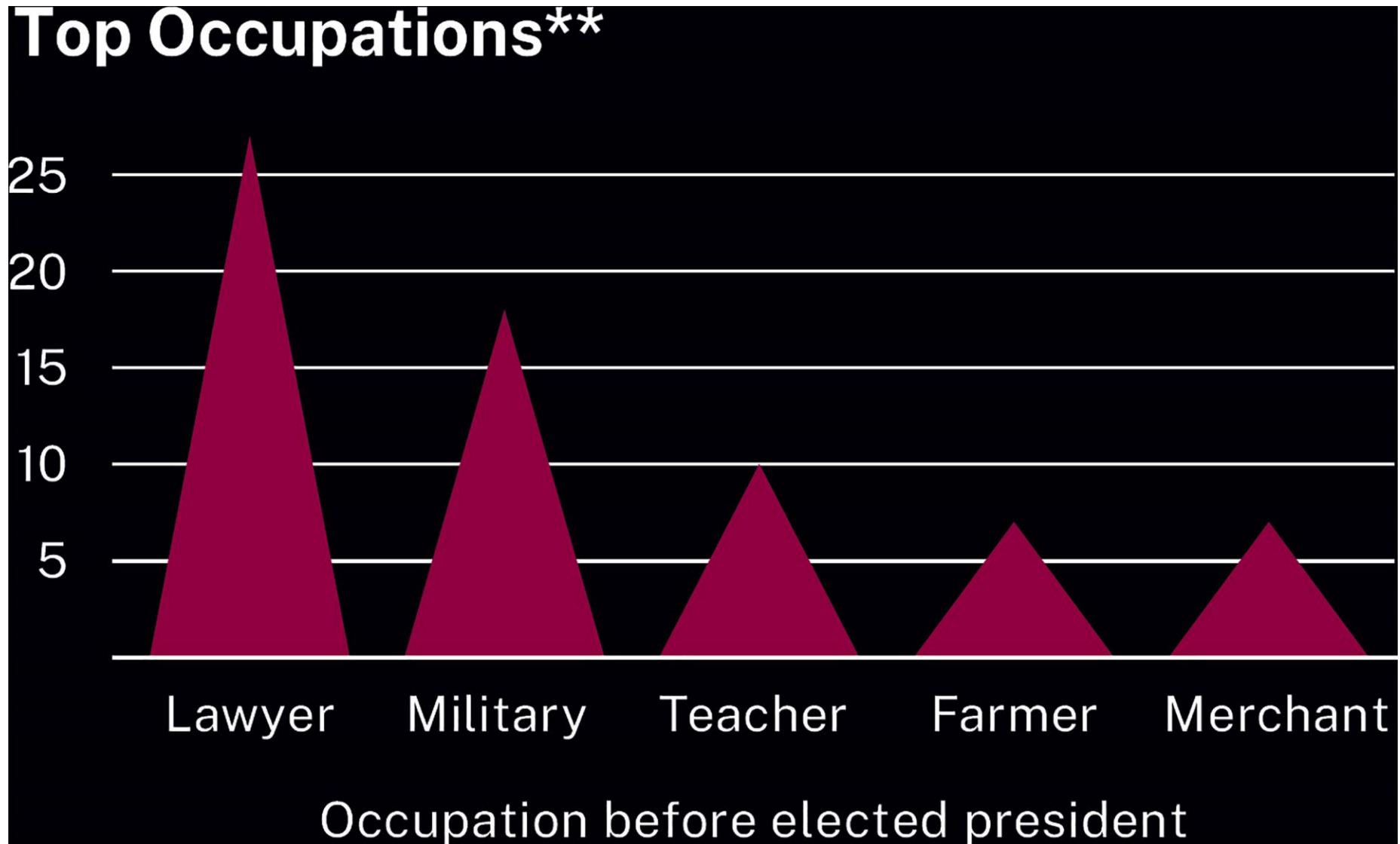
Who Are America's Presidents? by Party



Who Are America's Presidents? by Age



Who Are America's Presidents? by Occupation



Presidential Power Grew in the Twentieth Century

- During the nineteenth century, Congress was the nation's dominant institution of government, but that is not true today.
- Today, presidents seek to dominate policy making and claim inherent power.
- Presidents expand their power in two primary ways.
 - Popular mobilization (“going public”) Political manipulation.
 - Control of executive agencies or creation of new administrative institutions and procedures.

Presidential Power: Going Public

- Nineteenth-century presidents were expected to refrain from speaking out in public in support of programs or policies, and it was considered inappropriate for them to campaign for themselves.
- Now, popular mobilization is part of the president's political arsenal.
 - Everything is a crisis-"Never let a crisis go to waste"
- FDR believed that a direct connection with the people was important.
 - made use of the radio with his famous "fireside chats"
 - innovator in the realm of press relations

Presidential Power: Going Public

“Going Public”

Informing the public as to the current situation.

President John F. Kennedy discusses the Berlin crisis at a news conference in 1961. Kennedy continues to be considered a master of such events.



Presidential Power: Going Public Online

- President Obama was the first president to make full use of the internet.
- During the 2016 presidential campaign, both Hillary Clinton and Donald Trump used Twitter to circumvent the media and reach citizens directly.
- The White House website keeps people informed of the president's policy agenda with regular video and blog-based updates.
- President Trump used Twitter to help drive his **legislative initiatives** as he broadcasted his policy ideas directly to citizens.

Presidential Power: Limits of Going Public

- Popular support is not a firm foundation for presidential power.
- There are several limitations to going public:
 - Public opinion is fickle.
 - Public approval declines during a president's term.
 - Presidential performance rarely meets expectations.

Presidential Power: Administrative Strategy

Contemporary presidents have increased their administrative capabilities in three ways:

- Control Over Federal Spending.
- Control over the Bureaucracy and the rule making process.
- Law via Executive Orders

Presidential Power: Administrative Strategy

Contemporary presidents have increased their administrative capabilities in three ways:

- They have enhanced the reach and power of the Executive Office of the President (EOP).
 - In particular, the Office of Management and Budget serves as a means of presidential control over federal spending.
- They have increased White House control over the bureaucracy through regulatory review.
 - Congress delegates to administrative agencies the power to establish rules and regulations on congressional statutes.
 - Recent presidents gradually have tried to take control of this rule-making process.

Administrative Strategy: Governing by Decree

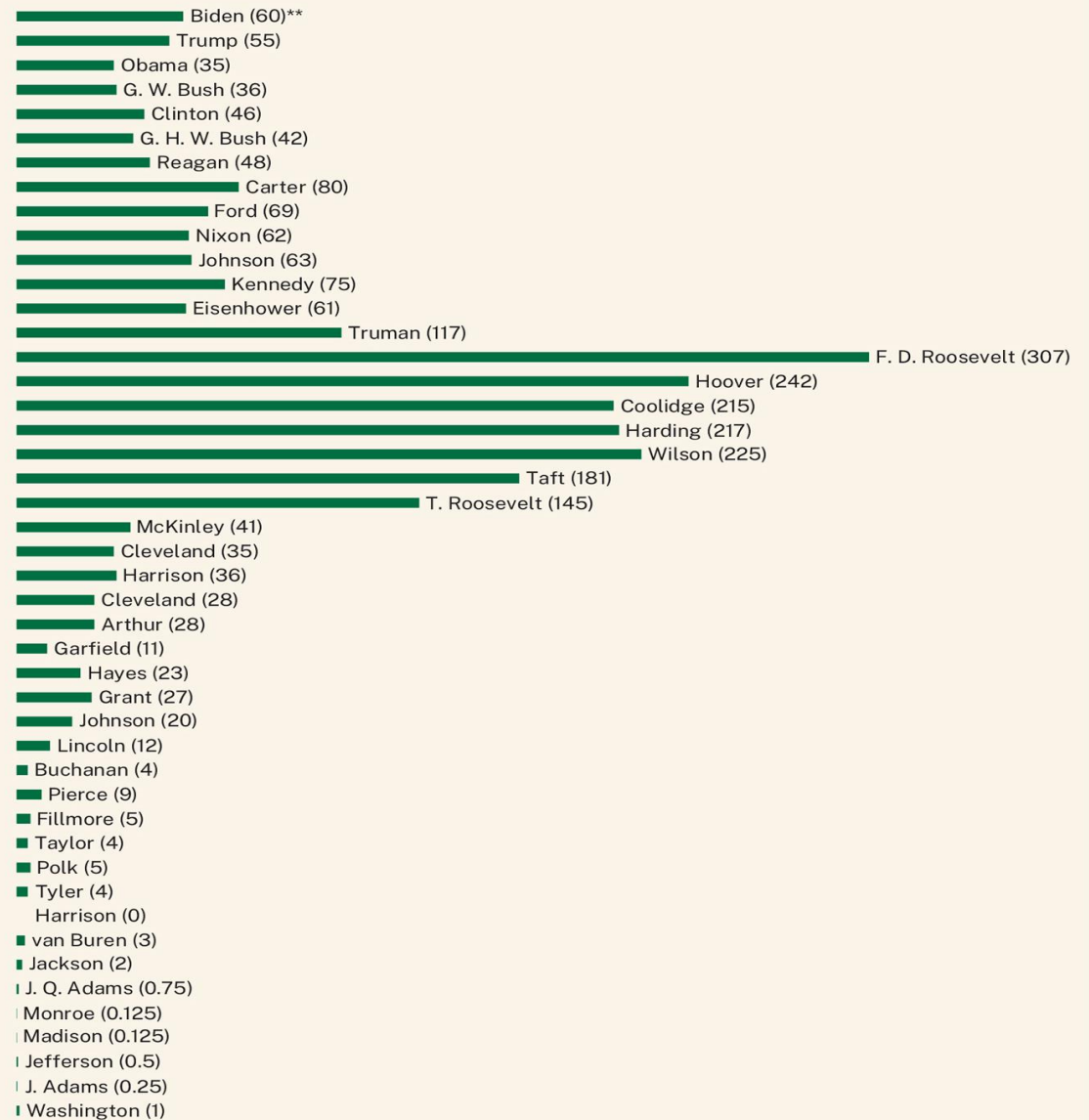
A third mechanism through which presidents have sought to enhance their power is the use of executive orders and other presidential decrees.

An **executive order** is a rule or regulation issued by the president that has the effect and formal status of legislation.

- Historically, executive orders were used during national emergencies, but they have become routine in recent years.
- Presidents must state the constitutional or statutory basis for their actions.
- Congress can overturn executive orders by passing new legislation, but this legislation can be vetoed.

Presidential Executive Orders

FIGURE 11.3 | Presidential Executive Orders*



*Does not include memoranda or other forms of executive action.

**As of September 2022.

SOURCE: The American Presidency Project, "Executive Orders," September 20, 2022, www.presidency.ucsb.edu (accessed 9/20/22).

Presidential Executive Orders: Joe Biden



Administrative Strategy: Signing Statements

Presidents can also act unilaterally through the use of signing statements.

Signing statements: announcements made by the president when signing bills into law, often presenting the president's interpretation of the law.

- Presidents may use signing statements to point to sections of law that they believe are improper or unconstitutional.

Administrative Strategy: Nonenforcement of Laws

- Congress may make the law, but the president can ultimately decide on what enforcement will look like.
- Both President Obama and President Trump used nonenforcement with different portions of the Affordable Care Act.
- The administrative strategy as a whole has given presidents more authority and allowed them to achieve policy results despite Congressional opposition to their agendas.

Presidential Power: Limits

The framers were concerned that executive power could be abused and thus stifle liberty.

- To guard against this possibility, they contrived a number of checks and balances on executive power:
 - Four-year term limit
 - Congress can:
 - Impeach and remove the president from office
 - Reject presidential appointments and refuse to ratify treaties
 - Deny funding to presidential programs
 - Override presidential vetoes
- Recess appointments have become more common and are quite contentious, with the Senate engaging in pro forma daily sessions to prevent such appointments from happening.

Readings from Faculty Website

- *The Constitution of the United States*
- *The Electoral College*
- *The Presidential Succession Act*
- *The War Powers Act*
- *George Washington as Commander and Chief*
- *Federalist No. 69 The real character of the executive*
- *Federalist No. 68 The mode of electing the president*
- *The impeachment trial of Andrew Johnson*
- *The election of Hayes v. Tilden*

The Executive Mansion – White House



The President's Office

