

6.4 The Legislative and Executive Branches

2.4 Explain how the president can implement a policy agenda and 2.6 Explain how presidents have interpreted and justified their use of formal and informal powers.

THE PRESIDENCY IN THE CONSTITUTION

Article II of the Constitution defines the qualifications, powers, and duties of the president and carefully notes some important checks of the executive branch by the legislature.

Qualifications	<ul style="list-style-type: none"> • Natural-born citizen <ul style="list-style-type: none"> ○ Only individuals born as citizens may seek the presidency; all others are excluded from consideration • At least 35 years of age <ul style="list-style-type: none"> ○ In contrast to a minimum age of 30 for a senator and 25 for a representative ○ This provision has never been seriously challenged, since presidents tend to be considerably older than 35 <ul style="list-style-type: none"> ▪ Theodore Roosevelt (age 42 – youngest president), John F. Kennedy (age 43 – youngest to be elected president) • Residency for at least 14 years <ul style="list-style-type: none"> ○ Years don't have to be consecutive
Selection	<ul style="list-style-type: none"> • Elected in November in years divisible by 4 <ul style="list-style-type: none"> ○ People >> Electors >> President • Electoral votes counted on January 6 • President inaugurated on January 20 (established by the 20th amendment)
Terms of Office	<ul style="list-style-type: none"> • Four years • Maximum of two elected terms <ul style="list-style-type: none"> ○ Amendment 22 institutionalized Washington's precedent ○ Passage of 22nd Amendment was due to the Republican congress' concern over future FDR's ○ Possible to serve just less than 10 years in office if a V.P. becomes President just after the midpoint of a President's term <ul style="list-style-type: none"> ▪ If a V.P. serves less than half of a President's term, he can be elected to the presidency twice ▪ If a V.P. serves more than half of a President's term, he can be elected to the presidency only once ○ Lyndon Johnson succeeded JFK in 1963, and was therefore eligible to be elected twice ○ Gerald Ford succeeded Nixon in 1974, and was therefore eligible to be elected only once
Succession	<ul style="list-style-type: none"> • If office of presidency is vacant due to death, resignation, or impeachment and removal, the V.P. becomes President. If V.P. dies before his inauguration as President, the line of succession is as follows: Speaker of the House, Senate President Pro Tempore, Secretary of State, Secretary of Treasury, Secretary of Defense, and then the other Cabinet secretaries in the order of the creation of their offices. • If the President is disabled, the 25th Amendment applies: <ul style="list-style-type: none"> ○ The President informs the Congress of disability and the V.P. becomes Acting President. ○ If the President is unable to inform Congress (e.g., coma), the V.P. and a majority of Cabinet secretaries can go to the Congress and receive approval for the V.P. to become Acting President. ○ In either case, the President regains powers by informing the Congress of his intent to return. In case of dispute, Congress has the power to decide who shall be President.

FORMAL POWERS AND CHECKS ON THE PRESIDENT

Alexander Hamilton outlined his hopes for a single American chief executive in Federalist 70. The president by no means was intended to be weak. Hamilton wrote:

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 against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

Hamilton’s description, however, appears to overstate the role of president as taught by both historical experience and political science.

For many presidents throughout our history we barely remember their names. Powerful presidents were either made by extreme circumstances like wars and economic depressions or possessing certain charismatic qualities. But as we were often taught in school, U.S. presidents were not intended to be powerful.

Presidents face many checks on their power. The constitution gave presidents few unilateral powers. The Senate, through their advice and consent authority, is authorized to confirm and approve presidential activity. Federalism dilutes federal power even more. And more particularly, the Twenty-Second Amendment now limits presidential terms. No president can serve longer than two four-year terms.

We have, in more recent years, come to expect much more from our president. The President of the United States has to wear many hats. Today’s modern president is expected to fulfill many different roles. These roles, powers and checks include:

The Constitutional Roles of the President (FORMAL)

Roles	Power(s)	Check(s)
Chief Legislator	<ul style="list-style-type: none"> Proposes legislation Vetoes legislation (lacks line item veto -- struck down by Supreme Court) Calls special sessions of Congress 	<ul style="list-style-type: none"> Congress need not pass suggested legislation Congress can override veto with 2/3 majority in both houses
Chief Executive	<ul style="list-style-type: none"> Enforces laws, treaties, and court decisions Appoints officials to office Issues executive orders (which have the force of laws) to carry out laws 	<ul style="list-style-type: none"> Congress passes laws and has “power of the purse” Senate can reject appointments
Commander in Chief	<ul style="list-style-type: none"> Head of the armed forces 	<ul style="list-style-type: none"> Congress appropriates funds for the military Congress declares war War Powers Act of 1973 Budget Impoundment Act (1974)
Chief Diplomat	<ul style="list-style-type: none"> Sets overall foreign policy Appoints ambassadors Negotiates both treaties and executive agreements Gives diplomatic recognition to foreign governments 	<ul style="list-style-type: none"> Congress appropriates funds for foreign affairs Senate can reject ambassadors and treaties
Chief of State	<ul style="list-style-type: none"> The ceremonial head of our nation (e.g., tosses out the first ball of the baseball season, visits the areas struck by natural disaster) 	
Chief Jurist	<ul style="list-style-type: none"> Appoints federal judges Issues pardons (e.g., Ford pardoned Nixon for Watergate) and amnesty 	<ul style="list-style-type: none"> Senate can reject judicial appointments Senators can place “holds” on appointments Senators can filibuster nominations

INFORMAL POWERS AND CHECKS ON THE PRESIDENT

It should be added that certain powers exercised today by the president are also based upon tradition. These powers are not found in the constitution but are routinely practiced without any reservations. They include:

- Executive Orders – These domestic decrees carry the force of law but do not require Congressional passage or approval. The president can change and affect policy details through directives like these. Recent presidents for instance have changed details on various education and health care laws without any assistance from the other branches.

- Executive Agreements – These foreign policy decrees carry the force of treaties but do not require the Senate’s approval. The president can change and affect foreign policy without having to bother with the Senate. Recent presidents for instance have made numerous overtures in the Middle East without involving the other branches.
- Executive Privilege – This privilege allows the president to seek candid and confidential advice without having to disclose details to the general public. Despite promises of transparency all presidents utilize executive privilege to keep many matters of importance outside the purview of the media. The Courts have checked the Executive Privilege of the President. Examples like US v. Nixon (1974) demonstrate how the courts can limit the president, in this case a limit on executive privilege.
- Signing Statements – This informal power informs Congress and the public of the president’s interpretation of laws passed by Congress and signed by the president. Invariably it involves an enforcement agenda that may differ from the original statutory intention.
- Bully Pulpit: a platform to communicate (social media, State of the Union Address) with the American people and promote his agenda through the media coverage of presidential events.

Collectively these informal powers have dramatically increased the influence and authority of the president. Few seem to notice or care. The usurpation of power by modern presidents seem to only invite our chief executive to do it more. For example, presidents have increasingly played a more dramatic role in the legislative process through signing statements. A signing statement is when a bill is signed into law but interpreted by the president differently than originally intended by Congress. In this way the president controls the legislative process. These signing statements often go unchecked. Signing statements are another example of an informal power.

The Non- Constitutional Roles of the President (INFORMAL)

Roles	Power(s)	Check(s)
Chief of Party	<ul style="list-style-type: none"> • Selects the party’s chairman of the national committee • Political patronage 	
Chief Economist	<ul style="list-style-type: none"> • Proposes budget • Responsible for overall health of economy 	<ul style="list-style-type: none"> • Congress must approve budget

IMPEACHMENT: CHECKS ON THE POWER OF PRESIDENT

