

THE PRESIDENT AND VICE PRESIDENT

94. Is the U.S. President comparable to a reigning monarch, a prime minister, or premier? Is the President technically a "Chief of State"?

The American President has been compared to an elective monarch, but there are few kings or queens today who exercise the same degree of authority as does the President of the United States. The President simultaneously holds the titles that are often split among two or more incumbents in monarchies and parliamentary democracies.

The President is traditionally accorded the unofficial designation "Chief of State," a position which most closely parallels that of a king or queen in a monarchy. As such the President is often recognized as the symbolic embodiment of the United States and its citizens.

The President also performs many of the functions of a prime minister or premier in a parliamentary democracy. As Chief Executive, an office held under the Constitution, the President presides over the Cabinet and has responsibility for the management of the executive branch. The Constitution also vests the President with the power to make treaties, and to appoint ambassadors, U.S. officers, and judges of Federal courts, with the advice and consent of the Senate. The President also holds the position of Commander in Chief of the Armed Forces.

Unlike a prime minister, the President is not a member of the legislature, nor is tenure in office dependent on the approval of a majority of the legislators. Elected indirectly by the citizens through the electoral college, the President serves a definite term and can only be removed by the process of impeachment. Presidential tenure is limited to no more than two 4-year terms (or 10 years under special circumstances), which distinguishes the presidency from hereditary monarchs who reign for life.

As a political leader, the President directs the operations of the respective party's national organization and serves as its leader.

95. How is the President addressed?

Simply as "Mr. President." A letter sent to the Chief Executive is addressed "The President, The White House." One of the earliest congressional debates dealt with the title of the Chief Executive. A Senate committee recommended that the President be addressed, "His Highness, the President of the United States of America, and Protector of the rights of the same." In the House, a debate on the subject was climaxed by James Madison's recognition that the Constitution explicitly prescribed the Chief Magistrate's title as "President of the United States of America." When George Washington made his first inaugural address, the House made formal reply, addressing him simply as "The President of the United States." When the Senate's turn came to make a similar formal reply, it reluctantly bowed to the precedent, but not without adopting a resolution declaring "that it would be proper to annex a respective title to the office" of President.

96. What are the constitutional powers of the President?

Article II of the Constitution vests the "executive power" in the President. There is dispute among scholars, however, as to whether the executive power consists solely of the authorities enumerated for the President or whether it also includes powers that are implied in Article II. Most authorities lean toward the latter interpretation.

The actual powers expressly granted the President are few in number. The President is Commander in Chief of the Army, Navy, Air Force, and of the State Militias (now called the National Guard) when called into the service of the United States. The President may require the written opinion of military executive officers and is empowered to grant reprieves and pardons except in the case of impeachment. The President has power, by and with the advice and consent of the Senate, to make treaties, provided that two-thirds of the Senate present concur. The President also nominates and appoints, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, Justices of the Supreme Court and Federal judges, and other Federal officers whose appointments are established by law. The President has the power to fill temporarily all vacancies that occur during the recess of the Senate. The Constitution also directs the President periodically to inform Congress on the State of the Union and to recommend legislation that is considered necessary and expedient. The President may, on extraordinary occasions, convene both Houses of Congress, or either of them, and in case the two Houses disagree as to the times of adjournment, may adjourn them. The President also receives ambassadors and other public ministers, must take care that the laws are faithfully executed, and commissions all officers of the United States. The President may veto acts of Congress. A two-thirds vote in the House and in the Senate is required to override a presidential veto.

In addition to these express powers, the Chief Executive derives certain implied authority from the Constitution. This implied authority, like the express powers, has been in the past and remains today a subject of dispute and debate. For example, although the Constitution does not grant to the President express power to remove administrators from their offices, as the chief executive, the President holds power over executive branch officers, unless such removal power is limited by public law. The President, however, does not have such implied authority over officers in independent establishments. When President Franklin D. Roosevelt removed a member of the Federal Trade Commission, an independent regulatory agency, and not part of the executive branch, the Supreme Court, in 1935, ruled the removal invalid. More recently, in 1988, the Supreme Court upheld the constitutionality of the Independent Counsel Law. These independent counsels, who investigate and prosecute alleged criminal conduct of high-ranking officials, can be removed only by the Attorney General (not by the President) and then only for "good cause, physical disability, mental incapacity, or other impairing conditions."

Another implied constitutional power is derived from the President's authority as Commander in Chief. Though the Congress has

the explicit power to declare war, the President not only has the authority to protect the Nation from sudden attack, but also has used this power to initiate military activities abroad without a formal declaration of war. American Presidents have authorized military force abroad more than 200 times, but only on five occasions has Congress declared war: The War of 1812, the Mexican War, the Spanish-American War, and the two World Wars. In recent years, most notably through the War Powers Resolution of 1973, Congress has sought to more clearly define the conditions under which Presidents could authorize unilateral military action abroad.

97. It is constitutionally mandated that the President is Commander in Chief of the Army and the Navy. What about the other military services?

Organizationally, the U.S. Marine Corps is a part of the U.S. Navy, and the military service that is now the U.S. Air Force was once part of the U.S. Army. These four military services are a part of the Department of Defense, an executive branch department. The Congress, moreover, has provided that subject to the direction of the President and applicable laws, the Secretary of Defense has authority, direction and control over the Department of Defense and, thus, over the Armed Forces. During time of war or as directed by the President, the commissioned corps of the Public Health Service may be declared to be a military service by Executive order. Likewise, the Coast Guard, usually a part of the U.S. Department of Transportation, operates as part of the U.S. Navy in time of war or when directed by the President.

98. What is a Presidential veto?

There are two types of vetoes available to the President. One, the regular veto, is a "qualified negative veto," which is limited by the ability of Congress to muster the necessary two-thirds vote of each House for constitutional override. The other type of veto is not explicitly designated in the U.S. Constitution but is traditionally called a "pocket veto." This veto is actually an "absolute veto" that cannot be overridden; it becomes effective when the President fails to sign a bill after Congress has adjourned and is unable to override the veto.

The President's veto authority is one of the significant tools in legislative dealings with Congress. It is not only effective in directly preventing the passage of legislation undesirable to the President, but also as a threat, thereby bringing about changes in the content of legislation long before the bill is ever presented to the President.

In the last few years, the idea of a line-item veto has been explored in national debates and in the press. Many State Governors are permitted to veto portions of bills sent to them for approval by the State legislatures; they sign into law the remaining, unchallenged portions of the bills. Opponents of a line-item veto concept, however, have argued that because of the separation of powers doctrine provided by the Constitution, such a veto power would dilute the powers of the legislative branch. In order for a line-item veto to

become law, the Constitution would have to be amended or the courts would have to expand the current interpretations of presidential veto powers.

99. Have many bills been vetoed by Presidents?

Up to 1993, U.S. Presidents have vetoed 2,513 bills presented to them by Congress. Of that total number, 1,448 were regular vetoes, and 1,065 were pocket vetoes. This may appear to be a large number of vetoes, but it actually represents less than 3 percent of the over 93,000 bills presented to U.S. Presidents since George Washington. Congress has overridden or overturned only 4 percent of all Presidential vetoes.

Vetoes by Presidents

[Through January 1993]

President	Regular vetoes	Pocket vetoes	Total vetoes	Vetoes overridden
George Washington	2		2	
John Adams				
Thomas Jefferson				
James Madison	5	2	7	
James Monroe	1		1	
John Quincy Adams				
Andrew Jackson	5	7	12	
Martin Van Buren		1	1	
William Henry Harrison				
John Tyler	6	4	10	1
James K. Polk	2	1	3	
Zachary Taylor				
Millard Fillmore				
Franklin Pierce	9		9	5
James Buchanan	4	3	7	
Abraham Lincoln	2	5	7	
Andrew Johnson	21	8	29	15
Ulysses S. Grant	45	48	93	4
Rutherford B. Hayes	12	1	13	1
James A. Garfield				
Chester A. Arthur	4	8	12	1
Grover Cleveland (1st term)	304	110	414	2
Benjamin Harrison	19	25	44	1
Grover Cleveland (2d term)	42	128	170	5
William McKinley	6	36	42	
Theodore Roosevelt	42	40	82	1
William H. Taft	30	9	39	1
Woodrow Wilson	33	11	44	6
Warren G. Harding	5	1	6	
Calvin Coolidge	20	30	50	4
Herbert C. Hoover	21	16	37	3
Franklin Delano Roosevelt	372	263	635	9
Harry S. Truman	180	70	250	12
Dwight D. Eisenhower	73	108	181	2
John F. Kennedy	12	9	21	
Lyndon B. Johnson	16	14	30	
Richard M. Nixon	26	17	43	7
Gerald R. Ford	48	18	66	12
James E. (Jimmy) Carter	13	18	31	2
Ronald W. Reagan	39	39	78	9

Vetoes by Presidents—Continued

[Through January 1993]

President	Regular vetoes	Pocket vetoes	Total vetoes	Vetoes overridden
George Bush	29	115	44	1
Totals.....	1,448	1,065	2,513	104

A¹ President Bush asserted that two bills were not enacted into law under the pocket veto provisions of the Constitution because the Congress was in recess. The Congress, however, maintained that these were not vetoes because they required action within 10 days of receipt by the President, and therefore became law without his signature. A third bill was asserted by President Bush to be pocket-vetted during a congressional recess, but he returned a veto message to the originating House, and it was treated as a regular veto.

100. Are acts often passed over the President's veto?

This occurs very rarely, because pocket vetoes cannot be overridden and regular vetoes require a two-thirds vote in each House of Congress. As a consequence, regular vetoes have been overridden by Congress only 7.2 percent of the time. Presidents may also be anxious about a poor public image resulting from having a veto overridden by Congress and, depending on the circumstances, may be hesitant to use it unless reasonably assured of being sustained.

The U.S. President with the highest percentage of veto overrides was Andrew Johnson (71.4 percent), followed by Presidents Pierce (55.5 percent), Nixon (26.9 percent), Ford (25.0 percent), Arthur (25.0 percent), and Reagan (22.9 percent).

101. What important court cases relate to the pocket veto?

In practice, Presidents have found the pocket veto to be a useful tool and have employed it frequently (42.5 percent of all vetoes), both because Congress has adjourned and because it precludes a potential override by Congress. Congress, on the other hand, objects to unconstitutional use (in its view) of the pocket veto because, as an absolute veto, it diminishes the capacity of Congress to function as a coequal branch of Government in legislative matters.

Attempts in Federal courts to determine the limits of the pocket veto have satisfied neither the executive nor the legislative branch of Government. Federal court opinions have sustained the President's use of the pocket veto at the end of a complete congressional cycle. What remains in contention, despite various court rulings and agreements with two administrations, is whether to pocket veto a bill between the first and second sessions of a Congress or during intrasession adjournments of more than 3 days.

The Supreme Court has ruled in only two cases related to the pocket veto issue. The *Pocket Veto Case*, 279 U.S. 644 (1929), is probably the most famous of the rulings. In this case, the Supreme Court ruled that the President may pocket veto a measure not only after the final adjournment of a Congress, but also during the adjournment after the first session. According to the Court, the inter-session adjournment prevented the President (Coolidge) from returning the bill, and the measure did not become law.

The second Supreme Court opinion came in *Wright v. United States*, 302 U.S. 583 (1938). The Supreme Court held in *Wright* that the bill in question had been properly returned to the Senate by

the President and, in the absence of a congressional vote to override, it could not become law. In contrast to the views it had expressed in the *Pocket Veto Case*, the *Wright* opinion approved the President's return of a vetoed bill to an agent (official of the Senate) of the originating House, even though that body was not in session.

There have also been lower court decisions which relate to the application of the pocket veto. The most prominent lower court decision is *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974). In this case, the Court held that since the pocket veto is an exception to Congress' power to override a Presidential veto, the preferred construction of the constitutional clause is that the return of a bill is not prevented by an adjournment of Congress.

102. What is the date for the commencement of a President's term and how is it set?

When the Constitution was ratified, the Congress was given power to determine the date for beginning the operations of the new administration. Congress set the date of March 4, 1789. Although George Washington did not take the oath of office until April 30, 1789, his term began March 4. Later, the 20th or so-called "lame-duck" amendment, ratified in 1933, established January 20 as the date on which Presidents would be inaugurated. In 1937, President Franklin D. Roosevelt became the first President to take the oath on January 20. When inauguration day falls on a Sunday, it is traditional practice for the President to take the oath privately on January 20 and to hold the public ceremony the following day.

103. What qualifications are prescribed for the President?

According to the Constitution, that person must be a natural-born citizen, at least 35 years old, and a resident of the United States for at least 14 years. The question as to whether a child born abroad of an American parent is "a natural-born citizen," in the sense of this clause, has been frequently debated. While several constitutional scholars have argued that such a person should qualify as a natural-born citizen, there is no definitive answer.

104. Did any presidential candidate win the popular vote but lose election in the electoral college?

Yes. In 1876 and 1888. In 1876, Rutherford B. Hayes, a Republican, received 4,033,950 popular votes and 185 electoral college votes, as opposed to Samuel J. Tilden, a Democrat, who won 4,284,757 votes and only 184 electoral college votes. This election was further complicated by disputes over elections in Florida, Oregon, South Carolina, and Louisiana. A House commission was put in place to adjudicate the undecided and contested votes of a deadlocked electoral college. On the basis of the rulings by the House commission, the final electoral votes were 185 votes for Hayes and 184 for Tilden. The final tallies were not decided until March 2, 1877, two days before the inauguration. Neither candidate knew who would be President as each boarded a train for Washington the week before the inauguration.

In 1888, Benjamin Harrison, a Republican, was elected President with 233 electoral votes to Grover Cleveland's 168 votes, despite Cleveland's popular election victory of 5,540,050 votes over Harrison's 5,444,337.

105. How often has the election of the President passed to the House of Representatives?

In addition to the occurrence in 1876, twice. In 1800 Thomas Jefferson and Aaron Burr were tied with 73 electoral votes each. The House voted in favor of Jefferson.

In 1824, Andrew Jackson had won 153,544 popular votes and 99 electoral votes, but he lacked sufficient numbers to gain a clear majority over John Quincy Adams, who had won 108,740 popular votes and 84 electoral votes, and two third party candidates: William H. Crawford and Henry Clay, who had 78 electoral votes between them. After the House was given the matter to resolve, John Quincy Adams was elected President.

106. What is the wording of the oath taken by the President? Who administers it?

The form of oath for the President is prescribed by the Constitution as follows: *I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.*

Generally, the Chief Justice administers the oath, but this is merely custom. Any officer authorized to administer oaths could do it.

107. What provision is made by the Constitution or by law for execution of the duties of President in the event of death, resignation, disability, or removal from office?

The 25th amendment states:

(1) *in case of the removal of the President from office or of his death or resignation, the Vice President becomes President;*

(2) *when there is a vacancy in the office of Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress;*

(3) *whenever the President transmits to the President pro tempore of the Senate and Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President;*

(4) *whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.*

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive departments or such other body as Congress may by law provide, transmit within 4 days to the President pro tempore of the Senate and Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within 48 hours for that purpose, if not already in session. If the Congress, within 21 days after receipt of the latter written declaration, or, if Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall assume the powers and duties of his office.

108. Who would succeed to the Presidency if the office becomes vacant and there is no Vice President?

Under the Presidential Succession Act of 1947, it would be the Speaker of the House of Representatives, after resigning as Speaker and as a Representative. In the event the Speaker should not qualify, the President pro tempore of the Senate would discharge the powers and duties of the office of President. Succession would then proceed in the following order, which has been modified over the years as new departments have been added: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, and Secretary of Veterans Affairs.

109. Has a President or Vice President ever resigned?

Two Vice Presidents have resigned. John C. Calhoun resigned on December 28, 1832, 3 months before the expiration of his term, to become Senator from South Carolina. Spiro T. Agnew resigned October 10, 1973, subsequent to pleading *nolo contendere* (no contest) to a charge of Federal income tax evasion. Following Mr. Agnew's resignation, President Richard Nixon nominated Gerald R. Ford, the Minority Leader of the House, to fill the Vice Presidential vacancy. The Senate and House, in accordance with the provisions of the 25th amendment, under which Mr. Ford had been nominated, approved the nomination. He was sworn into office on December 6, 1973. Less than a year later, on August 9, 1974, Gerald Ford became President following Richard Nixon's resignation. Shortly thereafter, Mr. Ford nominated Nelson A. Rockefeller to be Vice President; he was confirmed and sworn into office on December 19, 1974. Thus, in about 1 year, two occasions arose for using the provisions of the 25th amendment to fill a vacancy in the Vice Presidency.

110. How many Vice Presidents have succeeded to the Presidency by reason of a vacancy in that office?

Nine: John Tyler, Millard Fillmore, Andrew Johnson, Chester A. Arthur, Theodore Roosevelt, Calvin Coolidge, Harry S. Truman, Lyndon B. Johnson, and Gerald R. Ford.

111. Of these successions, how many were caused by the assassination of Presidents?

Four: Abraham Lincoln, James A. Garfield, William McKinley, and John F. Kennedy were killed by assassins. Andrew Johnson served as President all but 1 month of Lincoln's second term; Theodore Roosevelt served 3½ years of McKinley's second term; Chester A. Arthur served 3½ years of Garfield's term; and Lyndon B. Johnson served about 1¼ years of Kennedy's term.

112. What would happen if the President-elect were to die before taking office?

In the event that the President-elect dies or resigns after the electoral vote is cast, then the Vice President-elect would be sworn in as President, as provided for in the 20th amendment.

Incidentally, in the event a Presidential or Vice Presidential candidate of either party dies or resigns prior to the meeting of the electoral college on the second Wednesday in December, the rules of the major parties provide that their national committees would meet and fill the vacancy or vacancies.

113. How are Vice Presidents elected?

The 12th amendment provides that the electors appointed by each State will name on distinct ballots the persons to be voted for as Vice President. A list of the electoral votes is then signed, certified, and transmitted "sealed" to the President of the U.S. Senate. These certificates are opened by the President of the Senate, in the presence of the Senate and House of Representatives, and the votes are then counted. The person having a majority of the Vice Presidential votes of the electors becomes Vice President. If no person has a majority, the Senate then chooses the Vice President from the two candidates receiving the largest number of votes. Two-thirds of the Senators must be present during the voting, with a majority necessary for election.

114. What are the qualifications for Vice President?

No person constitutionally ineligible to be President is eligible to be Vice President. Article II, Section 4 of the Constitution provides that a President must be a natural-born citizen, at least 35 years old, and have been a resident of the United States for at least 14 years.

The Vice President also takes the following oath: *I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.*

115. Does a President have any control over the sessions of Congress?

Under the Constitution the President may convene Congress, or either House, "on extraordinary occasions." It is usual for the President in calling an extra session to indicate the exact matter which needs the attention of Congress. However, once convened, a Congress cannot be limited in the subject matter which it will consider.

The President is also empowered by the Constitution to adjourn Congress "at such time as he may think proper" when the House and Senate disagree with respect to the time for adjournment. No President has exercised this power. Many constitutional experts believe the provision applies only in the case of extraordinary sessions.

116. Has it always been customary for Presidents to appear before joint sessions of the House and Senate to deliver their annual State of the Union message?

Presidents George Washington and John Adams appeared before the two Houses in joint session to read their messages. Thomas Jefferson discontinued the practice in 1801, transmitting his message to the Capitol to be read by clerks in both Chambers. Jefferson's procedure was followed for a full century. Woodrow Wilson was the first President since Jefferson to address Congress in person, delivering a tariff message on April 8, 1913. The "Annual Message" was delivered in person by Wilson on December 2, 1913. With the exception of President Herbert Hoover, the practice has been followed generally by subsequent Presidents.

117. What is the "President's Cabinet"?

The President's Cabinet has been commonly regarded as an institution whose existence relied more upon custom than in law. In fact, the First Congress created the departments of State, Treasury, and War, and also established the Office of the Attorney General. Once these offices had been established, President Washington made appropriate appointments and subsequently found it useful to meet with the chiefs of the several executive departments. Furthermore, Article II, section 2, of the Constitution, provides that the President, *may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices.*

The President's Cabinet differs from the Cabinet in the British Parliamentary system. In the United States, the Executive power is constitutionally vested in the President, so that the Cabinet members are responsible to him, whereas in the British system, the Cabinet as a whole, rather than only the Prime Minister who heads it, is considered the Executive, and the Cabinet is collectively responsible to the Parliament for its performance. In the United States, the Cabinet Secretaries serve only in the executive branch, whereas in Britain the Cabinet Ministers are typically drawn from among the majority party's members in Parliament.

118. What is the membership of the Cabinet?

Traditionally, membership of the Cabinet has consisted of the heads of the executive departments. There were 14 department heads in 1993, the newest being the Secretary of Veterans Affairs. It should be remembered that a substantial part of the executive branch is not represented on the Cabinet.

From the earliest days, Presidents have accorded to others the privilege of attending and participating in Cabinet meetings. In recent years, the Ambassador to the United Nations, the Director of the Office of Management and Budget, and the U.S. Trade Representatives, among others, have been accorded Cabinet rank.