I. The Executive Branch (The Presidency)

A. Major Themes;

- what is President’s power vs. Congress
- what is nature of presidential power?
  
  - Constitution? (Article II)
  - Given by Congress?
  - Public opinion?
  - Party support?

- is President too strong?

B. Power: In Constitution, a 'weak' branch

1. Original formal powers of President quite limited
• particularly in **domestic politics**

• executive powers = execute laws, administer

• unlike parliamentary system, no *power to legislate*

• access to legislative process indirect, distant

  **Veto power:** a negative power

2. administer government operations

  **Cabinet**
  - power over agencies/bureaucracy?
  - appoints department heads
    - civil service = indirect influence
    - only appoints about 2000 positions

  Power to hire (appointee) and fire (remove)

  Congress granted presidents control over 'removal'

  **Executive Orders**

  Orders regarding the operation of Federal agencies
• Restructure executive branch (FDR)
• Desegregate military (Ike, JFK)
• "Dont ask, don't tell" (Clinton)
• No US aid to IOs that 'promote' abortion (GWB)
• Public land status

**Proclimations**

• Emancipation Proclamation (Lincoln)
• Blocade Cuba (McKinley)
• National monuments

Congress can override EOs with legislation

3. Influence on judiciary

  ▪ indirect
  ▪ Senate must approve nominee
  ▪ early judges faced impeachment
  ▪ no control of justices once appointed

**Executive Judicial Powers**

  ▪ Grant pardons
  ▪ clemency
  ▪ Amnesty
4. Impeachable by Congress

- A. Johnson 1867
- Nixon 1974
- Clinton 1997

"Treason, Bribery, or other High Crimes and Misdemeanors"

Incompetent? Unpopular?

5. Weak Constitutional Powers,

Nonetheless:

- US now a Presidential dominated system
- President has “extra-Constitutional” powers from EOP
- powers delegated by Congress

C. Pres Power: Foreign Politics
1. Limits on presidential power in international relations less clear

2. **Commander-Chief**

   power over day-to-day operations of military

   NOT power to initiate conflict

   Executive orders, proclamations

   covert operations

   troop deployments...

3. **Treaty power**

   enter, negotiate treaties w/ other govts.

   **Senate** advise and consent (2/3 vote)

   Presidents may decide when to break treaty

   **Fast track authority**

   **Executive agreements** made w/ other heads of state
don't require Senate approval

D. Founder's Intentions re: power of Prez.

1. Distrust of executives

2. legislature close to people (a good thing)

3. These sentiments expressed in design of War Powers:

Madison: executive only has power to repel attacks

Constitution calculated to guard against an executive hurrying into war

Madison to Jefferson:

"The Constitution supposes what the history of all governments demonstrates, that the executive is the branch of power most interested in war, and most prone to it. It has, accordingly, with studied care, vested the question of war in the legislature."
Calculated wording in Const:

• “Congress shall declare war...”

• President issues admin orders of operation after Congress gives command to launch war

Reading this week:

- Wayne Chapter 11
- Reforming the Republic Chpt 6
- War Powers Act (on-line)

II. The Institutional Presidency

A. Modern power function of legislative delegation

1. Cold War
2. Economic management
3. Modern Media (TV)...
4. Executive power grab?

B. Modern Prez. power more than Cabinet

1. Cabinet = agency/dept. heads
Interior, State, Treasury, Agriculture, Labor, Defense, Atty. General, Commerce, etc.

2. Cabinet posts have limited status

some never/rarely meet w/ Cabinet
some in Cabinet have ltd/no access to Prez.

Cabinet "meeting" = photo op.

3. EOP "parallel" to cabinet
   Executive office of President

4. Consider:

how do these new institutional resources give Prez more power?

how does it blur the separation of powers btwn Prez and Congress?
do they make the Prez too powerful?

http://www.washingtonpost.com/wp-dyn/content/custom/2005/06/06/CU2005060601310.html

C. Institution of Presidency
   = Executive Office of Prez. (EOP)

1,800+ non-cabinet appointments by Prez.

posts not nesc. need Congressional approval
Key Elements of EOP

1. **White House Office**  (WHO, in West Wing)
   Est. by Congress in 1939

400-500 employees

   a. **Chief of Staff**  (Josh Bolten, was A. Card)

      **Act of Congress, 1946**  aka
      "Assistant to the President"

      control access to Prez, schedule
      recommendations on decisions
      take the blame
      drift types of management style

      hands on presidents (Clinton)
      hand off presidents (R Reagan)

Deputy Chiefs of Staff

   Karl Rove, for Policy
   Joel Kaplan
   Joe Hagin, for Operations

   b. **Chief White House Counsel**

      **Act of Congress, 1943**
(Fred Fielding...was Harriet Miers, was Alberto Gonzalez)

- legal advisor on public business
- contact (conflict) with Justice Dept.
- ethical issues
- veto issues
- constitutional conflicts w/ Congress
- lawsuits against the President
- signing statements
- pardons
- list of Federal Attys to fire?

Torture OK?  
Should staff testify?  
Share info w/ Congress?

Deputy Counsels

c. **Advisor for Policy and Strategy** (was Karl Rove)

Other special assistants to Prez.  
  Domestic policy advisors  
  Strategic advisors  
  Legislative affairs  
  Intergovernmental affairs

d. **Communications Dir.** (Kevin Sullivan)

Press secretaries (Tony Snow, Ari Fleisher)
work media, events
speech writing,
    State of the Union,
    inauguration speech etc.

Clinton appointed his campaign mgr.

e. Several Deputy Assistants for:

    Communication and Global Outreach
    Global Democracy Strategy
    Combating Terrorism
    Economic Affairs

2. National Security Council (NSC)
est. in 1947 Natl Security Act, along w/ CIA & DOD

60 full-time staff, plus military folks on asst.

    a. National Security Advisor (Stephen Hadley)
        (was C. Rice)

        loyal to Prez, not civil service or Congress

    b. Council of advisors from military

    c. classified information access

    d. tool to conduct covert military operations

Orig. est. as Bureau of the Budget, 1921

largest part of EOP; **520 employees**

largest part of EOP

"advise Prez. on budgeting and accounting"
clearinghouse of spending and rev. info from exec agencies
draft annual budgets to submit to Congress
regulatory review (EO 12291)
Cost benefit analysis of new regulations

4. Council of Economic Advisors

5. **Office of US Trade Representative**

Fast growing part of EOP, **164 employees**

fast track negotiations?

6. Less critical parts of EOP

a. Vice President's Office
b. Council of Environmental Quality advisors
c. Drug Czar (125 staff)
d. Office of Admin (200 staff)
II. Congress vs. President

Two Presidencies??

A. Domestic Policy

1. Tough sell for Prez in Congress, and w/ public

   1946-1966, 40% of Prez domestic programs approved by Congress

   includes period w/ 'Unified' party control of govt.

   since 1968 even harder for Prez...divided party control

2. How much Potential for Abuse of power?

   Nixon? (got caught)

   Charges: Watergage break in / cover-up
   Wiretaps
   Ellsberg office break in
   Illeagal campaign funds
   Use exec. agencies to target 'enemies'
   Secret bombing of Cambodia 1969 - 70

B. Foreign Policy:
History of Abuse of Presidential Power?

1. Easier sell for Prez in Congress and /w public

1946-1966, 73% of defense measures approved
71% of treaty and aid requests

2. Does President really need Congress to act?

1946-1990 135 instances of troop in hostile situations
every Prez. 1946-1997, but no 'wars'

7000 'executive agreements' re: arms sales,
troops, assistance

thousands of 'executive orders'

1990 – 2005:

<table>
<thead>
<tr>
<th>Country</th>
<th>Troops</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iraq II</td>
<td>170,000</td>
<td>2003</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>30,000+</td>
<td>2001</td>
</tr>
<tr>
<td>Kosovo</td>
<td>6,000</td>
<td>1999</td>
</tr>
<tr>
<td>Kosovo</td>
<td>6,000</td>
<td>1999</td>
</tr>
<tr>
<td>Central America</td>
<td>800</td>
<td>1998</td>
</tr>
<tr>
<td>Columbia</td>
<td>130</td>
<td>1998</td>
</tr>
<tr>
<td>Bosnia</td>
<td>12,000</td>
<td>1995</td>
</tr>
<tr>
<td>Somalia</td>
<td>4,000</td>
<td>1995</td>
</tr>
<tr>
<td>Somalia</td>
<td>26,000</td>
<td>1994</td>
</tr>
<tr>
<td>Haiti</td>
<td>21,000</td>
<td>1994</td>
</tr>
<tr>
<td>Country</td>
<td>Troops</td>
<td>Year</td>
</tr>
<tr>
<td>---------------</td>
<td>--------</td>
<td>------</td>
</tr>
<tr>
<td>Rwanda</td>
<td>2,600</td>
<td>1994</td>
</tr>
<tr>
<td>Kuwait / Iraq</td>
<td>550,000</td>
<td>1991</td>
</tr>
</tbody>
</table>

- Every President deployed troops since 1946
- No 'wars' declared

  ex: FDR and 'lend lease' before WWII
  ex: Bush Sr. and Iraq War, Somolia, Panama
  ex: Clinton and Haiti, Bosnia, Kosovo
  ex: **Funding Iraq War today...**

3. **How?**

- Executive agreements & orders
- Assert "presidential perogative"
- Commander-in-Chief powers over military
- Legislative delegation of powers to Prez.
- Claim authorization from Intl. organization

- **Rally effect** (public opinion)

  can Congress really challenge Prez once troops sent?

4. **Iraq**: Broad Congressional Authorization
• Where does President's authority to invade Iraq come from?

• Authorization for Use of Military Force Against Iraq Resolution of October, 2002

• Authorization motivated by President's claims that:

  1) Saddam possessed 'weapons of mass destruction'
  2) Saddam was assisted the 9/11 attackers
  3) Saddam had bad record on human rights

Members of Congress had access to classified intelligence reports (NIE)

  296 - 133 in House
  77 - 23 in Senate

  (no declaration of War)

Resolution suggests:

  o President must pursue diplomacy

  o President must work w/ UN Security Council
October 3, 2002: Ron Paul (R-TX) submits bill to declare we are at war with Iraq.

Rejected in committee

Constitutional question:

Did Congress had over it's power to declare war?

Court:

We can't get involved in this.

President made broader claims of authority to invade Iraq

Without specific authorization granted by Congress

1st gulf war, Bush claimed UN mandate

Current Iraq War authorized by a series of actions

- United Nations Security Council Resolution 660
- United Nations Security Council Resolution 678
- authorizes the use of all necessary means to enforce 660...
1990 - Authorization for Use of Military Force Against Iraq Resolution Public Law 102-1)

1998 - Iraq Liberation Act (Public Law 105-338)

"it should be the policy of the US to support efforts to remove from power the current Iraqi regime"

Sept. 14, 2001 -

AUTHORIZING USE OF UNITED STATES ARMED FORCES AGAINST THOSE RESPONSIBLE FOR RECENT ATTACKS AGAINST THE UNITED STATES (HJR 64)

(a) In General.--That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any further acts of international terrorism against the United States by such nations, organizations or persons.

Oct 10, 2001 -

Congressional Joint Resolution to Authorize Use of Force Against Iraq

SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.
(a) AUTHORIZATION -- The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to -

(1) defend the national security of the United States against the continuing threat posed by Iraq; and

(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

In Both Resolutions:

Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution

But: both resolutions:

Transferred:

• responsibility
• authority
• power of the Congress to the President:
  - so he can declare war when and if he wants to.
  - He did not indicated he wanted to go to war
  - Did not say we had to go to war
  - he would make the full decision
  - not the Congress
  - not the people through the Congress of this country
Madison to Jefferson:

"The Constitution supposes what the history of all governments demonstrates, that the executive is the branch of power most interested in war, and most prone to it. It has, accordingly, with studied care, vested the question of war in the legislature."

Calculated wording in Const:

- “Congress shall declare war...”

- President issues admin orders of operation after Congress gives command to launch war

Today, what role Congress?

- large majority of public now against the war (65%)
- 68% disapprove of Bush handling the war
- 58% say war was a mistake, most want withdrawl
- 50% want Bush to ask Congress to re-authorize war
- more people put priority of exit over "success"
- 2006 election a referendum on Iraq
Congress will give president what he wants on his terms

III. Asserting Executive Power Since 2001

(More than Just Delegation by Congress)

Assert "executive privilege"

Domestic Affairs:

1) Refuse to give GAO (Republican Congress) info on Cheney's drafting of energy regulations

2) Block access to presidential records/papers (despite Congress's law to open access)

3) Avoid Congress' Open Meeting Laws re: Social Security Commission

4) Opposed Congress granting Homeland Security Director statutory authority

        so wont have to testify before Congress (lost)

5) Expand Exec branch powers to detain suspected criminals
6) Allow Justice Dept. officials to listen to lawyer-client conversations

7) Take spending authority away from Congress

8) Secured Fast Track trade negotiation abilities

9) Information Awareness Office ran by John Poindexter (convicted of withholding info from Congress)

10) USA PATRIOT Act

   o intelligence gathering, ltd. control of judges...

   o eliminated checks of executive power est. in 1970s

   o checks because of misuse of surveillance powers by FBI, CIA, IRS

   revelation in 1974 that the FBI and foreign intelligence agencies had spied on over 10,000 U.S. citizens, including Martin Luther King.

   2007, revelations DoJ abused rules re: wire-taps

     Bush asserts right to by-pass law

**Foreign Policy:**

1) Limit intelligence briefings w/ Congress
'they'll get to know on a need to know basis'

2) Avoid setting nuclear arms policy via treaties
   so Congress need not ratify/amend

3) Rejected Amendments to Biological Weapons Convention

4) Ignore international laws

5) Resist congressional efforts to ltd. use of torture

6) Resist Court scrutiny of 'trials' of 'enemy combatants'

Strongest presidential powers ever?

Congressional Attempts to Limit Presidential War Powers

1. **War Powers Resolution**, 1973:
   w/ in 48 hrs of hostile situation MUST give notice to Congress
Congress must authorize action w/in 60 days with a declaration of war, or statute authorizing use of force

- Prez has 60 days to act
- Congress can set timeline for withdraw
- Congress can extend time-line

If no Congressional authoriz., troops come back (unless attacked)

  - all Presidents ignore Act (some do notify, but...)
  - Court ruled part of Act unconsitutional
    - (1983, 'legislative veto')

notify, then wait 60 days to declare or come home untested

2. Other Statutory Limits

Bolland Amendment  (1980s, no aid to Contras)

  - RR Admin ignored (violated)
  - offenders latter pardoned by Bush I

Restrictions on CIA/NSC/FBI

  - House Intelligence Committee  1970s
  - President share intelligence
- Regular briefings
- Require President issue 'findings' for cover ops.
- Limits on surveillance

- Some ltds removed via PATRIOT act

I. Interpretation of Presidential Power
   (institutional power)

A. Uses of Power + Assessment of Institution
   Hargrove and Nelson

1. President is **strong**, this is a **good** thing (Savior)

   Quasi-religious awe of President

   active, global problem solver

   FDR, JFK (RR?)

2. Prez is **too strong**, this is a **bad** thing (Satan)

   - President as a strong; evil force
   - will abuse powers given to institution

   LBJ, Nixon (RR?)
3. President is politically weak, this a good thing  (Seraph)

- Angels surrounding the throne of God,
- good in their weakness, let Congress govern
- Madison's model of exec. branch

mostly before 1932, Eisenhower

4. President is too weak, this a bad thing  (Samson)

- When he transgressed, his powers stripped away
- can't get Congress to do anything
- divided government blocks President's initiatives

Ford, Carter, Clinton post 1994 (?)

V. Presidential Character
JD Barber

Power of institution fixed (or steadily increasing)

Character of PERSON holding office varies

investigate PERSON who will be given powers
A. President's psychological profile function of

1. early life experiences which determine:

   o **ENERGY** invested into politics (active or passive)

   o "**TASTE**" for political battle (positive or negative)

B. Barber's types of personalities

1. Active, Positive

   Jefferson, FDR, Truman,

2. Active, Negative

   J. Adams, Wilson, (LBJ?), Nixon

   This is the proble

3. Passive, Positive

   Taft? (Madison?)
   Not many of these go into politics?

4. Passive, Negative

   Washington, Coolidge, IKE
<table>
<thead>
<tr>
<th>&quot;Taste for Politics&quot;</th>
<th>&quot;Energy&quot; ACTIVE</th>
<th>&quot;Energy&quot; PASSIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive</td>
<td>Active, Positive</td>
<td>Passive, Positive</td>
</tr>
<tr>
<td>Jefferson (?)</td>
<td>Clinton, LBJ</td>
<td>Madison (?)</td>
</tr>
<tr>
<td>Negative</td>
<td>Active, Negative</td>
<td>Passive, Negative</td>
</tr>
<tr>
<td>Adams</td>
<td>Nixon</td>
<td>Washington</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Coolidge</td>
</tr>
<tr>
<td></td>
<td></td>
<td>IKE</td>
</tr>
</tbody>
</table>

I. Electoral College:

- Why do we have it?
- Why do we still have it?
- How are “small states” interests preserved (what are they?)

What interests preserved?
What reform proposals?

A. What is it?

- **Indirect** election of President
- Election of a group to select a president
- There is no Electoral College campus.

- Each state allocated Electors = congressional delegation
  - 270 to win majority
  - Each candidate has slate of electors in every state
  - Electors “pledged” to a candidate
  - Electors cast their votes in December
  - Congress counts, certifies EC votes in January
  - if no majority, Congress selects President
    - each state delegation gets one vote

B. Mallaportionment of Electors

State’s get # of electors based on:

- 2 US Senators
- # of US House Seats
• example:  \( WA = 9 + 2 \)
  \[ AK = 1 + 2 \]

- 165,000 people in WY per elector
- 613,000 people in NY, TX, CA per elector

- nearly all electors awarded by "winner-takes-all" per state

<table>
<thead>
<tr>
<th>State</th>
<th>Population</th>
<th>EC votes*</th>
<th>Voters per EC elector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wyoming</td>
<td>495,304</td>
<td>3</td>
<td>165,101</td>
</tr>
<tr>
<td>Vermont</td>
<td>609,890</td>
<td>3</td>
<td>203,297</td>
</tr>
<tr>
<td>Alaska</td>
<td>628,933</td>
<td>3</td>
<td>209,644</td>
</tr>
<tr>
<td>North Dakota</td>
<td>643,756</td>
<td>3</td>
<td>214,585</td>
</tr>
<tr>
<td>South Dakota</td>
<td>756,874</td>
<td>3</td>
<td>252,291</td>
</tr>
<tr>
<td>Delaware</td>
<td>785,068</td>
<td>3</td>
<td>261,689</td>
</tr>
<tr>
<td>Montana</td>
<td>905,316</td>
<td>3</td>
<td>301,772</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,049,662</td>
<td>4</td>
<td>262,416</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,216,642</td>
<td>4</td>
<td>304,161</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,238,415</td>
<td>4</td>
<td>309,604</td>
</tr>
<tr>
<td>Maine</td>
<td>1,277,731</td>
<td>4</td>
<td>319,433</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,297,274</td>
<td>4</td>
<td>324,319</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,715,369</td>
<td>5</td>
<td>343,074</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,813,077</td>
<td>5</td>
<td>362,615</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1,823,821</td>
<td>5</td>
<td>364,764</td>
</tr>
<tr>
<td>Nevada</td>
<td>2,002,032</td>
<td>5</td>
<td>400,406</td>
</tr>
<tr>
<td>Utah</td>
<td>2,236,714</td>
<td>5</td>
<td>447,343</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,679,733</td>
<td>6</td>
<td>446,622</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,693,824</td>
<td>6</td>
<td>448,971</td>
</tr>
</tbody>
</table>
These 20 states have 28.7 million people
They get 84 electoral college votes
If apportioned by population = only 55

NY + NJ alone = 28 mil people 48 EC votes
California = 34 mil people 55 EC votes

Today, EC is a rural, Republican gerrymander:

"Winner-take-all" by state magnifies mallapportionment

2000 Election Bush 271 Gore 266 Protest 1
2004 Election Bush 286 Kerry 251

Bush vote 2000 in 20 small states = 53%
Gore vote 2000 in 20 small states = 41%

Bush won 61 of 84 these over-valued electors in 2000

if allocated by population, Bush wins 42 EC votes from these states, or 19 less in 2000

If allocated by POPULATION, Gore would have won solid EC victory in 2000
If by population, Kerry may have won by 1 vote in 2004 (while losing popular vote)

C. History (v. brief).

A product of odd constitutional compromise

Goal more than to protect small states

In 1789, no such thing as national campaigns:

- No candidates of national standing
- Not a national election
- No national channels of communication
- Impossible for a person to campaign nationally
- No party system = many potential candidates
- Ltd. participation in elections, varied across states

Not clear what role of executive would be

- An extension of Congress?
- A Prime Minister?

Founder's "Solution":

- Let state legislatures select presidential electors
• State legislators would know who candidates were
• State legislators can adopt any rule to pick electors
• Electors meet in state capitol to vote for President
• 2nd place candidate would be Vice President

**Early Issues:**

Not all elections “winner take all” back then

1789 Election:

• NY couldn’t agree, no votes cast
• CT split across 3 candidates
• DE split btwn 2 (Washington & John Jay)
• GA split
• NJ split
• PA split, SC, VA

1792 Election

• 2 states split their electors

1796 Election

• first “faithless” elector
• six states split
1800 an “accidental” tie: Jefferson & Burr (77 - 77)

- Electors only cast one vote, vice president was 2nd place
- Jefferson and Burr enemies
- Tie goes to the sitting Congress
- Federalists didn't want Jefferson
- Congress deadlocked (23 ballots)
- Burr kills A. Hamilton, (1804)

1804: Constitution amended to avoid ties as in 1800

now electors cast vote for President, and another vote for Vice President

D. Developments since 1800:

- Popular voting in elections uniform (1830s – 1960s)
- National political parties nominating candidates (1830s)
- Move toward “winner take all” allocation of electors.
• 4 times that popular vote winner differed than EC winner

1824, 1876, 1888, 2000 (almost in 2004)

Since Civil War, **11 of 34 elections no popular vote majority**

Several attempts to amend constitution to abolish EC

**after 1948 election:**

4 candidates; 3rd candidate had 39 EC votes

**Amendment proposed:**

Award electors proportionate to popular vote

64 Y, 27 N in US Senate; died in US House

**after 1968 election:**

3 candidates, no popular vote winner

3rd candidate had 46 EC votes

**Amendment proposed:**

Direct election of President
338 Y, 70 N in House,
51 Y in US Senate

E. How are “small states” interests preserved
(what are their “interests”?)

What interests are preserved today by Electoral College?
(in addition to the power they have in Senate?)

How does this affect the 2008 campaign?

Where will candidate go in general election?

• for primaries, they go to random small states
• states with early contests

In the general election:

Winner-take-all dynamic =
only go to competitive states

FL, OH, WI, MN, NM, PN, MI, NH
…maybe IA, CO, MI, OR, MO, AZ
What reform proposals?

• Proportional allocation of Electors w/in State:
  ▪ COLORADO 2004 - dumb idea.
  ▪ increases odds of no EC majority
  ▪ then what.....?

• Winner take all by Cong District
  ▪ Nebraska & Maine do this
  ▪ almost as dumb an idea

• Direct election

• National Compact