



Presidency

American National Government
Topic Eleven



Overview

- How are democratic executives structured? How does the presidency fit in?
- How are presidents selected?
- How has the presidency changed over American history?

I – How are democratic executives structured? Where does the presidency fit in?

The Presidency and Democracy

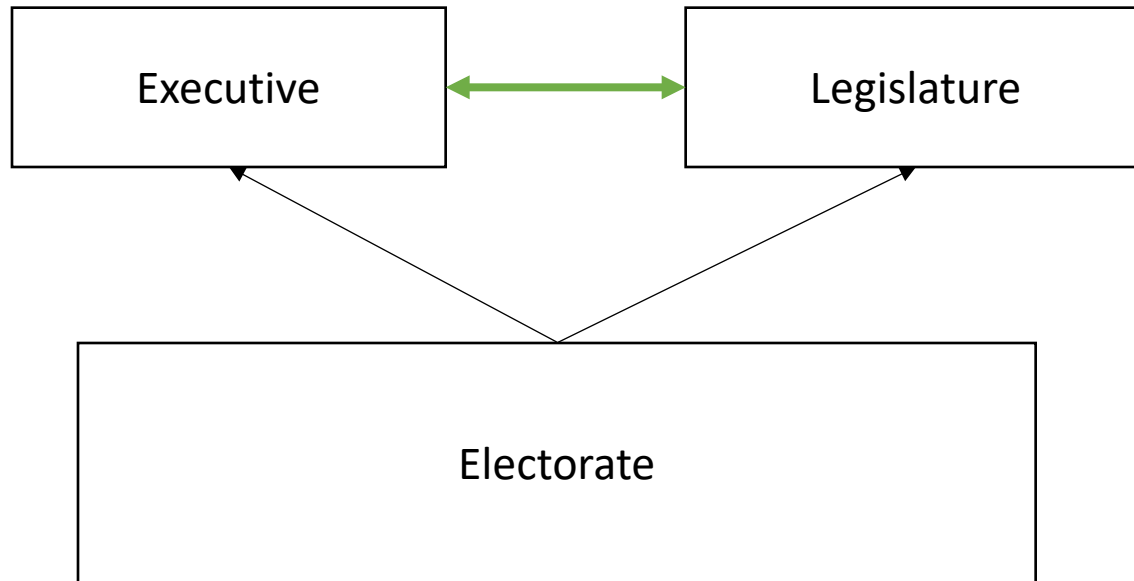
- Executive power, the power of the presidency, is the power to execute the laws
- But how are executives structured? In particular, what is the relationship between the executive and the legislature?
 - This relationship is key for how laws are executed, and indeed, for how law is made in the first place

The Presidency and Democracy

- Recall that at the Constitutional Convention, the framers considered several different options for the national executive
 - Single vs Plural
 - An indirectly elected executive, selected either by Congress or by state governors, or a directly elected executive by popular vote
 - Dependent on Congress or independent of Congress?
- Madison's Virginia plan called for a single executive elected by the legislature
- The New Jersey plan called for a plural executive elected by the legislature
- US ended up with an independently elected single executive
- They didn't know it, but the framers had considered the major options for executive structure found in different democracies today

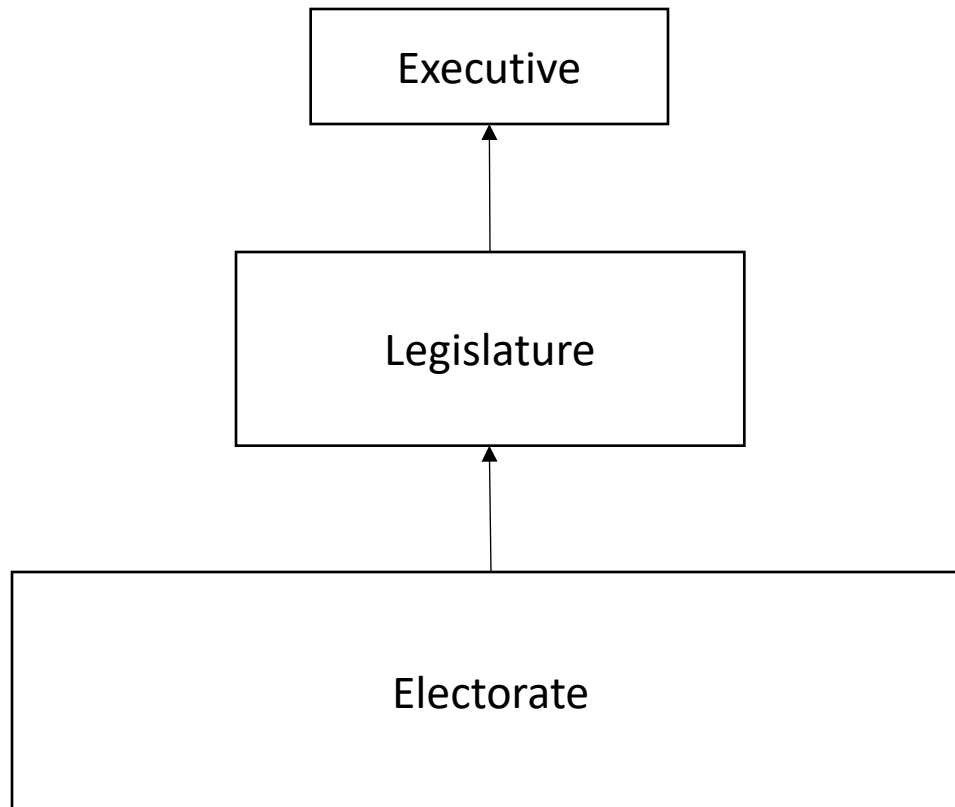
The Presidency and Democracy

- Framers ended up with a single executive who is elected independently of the legislature
- Today we call democratic systems with an independently elected single executive **presidential systems**



The Presidency and Democracy

- The other main way to structure the executive, found in both the Virginia & New Jersey plans, is to have the legislature choose the executive. This is called a **parliamentary system**



The Perils of Presidentialism

- Executive in a parliamentary system is called the **prime minister** (PM) (or premier, or chancellor)
 - Rules with the help of the **cabinet** who the PM generally does not pick
 - Cabinet + PM = the “government” (what we would call an “administration”)
 - Cabinet put together through coalitional or intra-party bargaining
 - Is at times like a plural executive as in the New Jersey plan
- Presidential executives are (duh) presidents
 - Rule with a cabinet that they generally appoint and control

Parliamentarism vs Presidentialism

- Parliamentarism makes for interbranch **cooperation**
 - Prime ministers can usually make whatever laws they want with the legislative majority that put them in power
 - When a single party doesn't have a majority, multiple parties cut a deal to form a coalition that elects a government in which the cabinet comes from those parties
 - Voters can easily identify who is to blame for failures
 - Clear lines of accountability and authority
- Presidentialism makes for interbranch **conflict**
 - Presidents must transact (cut deals) with the legislature to get the policy they want
 - When opposition parties control the legislature, this can lead to gridlock, stasis, and crisis
 - Can be hard for voters to figure out who to blame for failures
 - Unclear lines of accountability and authority



Parliamentarism vs Presidentialism

- In parliamentary systems, the legislature can get rid of the executive by a **vote of no confidence**
 - The executive can get rid of the legislature by dissolving parliament and calling a **snap election**
- These are powerful checks on each other's power
 - Allow parliament to get rid of abusive or failed executive; no lame ducks
 - Allows prime ministers to challenge parliamentary blockading of their agenda by appealing to the people directly

Parliamentarism vs Presidentialism

- Presidents generally cannot get rid of uncooperative legislatures; legislatures can generally impeach presidents, but this is difficult
 - Impeachment in the US takes a majority in the House and a 2/3rds supermajority in the Senate
 - No US president has ever been impeached and removed from office
 - Successful impeachments are rare in other presidential democracies
 - Usually no constitutional way to circumvent gridlock between branches

The Peril of Presidentialism

- Presidential systems have an inherent tendency to crisis and breakdown
 - Both the legislature and president are popularly elected
 - So both can claim democratic legitimacy as the true representative of the people
 - If they disagree, how can the conflict be resolved democratically?
- Historically, presidential systems have almost all turned authoritarian
 - Usual pattern is for presidents with the help of the military to overthrow an opposition-controlled legislature
 - Examples: Peru 1992; Venezuela 2018
 - This means the end of democracy (for a time)

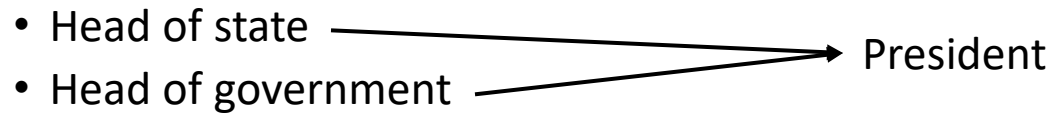


Functions of Democratic Executives

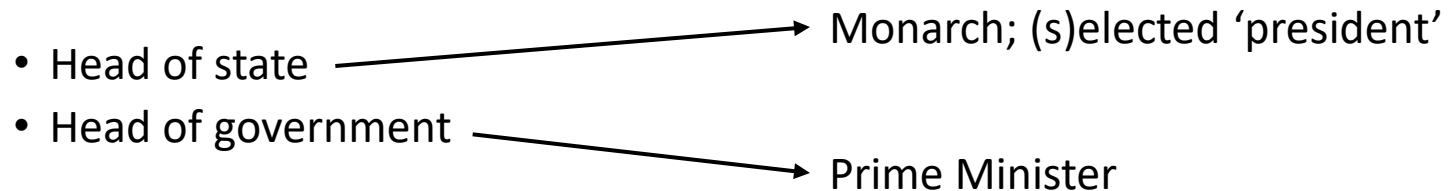
- Executives have two constitutional functions
 - Head of state
 - Symbolic leader of country, fancy dinners with foreign leaders. Generally non-political, ceremonial functions
 - Head of government
 - One who governs the country; makes political decisions

Functions of Democratic Executives

- Presidential systems combine these roles

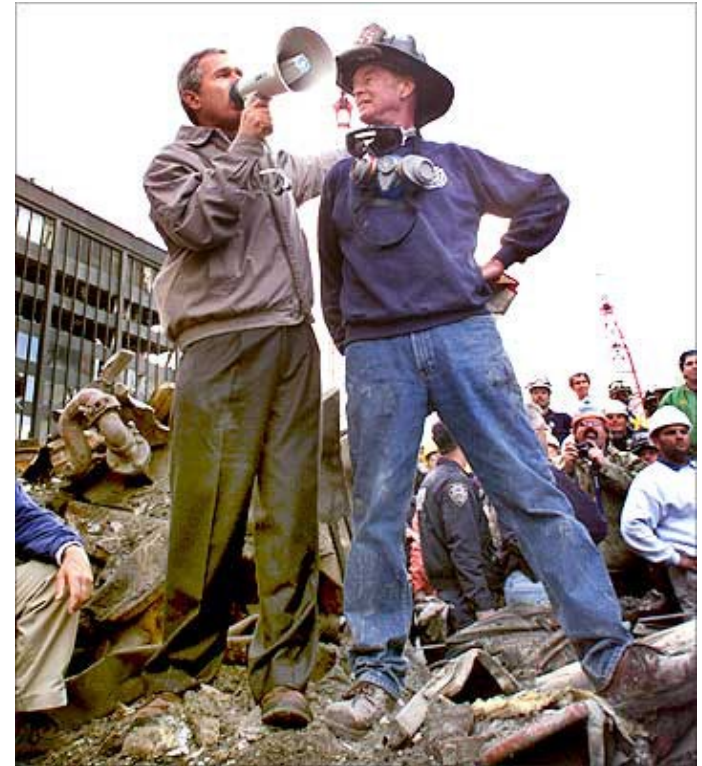


- Parliamentary systems separate these roles



Functions of Democratic Executives

- Combining these roles makes presidents both symbolically important and politically powerful
 - They can claim to embody the entire people (as they do as head of state) in order to justify their partisan political program (which they pursue as head of govt)
 - Example: GW Bush after 9/11
 - Leads to confusion about president's role and standing
 - Example: In the US, we are sometimes told to "respect the office" when criticizing presidents
- Separating these roles divides and checks power
 - The framers liked checks and balances, but this check was not invented yet in 1787



The Presidency in Comparative Perspective

- Parliamentary regimes are the most common type of democratic regime worldwide
- But presidential systems are very common in the Americas
 - Many Latin American countries have a long history of *caudillo* leadership and strongman politics highly compatible with presidentialism
 - Many adapted the US Constitution

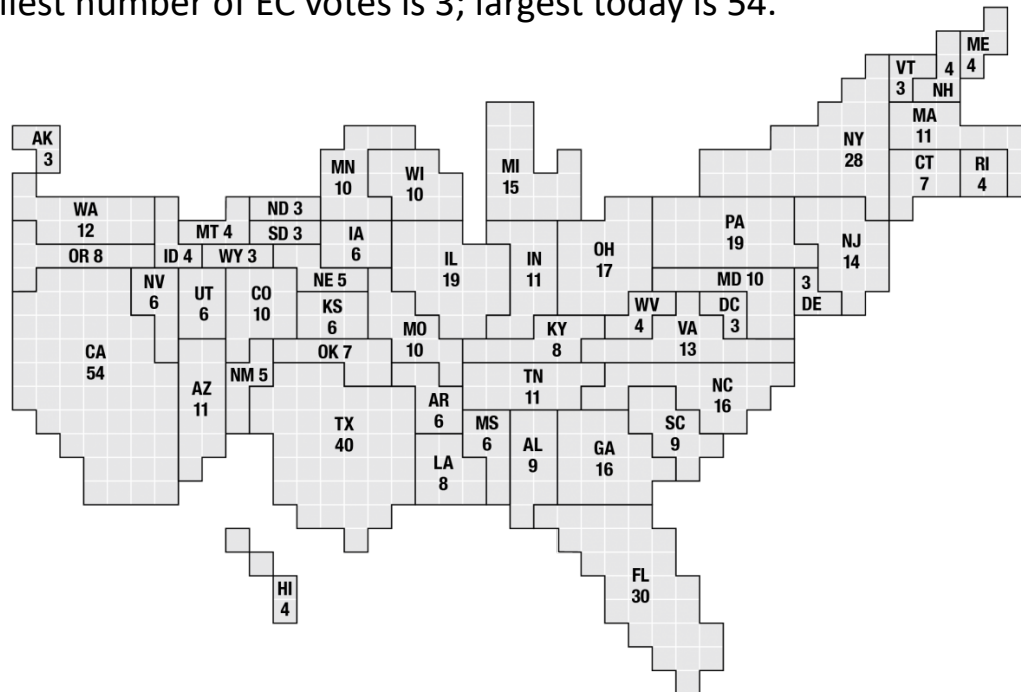
The Presidency in Comparative Perspective

- US presidents are somewhat less powerful than other presidents
 - It takes 2/3rds vote in Congress to override veto; this is the most common threshold
 - POTUS lacks a line-item veto; no “integrative” powers to control legislative agenda or limit legislative policy making
 - Frequent periods of **divided government** limit presidential power in US
- US president’s four-year term is on the low side, but still common
 - Of 12 presidential democracies, 5 have four-year terms; 4 have 5 yrs, 3 have 6
- Common to have term limits like US two-term limit
 - Presidents are powerful executives, so limiting time in office is common

II – How are presidents selected?

The Electoral College: Basics

- Presidents are elected indirectly via a specially selected body called the **Electoral College (EC)**
 - It's like a temporary legislature with just one job
- Basic rules of the EC in the Constitution:
 - Each state has a number of electoral votes equal to its representation in the House, plus its two seats in the Senate
 - Smallest number of EC votes is 3; largest today is 54.



The Electoral College: Basics

- Basic rules in the Constitution (cont'd):
 - Constitution says states decide how their electoral votes are distributed between candidates
 - Via whatever method they decide, each state selects a slate of electors who meet in their respective state on the same day and cast their votes
 - Originally, they cast two undifferentiated votes, but this led to a constitutional crisis in 1800. Added the 12th Amendment which made one a vote for president, one for VP
 - If someone has a majority of EC votes, they win. If there's no majority, there is a **contingent election** in the House of Representatives
 - Representatives vote by state, with each state getting one vote
 - In this case, the legislature selects the executive

The Electoral College: Basics

- That's how it works in the Constitution (in theory), but that doesn't tell us how it works in the world (in practice)
 - So, how do states select electors?
- Historically, there have been a few different methods
 - **Unit rule** or general ticket
 - Winner of the popular vote in the state gets all its electoral votes
 - **District method**
 - Popular vote winner in each congressional district wins one electoral vote, and the statewide popular vote winner gets the last two
 - Legislature picks
- Other methods have been discussed
 - Proportional distribution
 - National popular vote

The Electoral College: Basics

- Today, all but two states use the unit rule
 - The norm since 1820s
 - Nebraska and Maine use the **district method**

	1789	1792	1796	1800	1804	1808	1812	1816	1820	1824	1828	1832	1836
Number of States	10	15	16	16	17	17	18	19	24	24	24	24	26
General ticket	2	2	2	2	7	6	5	7	9	12	18	22	25
Legislature	4	9	7	10	6	7	9	9	9	6	2	1	1
District	2	2	4	3	4	4	4	3	4	6	4	1	0
Combination	2	2	3	1	0	0	0	0	2	0	0	0	0

Key: L (chosen by the legislature)

G (chosen by popular vote on a general ticket)

D (chosen by popular vote in districts)

C (chosen by a combination of methods)

Source: Keyssar (2020)

The Electoral College in Comparative Perspective

- **No** other democracy chooses its chief executive indirectly
 - The US is a major international outlier
 - Other democracies might have runoff elections or qualified plurality elections, but not selection by an intermediary body
 - Intermediary bodies, assumed to be filled with elites, were big in 18th century, before democratic legitimacy was widely accepted. Such elite control rejected today

<i>Indirect election (electoral college)</i>		<i>Direct election</i>	
<i>Federalist</i>	<i>Partisan</i>	<i>Plurality</i>	<i>Majority runoff</i>
Argentina (before 1995)	Finland (before 1994)	Colombia (before 1991)	Austria
United States		Korea	Brazil
		Mexico	Chile
			Colombia (after (1991)
		<i>Qualified plurality</i>	Finland
		Argentina ^a	France
			Poland
			Portugal

Representativeness of the Electoral College

- Because representation in the EC is based on congressional representation, it imports Congress' failures of representation
 - Wyoming has 3 electoral votes, which is 0.6% of all electoral votes (3/538), but only has 0.2% of the US population (578k/330,000k)
 - This means Wyomingites have three times the representation they should according to the ideals of political equality and popular sovereignty
 - California has 12% of the US population (40,000k/330,000k) but only 10% of all electoral votes (54/538)
 - This means each Californian's vote for president is worth less than a sixth of a Wyomingite's vote
- Because electoral votes are largely based on House representation, which is proportional to population, EC representational failures are less extreme than those caused by Senate malapportionment or partisan gerrymandering

The Electoral College Reform

- Members of Congress have introduced more than 800 amendments to change or abolish the Electoral College between 1800 and 2016
 - The Congressional Research Service concluded that “more proposed constitutional amendments have been introduced in Congress regarding the Electoral College reform than on any other subject.”
- There has never been a national poll showing that a majority of Americans want to keep the EC
 - In the 1960s and 1970s, between 65 and 80% wanted it abolished
- This all signals longstanding and widespread discontent among Americans about it

The Electoral College: For and Against

- What arguments are there for the Electoral College?
 - Hallowed part of the Constitution
 - Needed to protect the interests of small states
 - Needed to prevent cities from dominating the rest of the country
 - Helps to prevent fraudulent elections
- None of these traditional arguments stand up to scrutiny

The Electoral College: For and Against

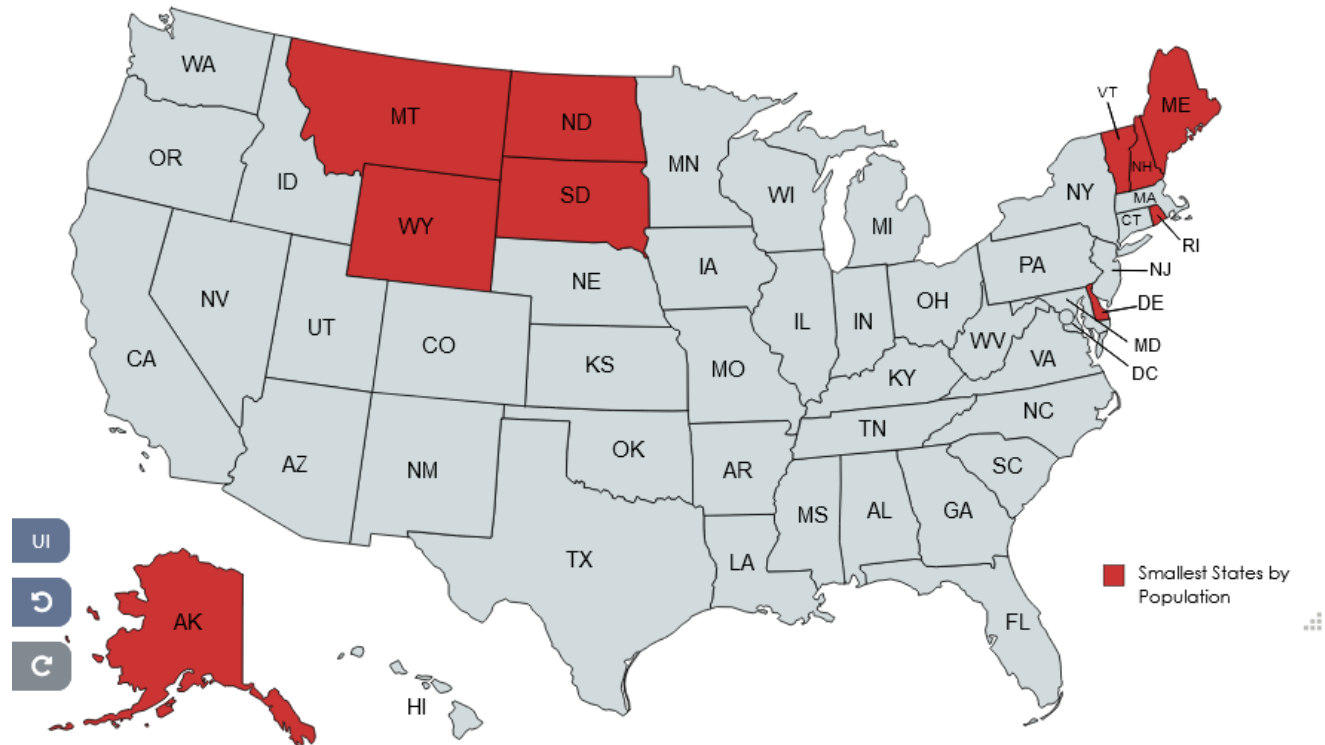
- Electoral College was a last-minute compromise at the Constitutional Convention, not a carefully designed institution
 - Wide disagreement about how the executive should be selected
- Varying ideas among framers about how EC would work in practice
 - Many thought states would nominate 'favorite sons' and so that majorities in the EC would be rare, meaning the House would usually select the president

The Electoral College: For and Against

- Core features of the compromise:
 - Votes in the EC determined by representation in Congress
 - This links the EC to the Great Compromise, including the 3/5ths clause giving slaveowners extra votes for their slaves and so special political influence
 - Those who wanted the national legislature to have a say got it in the contingent election provision
 - Those who wanted states to have a say got it in states determining how electors would be selected
 - Those who wanted a popular vote didn't get much, but most states would hold popular elections for president
- Nobody came to the convention planning to introduce an Electoral College, and no one left the convention entirely happy with it
 - It failed entirely in 1800 and caused a constitutional crisis in only the fourth presidential election
 - Framers' EC a failed experiment that had to be changed via 12th Amendment

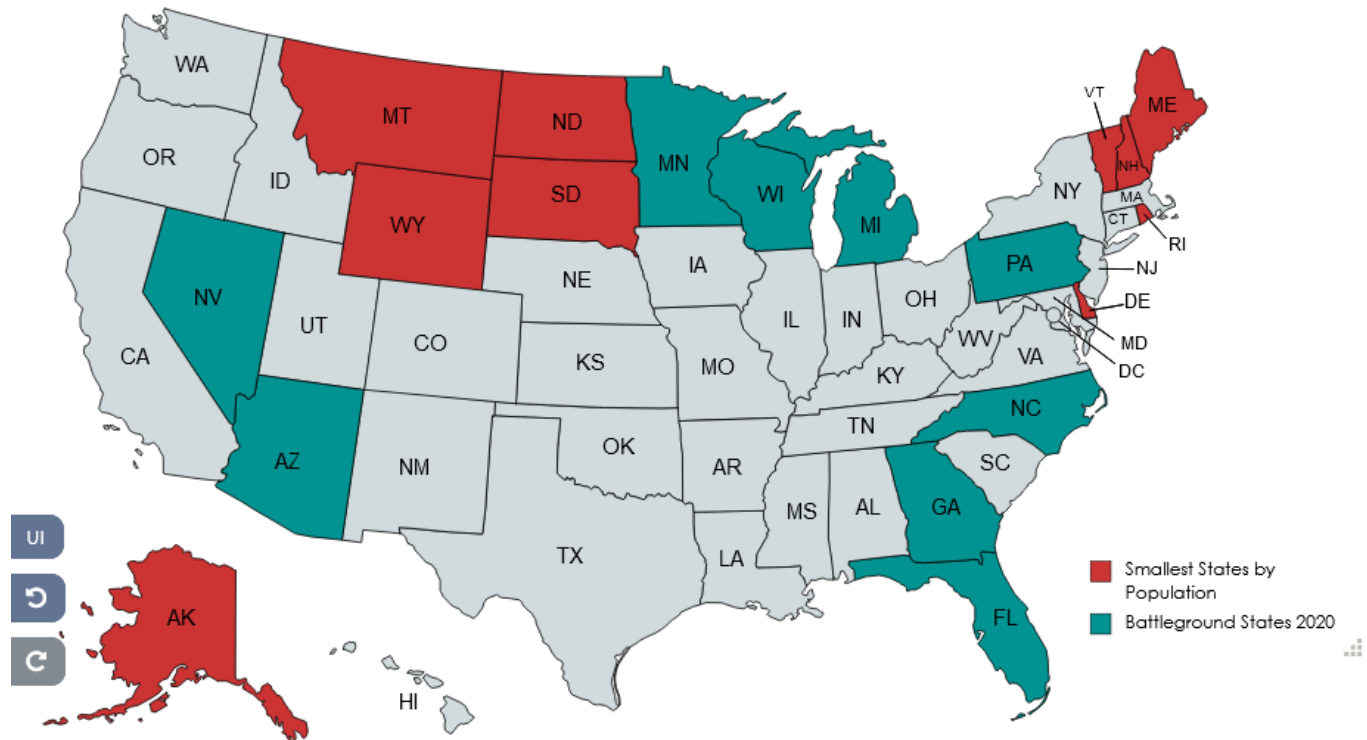
There's no such thing as the 'interests of small states'

- What interests do these small states share?



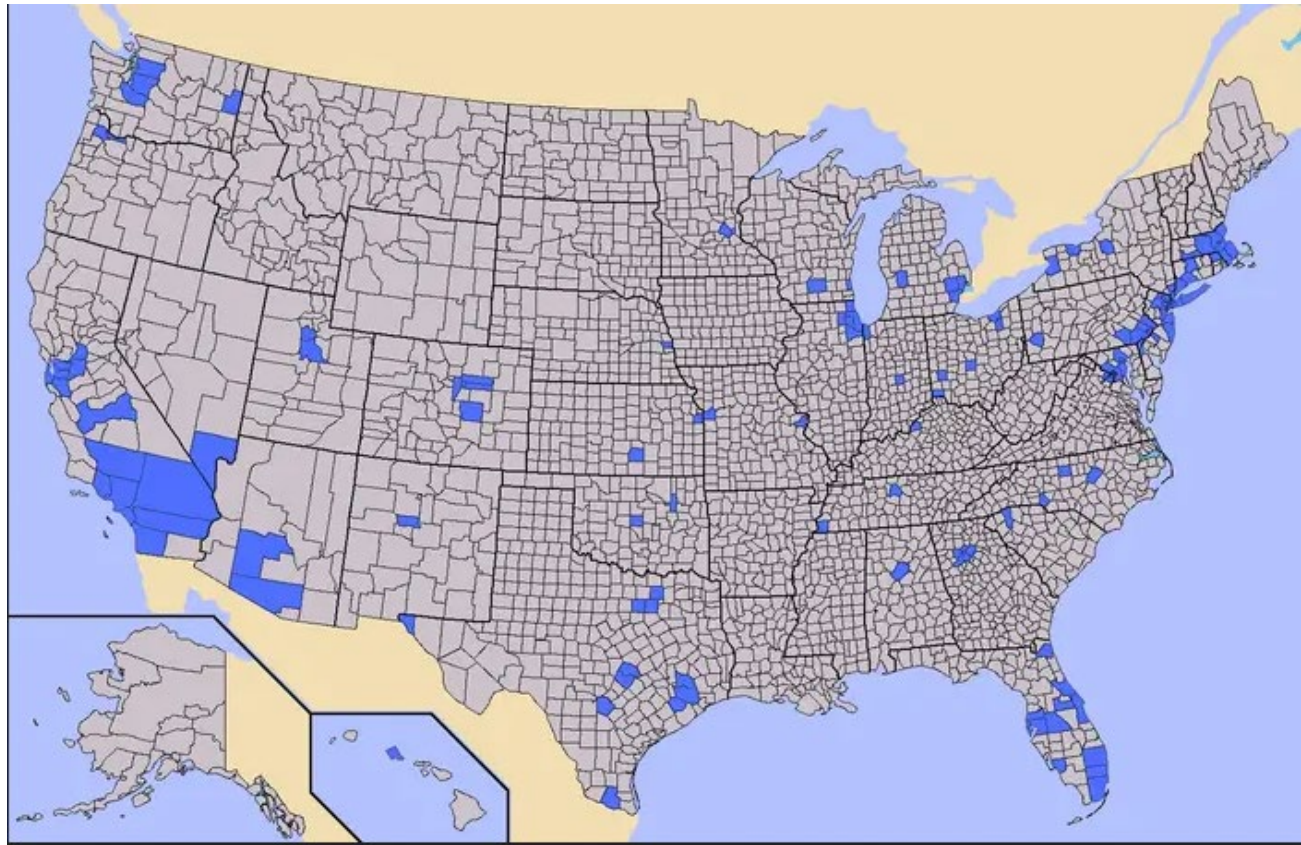
The Electoral College advantages closely divided states, not small states

- Zero overlap between small states and 2020 competitive states



A National Popular Vote would NOT allow candidates to ignore most of the country

- 50% of the population lives in the blue counties



The Electoral College: For and Against

- It is difficult to make a coherent case for the EC that does not abandon basic principles of representative democracy
- The real reason behind most opposition to reform of the Electoral College is partisan advantage
- Reform of institutions is very difficult when there are clear perceptions (true or not) of partisan advantage in the status quo
 - Reform generally requires buy-in from across partisan divides

III – How has the presidency changed through American history and why?

Presidency in History

- Although the Constitution's text regarding the presidency's powers has not changed since 1789, the institution, its power, and its role in American politics has changed immensely
- The history of how the presidency has changed illustrates how gradual, informal changes can result in drastic constitutional transformation in how American government works, and without formal amendment

The Paradox of the Presidency

- Changes to the presidency over American history have been driven by the following tension:
- Presidents have enormous amount of responsibility, and not because it was the framer's idea
 - Presidency in the Constitution is weak, with few powers
 - The president's visibility equals accountability, even for things over which the president has little or no control
 - Held responsible for things they are not responsible for
 - Goes for both good things (job growth) and bad things (recessions, pandemics)
 - Success of past presidents often creates high expectations
- But! Power of the president is limited
 - Framers worried about a strong executive
 - Constitution limited presidential power largely to foreign policy and implementing Congressional decisions
 - Not (supposed to be) a king

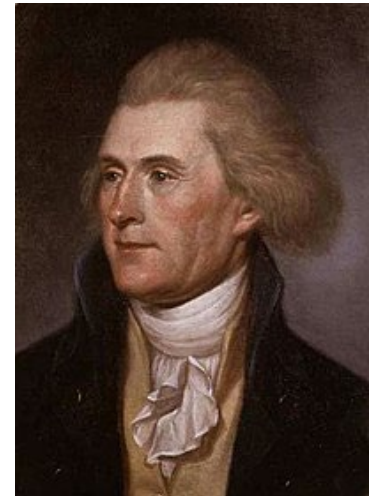
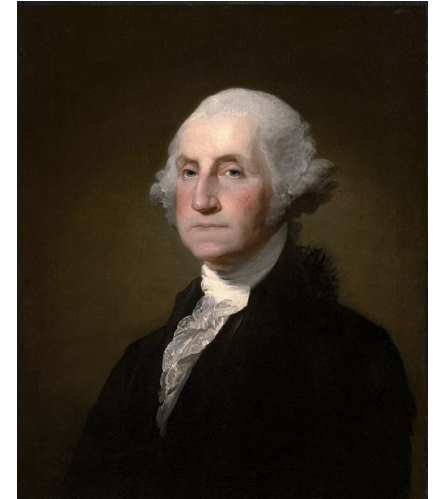
The Paradox of the Presidency

- This tension creates **the paradox of the presidency**
 - Mismatch in the expectations citizens have for the president and his power to deliver
 - *Expectations outrun resources*
 - The people expect the president to be in charge, but he isn't
- As a result, presidents are always looking for more authority
 - And over the course of American history, they've gotten it
 - **BIG STORY**: the transfer of power from Congress to the Presidency, including some forms of quasi-legislative authority



Early Presidency

- How does the paradox of the presidency play out in American history?
- From the first Congress in 1789 until 1809, executive was dominant
 - Washington administration
 - Established precedent that authority over the executive branch belongs primarily to president
 - Hamilton & nascent Federalist party organization dominated legislative process
 - Executive dominance over foreign policy
 - Jefferson administration
 - Opposed executive supremacy
 - As president governed through extra-constitutional role as party leader

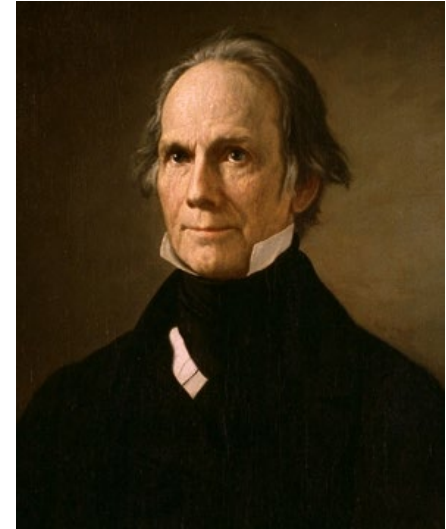


Early Presidency

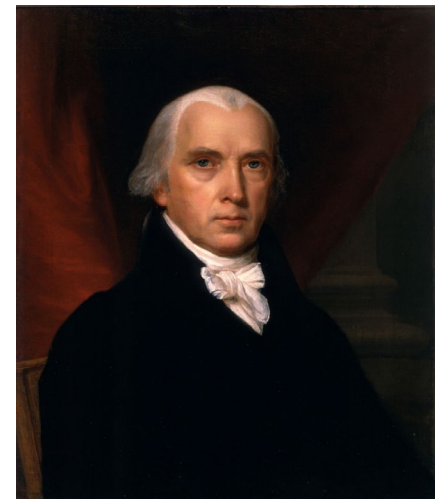
- Why was it so easy for the first presidents to dominate Congress?
 - Early Congresses had relatively weak institutions
 - Strong, independent congressional parties did not exist nor did standing committees
 - Presidents solved collective action problems faced by Congress
 - Early presidents were influential heroes of the struggle for independence

19th Century President

- Most of 19th century Congress dominant
 - Congress institutionalized, becomes powerful
 - Election of Henry Clay as speaker in 1811
 - Unified party leadership in the House
 - Expanded the number and influence of standing committees
 - “King Caucus”: Party caucuses in Congress selected nominees for president
 - Candidates were subservient to Congress
 - Prospective nominees had to cut deals that undermined executive power
- Example: President Madison didn’t pick his cabinet, it was full of men he distrusted. But he had to do it to secure harmony with his party in Congress.



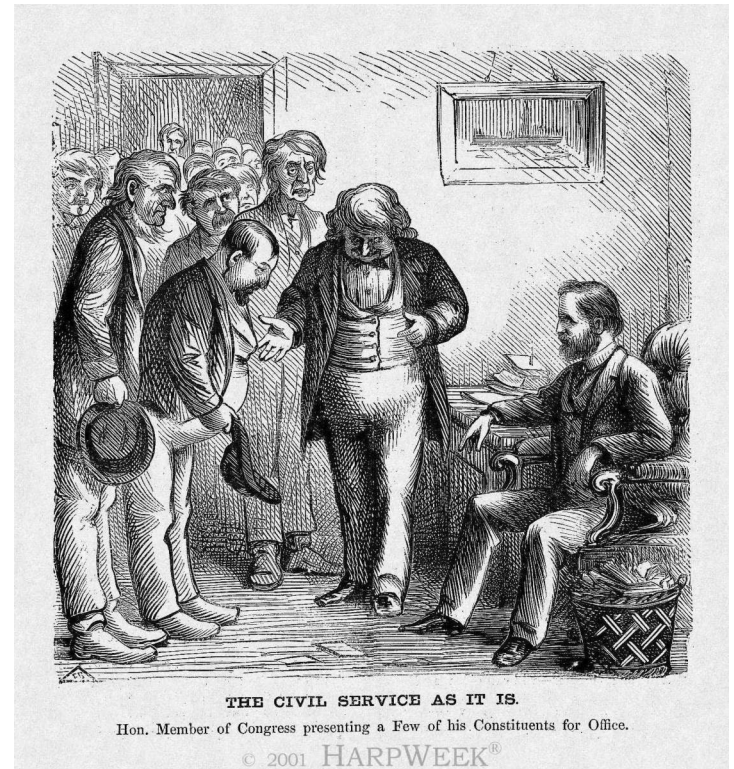
Henry Clay



James Madison

19th Century President

- “Glorified clerk”
 - Limited role for president in domestic policy
 - Basic tasks
 - Respond to wars & external crises
 - Hand out federal **patronage**
 - Patronage is jobs given as reward for doing work for the party, political support
 - This took up most of his time
 - Cleveland: When I fill a federal job “I make one ingrate and ten enemies.”
 - Relied heavily on cabinet members for policy decisions
 - No huge staff to do his bidding
- Exceptions
 - Jackson: Widespread popular support
 - Lincoln: Assumed unprecedented powers to prosecute Civil War



20th Century President

- 20th century witnessed emergence of president-centered government
 - Congress delegated new powers and authority to the president
 - Congress tacitly acceded to executive power grabs



Theodore Roosevelt depicted as a monarch because of his energetic assertions of executive power

20th Century President

- Why the growth in presidential power?
 - More active federal government to deal with nation's problems
 - In 19th century, little federal involvement in domestic life & a small bureaucracy
 - In 20th century federal government grew because:
 - Growth of the national economy, New Deal & Great Society to address its new problems
 - America's emergence as a global military and economic superpower
 - As problems grew, Congress chose to deal with it by not dealing with it
 - Passed legislation with general directives, leaving it to executive bureaucracies to interpret those directives through regulations and enforcement
 - Grants executive wide discretion over actual policy implementation



20th Century President

- World Wars & Cold War

- Growth of US's role in the world leads to big increase in presidential power
- During wars and foreign crises, Congress & courts defer to the president
 - Public rallies behind the president as head of state (“Rally around the flag”)
 - Examples of Congressional deference: Lincoln & Civil War; Bush & the war on terrorism
 - Example of court deference: *Korematsu*
- This is because of president's constitutional role as commander-in-chief and because of his wide discretion in foreign policy as nation's chief diplomat
- After crisis other branches may try to limit presidential power
 - Example: War Powers Act
- Overall, the US's role as global superpower has meant more power has durably accumulated in presidency

20th Century President

- Congress specifically delegated more responsibility to executive branch
 - Examples
 - Budget & Accounting Act (1921) forced presidents to write a budget and gave them staff to control it
 - Environmental Protection Agency, given vast quasi-legislative powers to regulate air & water pollution
 - Endangered Species Act, giving the president quasi-legislative power to determine which species should be designated endangered and entitled to protection
- Why would Congress give away its power?
 - The framers would have been puzzled by this, since they assumed human beings always crave more power

20th Century President

- Explanation: Because Congress benefits from delegation to the president
 1. Reduces congressional workload
 - Writing detailed regulations for things like water pollution are difficult
 2. Allows for more flexible policy
 - Regulations made by executive bureaucracies are easier to change than laws
 3. Enables Congress to avoid contentious political issues, shift responsibility off to the President
 - Congress likes being able to blame someone else for unpopular policies
- Congress has also been immobilized by polarization in recent years

20th Century President

- Overall, increased delegating led to more discretion for the president
 - Discretion = real policy-making power (i.e., legislative powers)
 - This raises the real worry that the modern presidency combines executive and legislative power, and is simply too powerful
- Contemporary Supreme Court seeks to cripple congressional delegation to the executive (on issues the majority dislikes)
 - Example: 2022 case *West Virginia v. EPA*, 'Major Questions Doctrine'

21st Century President

- 20th century patterns persist; paradox of the presidency still in effect
 - Example: Trump redirects Pentagon funding; Biden student loan forgiveness
- Gridlock in Congress due to partisan polarization and the filibuster has left power vacuum that presidents (and courts) have filled
 - Much of the power increase in the presidency comes from Congress doing nothing when presidents seize new power for themselves
 - Congressional gridlock and immobility therefore aids increase in presidential power (and also the power of courts)

Wrapping Up

- The US has a presidential system of government in which the legislature is set against the executive
- The president is indirectly elected by an Electoral College, uniquely in the world
- Paradox of the presidency persists, driving presidents to seek more power, at which they've succeeded