

The U. S. Presidential System Equilibrium of Power?

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Presidential systems are designed to create some equilibrium in power between the various branches of government. In contrast to a parliamentary system - which concentrates governmental power in the majority party relying primarily on the electorate to check abuses - presidential systems assume that no single branch of government can be trusted (at least in the long term) and thus creating a system of permanent institutional rivalries is the most realistic check on governmental abuse. Or, somewhat less elegantly, we assume if the different branches of government can be kept preoccupied fighting with each other, they are more likely to leave the rest of us alone.

This thinking, accurate or not, clearly dominated the U. S. Constitutional Convention called in 1787 to rework the Articles of Confederation which were rapidly proving an inadequate basis for a national government. The members of that convention were only six years removed from a revolution against England lead by a hereditary monarch who they considered a tyrant. And each, of course, was familiar with the authoritarian monarchies in France, Spain and Russia.

At the same time, the ten year experiment with a government without either a chief executive or head of state under the Articles of Confederation also appeared unworkable. For a time it appeared that a consensus might emerge in the convention on a three person executive with one member from a northern state, one middle and one southern state. But this was scrapped as unfeasible, and the convention settled on a single executive with limited formal power who would be checked by a legislature with a reasonable extensive list of formal powers. No doubt, this decision was easier to reach as all assumed the first chief executive would be George Washington who was not only highly respected as the primary military leader of the revolution but also well known to be quite reluctant to continuing his public life. If a younger and more ambitious man - Alexander Hamilton or Thomas Jefferson for example - had appeared to be the primary contender for the office, it is quite possible that agreement could not have been reached on a single person executive.

The question at this time then is has there been equilibrium in power between the presidency and the other branches of government in the United States over the 210 years since the establishment of the national constitution?¹. The brief answer certainly is yes in general, but much depends. Indeed perhaps a useful metaphor for the interplay of political institutions in the U. S. is several competitive sports franchises or programs between longtime rivals. In a given season, one may be quite a bit stronger than another, but there always is some uncertainty about the outcome of any particular game as injuries, overconfidence, or the home field advantage can allow the weaker team to win on a given day. And over time, wins and losses tend to even out as the pendulum tends to swing back and forth.

¹ The conflict, and whether or not there is "equilibrium" between the executive and judicial branches of government is an equally interesting question. But we will focus on the executive-legislative interaction for the purpose of this brief paper.

The Constitution

The basic rules of the presidential power game are laid out in Article II of the Constitution which states that "the executive power shall be vested in a President of the United States". Article II, which is about one third the length of and much vaguer than Article I establishing the legislative branch, specifically grants the President only the power to be commander in chief of the military, to be chief diplomat through the power to appoint ambassadors and sign treaties with other nations (subject to two thirds concurrence of the Senate) and chief legislative promoter with the language "He shall from time to time give to the Congress information on the state of the union and recommend to their consideration such measures as he shall judge necessary and expedient".

It is interesting to speculate why the constitutional writers devoted far less space to establishing the presidency in Article II than the legislature. Article I on the legislature has an explicit list of 17 powers plus a very loose elastic clause allowing the congress to enact a wide range of legislation "necessary and proper" for carrying out the list of 17. Perhaps they felt the shortness of the list would sharply limit the presidency in institutional conflicts with the legislature. Or perhaps they felt the legislature was inherently a stronger branch which could take care of itself. Or perhaps both. Regardless, it is quite clear the institution of the presidency over time evolved into something which would have been totally unexpected by this small group of 18th century thinkers.

Conditions Affecting the Equilibrium

But the formal rules in all games only provide a rough outline or framework. Hence we must look to the actual players and specific conditions to understand how the game actually is played. In the case of the conflict between the U. S. executive and legislative branches, several different considerations appear to make a great deal of difference. The first is the *personality* of the president. James David Barber's *Presidential Character*, probably the best known book on the US presidency written by a political scientist, categorizes the occupants of the office on the basis of how hard they work at their job (i.e. actives or passives) and how much they enjoy their work (i.e. positives or negatives). According to Barber, active/positive presidents such as Jefferson, Lincoln, both Roosevelt s, Truman, and Kennedy are quite likely to see the vagueness of the constitutional description as an opportunity to expand the role of the office, often at the expense of the legislative branch. Active/negative presidents such as Johnson and Nixon are quite likely to try the same, and may be successful for a time, but often (because of their personality traits) provoke significant resistance from the legislative branch and other players. The passive/positive (Taft, Reagan) and passive/negative (Washington, Coolidge) presidents, in contrast are far more likely to assume the scope of the office ought to be restricted to the short list of formal powers outlined in the Constitution.

A second condition which clearly has a huge effect on the play of executive and legislative power is the *nature of the times*. Periods of crisis - wars, economic depressions - sharply shift the game towards the president. Lincoln ran much of the Civil War using the "all executive power" and "commander in chief" clauses in the Constitution for justification to pay relatively little attention to Congress, and even parts of the Bill of Rights such as the requirement for habeas corpus. Woodrow Wilson similarly sharply expanded executive authority during the first World War nationalizing much private industry while Franklin Roosevelt faced by first the Great Depression and then World War II essentially created the modern executive dominated government which existed at least through the end of the Cold War. In contrast, the 25 year period before the Civil War produced a series of presidents whose names are little more than answers to trivia questions as is the case with the 35 year period after that conflict. The two presidents who served during the 1920's (Harding and Coolidge)

are known primarily for scandal and a barely visible presence, while the third of this period (Hoover) is remembered, no doubt unfairly, as ineffectual in the face of economic crisis.

Finally, the *policy area* of concern has a major impact on the play of the presidential-legislative game. Foreign policy and military action is primarily the domain of the president, even though the Constitution appears to give the Congress critical checks in these areas with the power to declare war, pass budgets to pay for military action, and ratify treaties. In brief, the highly visible demands of war and other forms of military action encourage a very loose interpretation of the "commander in chief" power and place the Congress in a passive position. No doubt the authors of the Constitution thought that giving the Congress the formal power to declare war would prevent a chief executive from engaging the nation in military actions on his own. But the U. S. Congress has not declared war on anyone since December 8, 1941 - the day after Pearl Harbor - while a series of presidents have engaged the military in major conflicts in Korea, Vietnam, the Persian Gulf and a wide variety of smaller actions essentially receiving legislative approval through acquiescence. Indeed perhaps the most dramatic example of this lack of equilibrium between the branches in military affairs was President Clinton's decision to bomb Iraq in December 1998 in the middle of his impeachment process.

Domestic policy, on the other hand, is much more of a legislative arena. The president does have the formal power to recommend legislation he likes and to veto what he does not. And several presidents such as Wilson, Franklin Roosevelt and Lyndon Johnson are known for proposing major amounts of significant domestic legislation which did indeed pass Congress. But the record here is quite mixed and significantly related to whether the president's political party also has majorities in each house of Congress. In years of non-divided government such as 1964-66 under Johnson, and 1993-94 under Clinton, (also 1981-82 under Reagan during which control of the legislature was split) Congress has passed over 80% of legislation proposed by the president. However, periods of divided control of the White House and Capitol Hill such as 1974-76 under Nixon-Ford, 1988-92 under Bush and 1994-98 under Clinton have seen the president's legislative success rate drop below 50%.

Scouting Report-Strengths

At this point I would like to turn towards a somewhat more systematic look at the present strengths and weaknesses of the presidency in its eternal constitutionally dictated struggle with the legislative branch for power. At first glance, it might appear that the "peace and prosperity of the late 1990's should weaken the presidency and lead to an era of legislative dominance of government similar to 1870-1900 and 1920-30. And the massive defeat of Democratic legislators seen as too close to Clinton in 1994, the rise of Newt Gingrich to national prominence from the role of Speaker of the House in 1995, and the Clinton impeachment trial of 1998-99 might suggest this is indeed the case. Certainly it is inconceivable that presidents serving in other times such as Roosevelt or Kennedy would be put on trial in the Senate for lying about sexual indiscretions, or that Johnson or Nixon would have to compete with the leader of the majority party in the House of Representatives for national media attention.

Still sixty years of depression, war, and near war as well as the technological changes in society clearly have strengthened the institution of the presidency so that a return to an office primarily occupied by ceremonial duties is inconceivable in the foreseeable future. A number of factors no doubt underlie this, but I would like to focus upon three in particular.

National office. The president (and vice president) are the only nationally elected office holders in the U. S. The 435 members of the US house are elected from a mix of often homogeneous districts averaging about 600,000 population each. The hundred members of the Senate represent states as different as Wyoming with a population of 470,000 and California with over 31 million people. All other American elected office holders run

within their states or districts within states. Consequently a presidential campaign is the only truly national political event in the country, and thus the only regular political event which can hope to rival the entertainment and sports industries in media attractiveness.

National Voice. As a result of having the only national constituency, the president really is the only political office holder who can claim to speak for the nation. In addition, the American system does not distinguish between the roles of "head of government" and symbolic "head of state" as many parliamentary systems do. Furthermore, the modern mass market driven media clearly is attracted to a star system in politics, just as in sports, music, movies and other forms of entertainment. Consequently the president, and his family, have become a constant in the celebrity business along with athletes and entertainers. His daily work is usually considered worth about 5 minutes on national nightly news broadcasts, and his personal life is fair game for the tabloids. It is simply not possible for any one of the 535 elected members of the Congress to attract as much attention.

Security. The Kennedy assassination in 1963 led to significant changes in the practices of the U. S. Secret Service in protecting the president. Presidents no longer campaign from open vehicles. Crowds for presidential speeches pass through metal detectors. Police background checks are required for access to most of the White House. Presidential trips home and abroad require several weeks of advance planning and fleet of transport aircraft to move the armored limousines, helicopters, military weapons and personnel required by the secret service. The time when Harry Truman could go out the front door of the White House twice a day for a walk chatting with reporters and regular citizens along the way, is a quaint memory.

The political impact of this is huge, but likely often missed. No one can witness preparations for a presidential visit, or the actual visit, without concluding that one must be an extremely important person to require all this attention. In contrast, members of Congress usually travel with a few aides and little or no security. Some jog the National Mall in Washington alone and are recognized only by the political junkies. All can fly on regular commercial planes and pick up groceries in their hometowns without escort or security. In many ways, of course, this is a preferable way to live than the highly restricted presidential life style. Bill Clinton, for example, once described the White House as the most secure level of the federal penal system. At the same time, the security accouterments of the presidency say at least symbolically that this is a very important person. Indeed one who is far more important than those who can disappear into a crowd anonymously.

Scouting Report-Weaknesses

Constitution. There are certainly a significant number of political limitations in the office of the presidency. As noted above, the framers of the Constitution gave the Congress a number of checks to ensure that ambitious presidents could be blocked by the legislative branch. Various congresses over the years have found it quite easy to block presidentially proposed legislation with the 1995-96 Congress setting the modern record by refusing to pass 65% of the Clinton legislative agenda. A united Congress also can pass legislation over the president's veto. Such action requires a two thirds majority in each house generally is rare, but the Republican Congress of 1946-48 over rode 5% of Harry Truman's vetoes and the Democratically controlled Congresses of 1984-88 actually over ruled 12% of Ronald Reagan's vetoes. And no doubt, presidents in many cases have refrained using their veto power knowing the Congress could and would over ride and thus create the impression of presidential weakness.

Congress also has the constitutional power of the purse, and can make funding decisions which are almost completely immune from presidential influence. The entire US federal budget of about \$1.6 trillion normally is broken into 13 separate pieces of spending legislation. The president can, of course, veto any or all of these bills. But he can not veto any single expenditure item in any bill without vetoing the entire package.

This, of course, creates the opportunity for Congress, or more realistically individual members of Congress, to add items of narrow interest knowing that a president is unlikely to veto an entire package for the sake of a small number of items. There have been some highly visible exceptions to this rule. In the fall of 1995, Bill Clinton vetoed several spending bills passed by the Republican Congress leading to a highly visible "government shutdown". In reality, of course, the government didn't actually shut down, but a number of highly visible activities such as national parks and passport offices were closed for several weeks leading to some inconvenience and significant public outrage. In this case the Clinton administration (largely as the result of the media advantages of the office) was able to convince a majority of the public the Republican congressional leaders were at fault. But this is a high risk strategy and neither the president nor congress has been eager to repeat it.

Decentralization. A former Speaker of the House, Tip O' Neill, once remarked that in the U. S. "all politics is local politics". This is no doubt an exaggeration, but it contains elements of truth which can be an asset to the presidency as discussed above. At the same time, however, the local nature of U. S. elections can make it very difficult for a president to have much say in the makeup of Congress. Most presidents since Franklin Roosevelt in the 1930's have tried to help friends and punish foes in congressional elections. And most have been extremely unsuccessful. In general, local elections are won or lost by local candidates running on local issues. On occasion local candidates can tie themselves to a president, but just as often local candidates spend a great deal of time trying to distance themselves from a president of their own party whose popularity has slipped.

The U. S. political party system also is extremely decentralized. For most of our history, the state levels dominated, with the national party primarily responsible for a convention once every four years to choose a candidate for president and to dispense limited campaign funds and technical assistance. As a result, most presidential campaign organizations are primarily personal organizations assembled by, and loyal to the candidate. Similarly congressional campaigns organizations are assembled at the state or district level around a particular candidate. Consequently even when the presidency and the congress are controlled by the same party after an election, all are aware that they don't owe the national party much for their success and have relatively little to fear from the national party in the future.

A final decentralization concern is the American federal system. The Constitution and 210 years of tinkering have produced a system which spreads responsibility for different policy areas over three levels of government including one national, 50 state, and tens of thousands of local units. At this time, the courts essentially have put the national level in the dominant position in any struggle over formal power. But about 17 million of the 19 million government employees in the U. S. work for state or local units of government. Education, which is one of the major issues in the 2000 election, really is not a national government issue at all. Local districts run most K-12 schools and private organizations (primarily churches) run the rest. State governments run about two thirds of higher education, with almost all the remaining colleges and universities (the service academies are the primary exception) run by private interests. Similar situations exist in law enforcement and corrections, highway and other infrastructure development and social welfare programs.

Fixed Terms. US presidents serve a four year term with the possibility of being re elected to only one additional four year term. George Washington set precedent for no more than two by refusing a third term which stood as an unwritten custom until Franklin Roosevelt ran for 3^d and 4^h terms in 1940 and 1944. After Roosevelt's death, a Republican controlled congress initiated the 22nd Amendment ratified in 1951 and gave the previous two term custom constitutional standing.

The political impact of the two term limit, coupled with the existence of fixed election dates, is to make any second term president a "lame duck" the day after his re election. None of this, of course, negates the

advantages of the presidency mentioned above, but inevitably at some time during the second term all begin to look toward the future. Who will the next major party nominees be? Who will win? Who will be chosen for significant positions of influence in the new government? No one mentions the name of the incumbent president when answering any of these questions.

Summary

So what implications does this assessment of the 210 year struggle for equilibrium have for the immediate future? Does it matter who is elected in November? In all likelihood the answer is yes, it matters, some. The present era of "peace and prosperity" almost certainly will limit either presidential candidate from dramatically expanding the powers of the office or the role of the federal government regardless of their personal desires. Any non incremental changes in government resembling the Roosevelt New Deal or the Johnson Great Society seem totally unrealistic at this time barring a major economic collapse. On the other hand, we are a long ways from an era of true "legislative government" with the president primarily confined to ceremonial duties as envisioned by the constitutional framers. Neither George Bush nor Al Gore is any more likely to be remembered as a 21st Century Franklin Pierce or Calvin Coolidge than the 21st Century equivalent of Abraham Lincoln or Franklin Roosevelt.