

The President as Prime Minister:
George W. Bush and Congress, 2001-2007
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President Bush enjoyed a highly unusual rate of success in passing his initiatives. His success was not the result of innovative bargaining or broad appeal, but inherited political and institutional conditions which have evolved over time. Using a two dimensional model of presidential power, I demonstrate that from 1947-2007 President George W. Bush was the most powerful of the postwar presidents because he inherited a highly cohesive party system with a working majority in congress. I conclude that under these conditions, presidents depend on party leaders in Congress to manipulate institutional rules and practices when they inhibit executive preferences.

Introduction

Few presidents have been able to accomplish what Henry Ford Jones has described as the “necessary evil” for overcoming the separation of powers: highly disciplined political parties.¹ This has been the key to legislative success for the Bush administration. Through shared ideology and close cooperation, President Bush forged a triumvirate with House Speaker Dennis Hastert and Senate Majority Leader Bill Frist helping him to achieve an impressive array of legislative victories.² What few disagreements Congress may have had with the White House were alleviated by executive deference to the legislative body’s increasing appetite for earmarks and other local projects.³ For FY 2001 – FY 2005, the Republican controlled Congress exceeded the President’s budget requests for non-defense discretionary spending by \$91 billion.⁴ A few veto threats were made, but ultimately the President abstained from exercising his veto prerogative.⁵ In fact, President Bush did not veto a single bill until five and a half years into his administration, the longest of any two-term president since Thomas Jefferson.⁶ From 2001-2006, the president vetoed only one measure and it wasn’t an appropriations bill.⁷

By using restraint, President Bush was willing to embrace congressional logrolling in order to acquire his budget priorities, particularly for the war in Iraq. House and Senate GOP leaders were equally pleased to get their domestic discretionary spending increases approved by the White House. The President became so effective in acquiring his legislative objectives that *Congressional Quarterly* rated his ability second only to Lyndon Johnson and the 89th Congress.⁸

Although CQ's methodology is problematic, party strength does play an important role in the legislative success of presidential programs. No president since 1879 has ever presided over a period of unified government with a majority party as cohesive as the 109th Congress.⁹ House Republicans were so consistent in their support for the President that Rep. Jim McDermott labeled it the "rubber stamp congress."¹⁰ The Seattle congressman summed up the frustrations of his own party when he referred to the President as "King George III."¹¹ Rep. McDermott's observation underscores the important role that political parties play in both moving and obstructing a president's legislative program.

Most studies of the Bush presidency have focused on presidential power in the context of what Terry Moe refers to as "residual decision rights," a right to act unilaterally where the constitution is ambiguous.¹² This is the inherent nature of the executive branch and it's frequently exercised over U.S. foreign policy.¹³ Presidents may operate unilaterally through the issuance of executive orders and signing statements, but they also have enumerated powers like the veto. Alexander Hamilton argued that veto power was necessary for the executive branch to protect itself against the legislature if the separation of powers was to be maintained.¹⁴ Without it, "...legislative and executive powers might speedily come to be blended in the same hands."¹⁵ Hamilton implies that a parliamentary fusion of executive and legislative authority poses a great risk to the separation of powers. The problem with such an arrangement is the vulnerability of the legislature to executive influence. Although Hamilton did not consider political parties, highly partisan political parties present a formidable challenge to the separation of powers in periods of unified government.

When presidents dominate the legislative branch they operate through their respective party leaders in Congress. If Congress is governed by numerical majorities, party leaders may alter the institutional rules and norms when they inhibit the president's legislative preferences. The consequence of this process is the erosion of "universalism" and the decline of "institutional maintenance."¹⁶ When the House leadership killed a bipartisan version of the Patriot Act and replaced it with the White House version, Rep. Jim McDermott said, "...the leadership on the other side operates on another set of rules called the King George II rules. Those rules have made it possible for the President of the United States to serve for 3 1/2 years without using his veto pen on one single occasion. The White House sends down the message to the gentleman from Texas (Mr. *DeLay*) and says this is what I want, and the gentleman from Texas (Mr. *DeLay*) says yes, sir, and comes out on the floor, and if it is not coming out that way, we switch from the House rules to the King George II rules."¹⁷ Presidents are unilateral actors who depend on party leaders in Congress to manipulate institutional rules and practices when they inhibit executive preferences. The end result has little impact on the presidency, but is detrimental to the "institutionalization" of the legislative branch. The strength of Congress has always been its willingness to guard its institutional prerogatives and to operate democratically. Without bi-partisanship the legislative branch is vulnerable to the encroachment of executive power.

Separation of Powers

Most liberal democracies are administered through parliamentary governments, but the United States is unique among them for its distinct system of power sharing. The separation of powers frequently frustrates the legislative agenda of presidents. Without working majorities in both chambers of Congress, presidents must either compromise or accept the status quo if they cannot surmount legislative opposition. These obstacles make prime ministers the envy of presidents. With a working majority, prime ministers operating under a two-party system have significantly more influence on legislative outcomes. Despite varying degrees of institutional weaknesses, the power to implement legislative objectives for both presidents and prime ministers depends heavily on institutional constraints. Both prime minister and president alike must negotiate with legislators, but unlike parliamentary systems of governance, the separation of powers places a unique burden on the executive branch.

Wary of centralized power, the Founding Fathers weakened the presidency by dividing the law making process between the executive and legislative branches. They gave congress the responsibility to pass legislation which required the president's consent. This was further complicated by the frequency of election in the House and the infrequency of election in the Senate. Their objective was to create a system of power sharing counterbalanced by inherent institutional weaknesses. Congress was created as a bi-cameral legislature with two chambers, each having the ability to establish their own institutional rules and therefore "a will of their own."¹⁸ While this may have weakened the legislature, it was strengthened by the necessity to produce uniform legislation if it was to make laws. Within this relationship, the president was given a powerful bargaining role: the ability to veto any law. These institutional relationships defined by the constitution created inherent tensions within the legislative branch and between the other two branches of government in order to extract collaboration and sound policy.¹⁹

The incongruity of elections has been a source of institutional strife between presidents and congress. Executive governance is complicated by reelection of the entire House of Representatives and one-third of the Senate every two years. In his classic study of congress, David Mayhew characterizes members of congress as "single-minded seekers of reelection."²⁰ While Presidents do seek reelection, the brevity of their election cycle has a significant impact on their relationship with congress and vice versa. The work of congress can be equally difficult during a lame-duck presidency. Some chief executives find their legislative programs frustrated by personnel changes in congress while others accomplish little because two-thirds of the Senate do not stand for reelection. Although presidential elections coincide with congressional elections every four years, presidents must sustain their party seats during mid-term elections. Chief executives find it increasingly difficult to govern when the composition of congress is altered during their tenure in office. Their influence is based on party strength

which is determined by elections. The frequency of election in the House and the infrequency of election in the Senate both play an important role in shaping the relationship between the executive and legislative branches of government.

The fundamental origin of institutional tension between executive and the legislative government is not simply confined to power sharing or the frequency of reelection, but also to the size of constituencies. In theory, the president and the congress each represent the national electorate, but this is complicated by the narrow constituencies of the House and Senate. Notwithstanding at-large states and districts, the average Senator represents about 5,608,363 people while the average member of the House represents about 645,632.²¹ Compelled by smaller constituencies, members of congress have a more parochial outlook on political issues because they are shaped by the size and composition of their constituencies. As the only federal official elected by a national constituency, the president has broad interests which sometimes clash with the parochial orientation of congress.²² Trade agreements often highlight these distinctions. Presidents are usually able to navigate trade deals through the Senate, but have greater difficulty getting them through the House because local constituencies have more influence. The constitutional constraints of power sharing, the frequency of election, and the size of electoral constituencies hinder presidents from extracting the legislative concessions present under parliamentary governments.

Methodology

In this study, presidential power is defined along two dimensions: 1.) the number of congressional seats held by the President's party and party strength, the frequency of party-line voting within both parties, and 2.) the exercise of veto restraint. The definition of veto restraint contained in the methodology is based on the idea that a persuasive president is one who can acquire legislative results without resorting to the use of many vetoes. In other words, a persuasive executive is able to circumvent the separation of powers through congressional collaboration. This idea is based on three assumptions: 1.) modern presidents seek to alter the status quo,²³ 2.) modern presidents drive the legislative agenda,²⁴ and 3.) legislators can be bought with particularistic benefits.²⁵ The executive branch has a tremendous advantage when bargaining with the legislature. The president is a unilateral actor that does not suffer from the collective action problem that impairs congress.²⁶ Secondly, congress is oriented towards parochial interests, which makes the institution vulnerable to executive influence through logrolling.²⁷ The end result is often deference to the expansion of executive power as long as the president does not harm particularistic clients.²⁸

In order to contrast the relationship between institutional strength and executive bargaining a two-dimensional model was created using two distinct datasets. To measure institutional influence a simple metric was established for each president from 1947-2007. For the 80th-109th congresses the sum of four

variables was divided by their respective number. The first two variables were the percentage of seats held by the president's party in the House and Senate. Because vacancies and party defections can alter these numbers, only the members who were sworn in at the beginning of the first session of each congress were used. These numbers were included to determine whether a president had numerical majorities, working majorities, or no majority in either chamber of congress. For this study, a working majority is defined as a simple majority in the House and a supermajority of 60 or more in the Senate; a numerical majority is defined as a simple majority in both chambers of Congress (less than 60 in the Senate). A working majority is usually needed to accomplish anything in the Senate particularly when there is a high frequency of party-line voting.

The last two variables are the frequencies of party-line voting for both parties in the House and Senate. These numbers are an important indicator of party strength developed by Keith Poole and Howard Rosenthal. The combined frequency of party-line voting was selected for both parties over the individual numbers for each party because presidents often depend on votes from the opposition party. Their chance of acquiring support first hinges on loyalty from within their own party and secondly from the opposition party which is primarily based on how frequently members from each party cast their votes along party lines. For example, both parties are so highly polarized it could be argued that President George W. Bush must rely more heavily on his own party because he can expect little support from the opposition party. The divide between the two parties plays a more important part in the calculus of presidential bargaining than solely the president's own party so the total frequency of party-line voting for both parties was included. Finally, after the percentages were calculated for the 80th-109th congresses they were combined and averaged for each congress. These results were then combined for each administration and divided by the number of congresses which coincided with each presidency. The 88th and 93rd congresses were excluded from the dataset because there was a change in administrations during those congressional sessions.

For the second dimension of the model presidential vetoes were used as a gauge of executive bargaining across administrations. As Charles Cameron points out, "vetoes are rare events."²⁹ They are rare because presidents know that any significant bill sent to the White House has already overcome tremendous obstacles. In the 109th Congress alone 13,074 bills were introduced in Congress and 418 were sent to the president's desk.³⁰ From 1947-2007 only 6% of all bills introduced in Congress were enacted into law.³¹ Although these statistics include less important bills like post office designations they illustrate the challenge of legislating in Congress. The bi-cameral division of the legislative branch along with 535 members of congress make consensus difficult to achieve when important laws must be passed. Presidents recognize this collective action problem so they use vetoes as a bargaining tool to extract concessions or kill legislation when the collaborative process has failed.³² Congress anticipates these veto attempts by reacting in one of two ways: accommodating presidential preferences with simple

majorities or by passing a bill over the president's wishes with a two-thirds majority.³³ The fundamental assumption is that congress usually wants to avoid the veto of any bill which cannot withstand the scrutiny of a two-thirds majority. When a veto does occur, Cameron hypothesizes that it results from congress' misinterpretation of the president's policy preferences.³⁴

However, Cameron's interpretation of the veto bargaining process is problematic in this scenario. First, he views the veto as a strength of executive power. The problem with this view is that by his own admission, the veto is a negative bargaining tool.³⁵ It's used when the president cannot persuade congress of executive policy preferences even if the president must use it to achieve a series of concessions. Although the veto is an institutional strength for the executive branch, the fact remains that "negative power" is exercised to move congress towards an ideal point which essentially is the last resort of executive-legislative bargaining. For this reason and for the purpose of this study, the use of the veto is interpreted as a weakness of the executive branch. Secondly, Cameron places the veto burden at the doorstep of congress by assuming it is the legislative body that misinterprets the president's policy preferences.³⁶ The problem with this view is that presidents are unilateral actors who possess a much greater capacity to communicate their policy preferences to congress. With 535 actors it is more likely for the president to misinterpret the policy preferences of congress rather than congress to misunderstand the president. When executive-legislative bargaining fails it may be a result of the executive's misinterpretation of congressional policy preferences. In such a case, congress would alter legislation if the president were to make it known that it would be vetoed under the status quo.

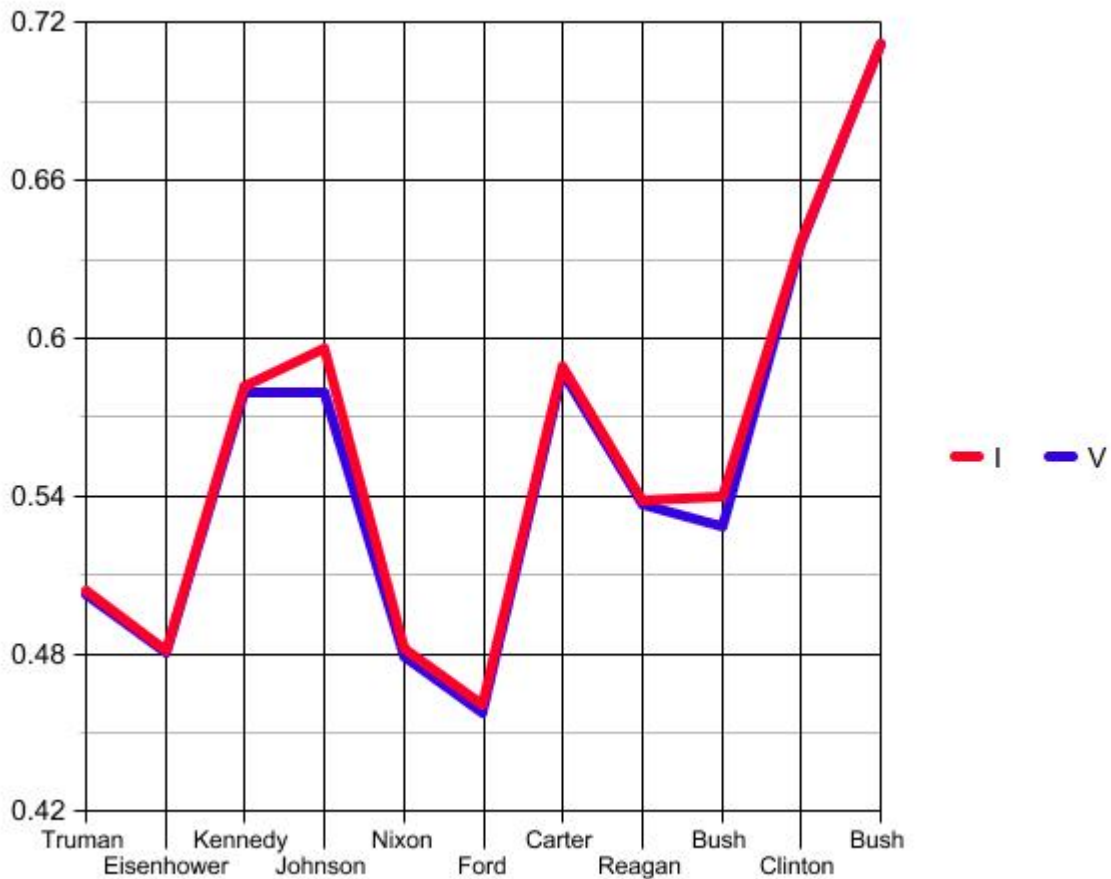
The primary burden of avoiding vetoes rests with the executive branch for two reasons. First, the president is a unilateral actor, highly capable and more able than the congress to communicate policy preferences to the legislature rather than vice versa. Secondly, the president has the institutional prerogative to initiate the veto bargaining process because it is an exclusive power of the executive branch. The ability to initiate the veto process is an important power which often gives the White House a great advantage in the legislative bargaining process. The assumption is that vetoes are negative, a symptom of failed bargaining.³⁷ Although bargaining is a reciprocal process between congress and the president, the onus falls on the president for two reasons. First, the executive branch does not suffer from the collective action problem that congress does. As a unilateral actor, the chief executive has a tremendous advantage in the bargaining process which means exercising the veto pen is a failure of the collaborative process.³⁸ Very rarely does congress override a presidential veto.³⁹ In the past 60 years congress has sustained x% of all bills vetoed by the president. During the same period of time, x% of all significant legislation subjected to a veto was sustained by congress.⁴⁰ If as Richard Neustadt says, "presidential power is the power to persuade," the veto is a symptom of executive weakness, a failure of the president to assuage the legislative branch.⁴¹ Secondly, the American public has high expectations for presidential success, so they are less forgiving if sufficient results are not achieved. The president will bear

more public responsibility than congress for a legislative impasse precisely because the president has the institutional advantage in the bargaining process.

As a measure for executive bargaining, presidential vetoes were carefully examined from 1947-2007. Charles Cameron's dataset and some of his criteria were used in selecting which vetoes to include in the model. The Cameron dataset contained 434 vetoes from 1945-1992 which were divided into four categories ranging from the most important to the least important.⁴² Each of the four categories was labeled A-D, a majority of the bills falling into the "C" and "D" categories.⁴³ His purpose for categorizing vetoes was to demonstrate that some were more important than others.⁴⁴ With this in mind, only vetoed bills falling into the "A" and "B" categories were included in the model. Cameron describes vetoes in category "A" as those listed "...in the annual legislative roundups of the *Washington Post* or *New York Times* as the most important legislative accomplishments of the congress comparable with the most important accomplishments of any Congress."⁴⁵ Vetoes included in category "B" were bills mentioned in the legislative summaries of the *Washington Post* or *New York Times* which also received at least six pages of coverage in the *CQ Almanac*.⁴⁶ Another reason for filtering less important vetoes out of the dataset was to alleviate any discrepancies which may have occurred over time. For example, prior to the 1970's when federal agencies were given less discretion congress passed as significant number of private relief bills.⁴⁷ This is one explanation for the high number of vetoes during the Truman administration.⁴⁸ Truman ranks first among postwar presidents in total number of vetoes, many of which are private relief bills. Excluding private bills not only because they are insignificant but also because contemporary presidents have receive fewer of them to veto helps keep any measure across time consistent.⁴⁹ Using Cameron's criteria, the dataset was expanded to include significant vetoes from 1995-2007. This was done by examining the public record on presidential vetoes and using David Mayhew's expanded dataset for the same period of time while cross checking it with the appropriate *CQ Almanacs*.

Vetoes falling into the "A" and "B" categories were collected and totaled for the 80th-109th congresses. The 88th and 93rd congresses were again excluded from this dataset because in each case one president did not serve through both sessions. Once the presidential vetoes were added, each total was multiplied by - 1/10,000. This number was selected to give each of the vetoes enough weight to demonstrate the negative exercise of presidential bargaining without distorting the numerical calculations of their institutional strength. These negative numbers were then added to the institutional strength numbers for each congress to account for the reduction in executive strength. Each result for the respective congresses was added for the appropriate president and divided by the number of congresses which coincided with their administration. Both the institutional and the executive bargaining datasets were created to compare these variables along an x-y axis in order to determine whether there is a correlation between executive bargaining and institutional strength.

Results



Data from the model is displayed on the graph above. Although the range of the x-axis is not visible, it is equal with the y-axis. The i-variable represents the institutional strength of each administration and the v-variable demonstrates their use of negative bargaining power. The congruency of both lines indicates that most presidents did not stray far from the moorings of their institutional strength when bargaining with congress over significant bills. The data reveals that 9 of 11 postwar presidents bargained within the confines of their institutional strength. These results also suggest that unified and divided government have little impact on whether chief executives bargain within their institutional limitations. Furthermore, the level of institutional strength appears to have virtually no influence over a chief executives willingness to remain within the boundaries of their institutional strength. For example, Gerald Ford has the lowest level of institutional strength, but he remained within his capabilities when bargaining over significant bills. A president whose party has few seats in Congress and little party strength could probably expect to achieve very little if approaching Congress aggressively. Although he did not serve a full term in the White House, Ford vetoed a high

percentage of bills (when insignificant bills are included with significant ones), having the third highest percentage of vetoes overridden of all U.S. Presidents.⁵⁰

Secondly, two cleavages appear during the administrations of Lyndon Johnson and George H.W. Bush. The data reveal that Johnson and Bush both had trouble extracting concessions from Congress on important legislation during their administrations. As a former Senate Majority Leader, Johnson mastered the art of legislative bargaining. As president he presided over what might be considered the most productive congress of the post-World War II period: the 89th Congress.⁵¹ The 89th Congress produced Medicaid, Medicare, the Voting Rights Act, and the Immigration and Nationality Act.⁵² The most sweeping legislation produced by Congress since the New Deal, these programs could not have been passed without large Democratic majorities in Congress. However, Johnson relied heavily on veto bargaining to extract concessions from Congress as seen in the graph. Although he was an exceptional bargainer, he may have underestimated his party's willingness to support his programs. In the 1966 mid-term elections Democrats lost 4 Senate seats and 47 seats in the House in a backlash against the President's Great Society programs.⁵³ It was a significant defeat for the President's party and although he still had a working majority in both chambers of Congress, Johnson was more cautious in the 90th Congress. He was more restrained in his use of the veto pen.⁵⁴

George H.W. Bush is another example of excessive vetoes. Unlike Lyndon Johnson, Bush presided over a period of divided government. Although he had strong ties with both parties, higher party cohesion than his predecessor, and high approval ratings, President Bush was unable to translate them into legislative concessions.⁵⁵ Secondly, Bush had the fewest number of congressional Republicans serving in congress than any elected Republican president in the 20th century.⁵⁶ Much of this may be the result of the institutional limitations that plagued Congress during this time. As partisanship began to increase party leaders were either unprepared or ill equipped to enforce discipline which meant it was difficult to forge agreements with the White House if they could not be enforced in Congress.⁵⁷ It is always much easier to prevent legislative initiatives than pass them. When President Bush took office in 1989, both Senate Majority Leader George Mitchell and House Speaker Tom Foley were all new to their positions and perhaps a little green when it came to executive-legislative bargaining.⁵⁸ Although the President was able to outmaneuver House Democrats on several key issues, he was unable to repeat it in the Senate.⁵⁹ Like Johnson, Bush resorted to vetoes to extract congressional concessions beyond his institutional strength, a symptomatic weakness of his inability to convince congress.

The Bush Administration

Party cohesion alone is insufficient enough to achieve legislative success. Political parties alter the institutional rules and norms which govern Congress and determine legislative outcomes.⁶⁰ They shape institutions to make them responsive

to their objectives. Congressional Republicans dramatically altered the institutional structure of Congress in 1995.⁶¹ As the two-party system grew increasingly polarized in the late 1980's and early 1990's, both Speakers Jim Wright and Tom Foley found it difficult to enforce party discipline.⁶² President George H.W. Bush was able to outmaneuver them on several key votes because they did not have the institutional means to keep enough House Democrats from defecting.⁶³ In an attempt to gain control over GOP partisans and defectors within his own caucus, Wright over asserted his authority irritating House Republicans and alienating himself from many inside the House Democratic Caucus.⁶⁴ Although Wright was confrontational and Foley conciliatory, the distinct approaches both men applied to the breakdown of party discipline demonstrated that the issue at hand required institutional change rather than a change in personnel. Jim Wright was certainly a victim of his own circumstances. However, his approach to managing the two unruly parties was brought about by the underlying need for institutional change.

When Republicans gained control of the House in 1995, they immediately addressed the principal agent problem that plagued the two previous Speakers.⁶⁵ It became evident that as partisanship increased in Congress, congressional leaders would need the tools to enforce party discipline. Without a better way to enforce party discipline, the majority party in Congress would be vulnerable to executive influence. The House Republican Conference centralized power by weakening the committee system and strengthening the power of the Speaker.⁶⁶ They abolished the seniority system giving the Speaker ability to appoint all committee chairmen (subject to ratification of the Republican Conference).⁶⁷ GOP House members weakened committee autonomy even further by reducing the number of professional staff and placing six year term limits on committee chairmen.⁶⁸ This party rule change was also ratified in the full House in order to change House rules.⁶⁹

Under new conference rules, committee chairmen would serve as agents of the majority party and their performance would be judged by the Speaker who could strip them of their position or reward them with the chairmanship of another committee when their term expired. Reps. Chris Smith and Rob Simmons were both stripped of their committee and subcommittee chairmanships for criticizing GOP leaders in 2005.⁷⁰ Although Speaker Hastert delegated this task to Majority Leader Tom Delay, the decision was ultimately his. In many cases, Newt Gingrich bypassed committees altogether by creating task forces comprised of only GOP members which brought bills to the floor with no minority party input in the process.⁷¹ Gingrich was able to circumvent the legislative process because new conference rule changes gave the Speaker power to select the chairman of the Rules Committee.⁷² By controlling the Rules Committee the Speaker controls the floor agenda of the House because the Rules Committee can bring special rules to the floor that grant precedence to an important bill over others on the legislative calendar.⁷³

Although institutional reform in the Senate was less pronounced, it eventually trickled into the other chamber of Congress. Prompted largely by angry

conservative freshman reeling over Senator Mark Hatfield's vote against the balanced-budget amendment, Senate Majority Leader Bob Dole established a task force to appease GOP conservatives.⁷⁴ The Senate is a continuous body and its rules reflect this continuity because they do not have to be adopted at the beginning of each Congress like the House.⁷⁵ Unlike the simple majorities required in the House, Senate rules require a supermajority: two-thirds of the Senate, to change the standing rules.⁷⁶ This makes sweeping rule changes in the full Senate very difficult when partisanship is frequent, which means institutional reforms are more likely to develop within the party caucuses. Republican reformers in 1995 found this to be just the case. Their recommendation, which was ultimately ratified by the Republican Conference, was to allow Republican committee members to elect chairmen by secret ballot and to limit the committee chairmen to three terms.⁷⁷ Secret ballot elections and term-limits for Republican committee chairmen, were another blow to the independence of the committee system which had long been an important hallmark of the Senate. The rule change allowed the Republican Conference to develop and strengthen its influence. Nine years later Senate Republicans equipped their floor leader with the right to appoint Senators to half of the vacancies on the Appropriations, Armed Services, Finance, and Foreign Relations Committees.⁷⁸ This rule change empowered the floor leader with the ability to reward and punish defections.

As the principal agent of the Republican Conference, the floor leader has the difficult task of keeping the party together on important roll call votes and a unified message. The difficulty of this task is amplified by the standing rules and customs of the Senate. Chief among them is the time honored tradition of a hold which permits any Senator to put a stop to consideration of a bill or executive nomination.⁷⁹ Traditionally, the party leader would not reveal the name of the Senator who placed the hold, but the practice of anonymity was abolished by Senators Lott and Daschle in a 1999 agreement.⁸⁰ Second is Rule XXII which requires sixty votes to end debate and proceed with consideration of a bill.⁸¹ Without a working majority, Senate Majority Leaders essentially have two options: 1.) seek consensus in order to achieve a unanimous consent agreement, or 2.) manipulate the agenda to force strategic votes or legislative maneuvers which can be used to cast the minority party as obstructionist in public perception.⁸² Facing a bitterly partisan chamber during the 108th and 109th Congresses, Senate Majority Leader Bill Frist chose the latter.⁸³ They were the two highest consecutive periods of partisanship in the Senate since at least 1879.⁸⁴

The key to President Bush's legislative victories and executive nominations was the way he approached Congress. First, the administration selected a narrow agenda.⁸⁵ This gave the President the ability to focus more energy on a few key issues. It also reduced the prospect of any legislative setbacks with fewer agenda items. Second, the President presented his legislative objectives to Congress in broad terms.⁸⁶ Despite his concessions, he declared compromise bills as victories because he was not specific about his preferences.⁸⁷ Third, he nudged the conservative dominated House to pass less compromised versions of his initiatives

in order to give Republican conferees greater leverage in conference.⁸⁸ This depended heavily on the GOP House leadership and their ability to maneuver around the House rules and practices. Fourth, he convinced the Senate Majority Leader to confront the tactical obstruction of his executive nominees by circumventing Senate rules and customs.

From 1995-2001, the institutional changes initiated by the Republican Conference in the House and Senate produced a highly disciplined party apparatus unseen in the Congress since the early 1900's.⁸⁹ Confrontation with the Clinton administration and Congressional Democrats helped GOP leaders refine their institutional capacity to enforce party discipline. By the time then Governor George W. Bush was inaugurated in 2001, GOP leaders in Congress were eager to support the President's legislative programs.⁹⁰ The White House and Congress developed a close working relationship through frequent strategy meetings between the two branches and between House and Senate leaders.⁹¹ House Speaker Dennis Hastert and Senate Majority Leader Bill Frist met every other day while House Majority Whip Roy Blunt met with White House Deputy Chief of Staff Karl Rove once a week.⁹² Frequent meetings helped top GOP leaders form strong ties with the President and develop an effective legislative strategy. The fundamental strength of the triumvirate between President Bush and his chief lieutenants on Capitol Hill lay in their mutual ideology which also was embraced to a large degree by the Republican Conference. Ideological cohesion was the first and most important ingredient in coercing Congress to embrace his legislative agenda. Secondly, was the GOP leaders' institutional ability to shepherd the President's legislation through Congress. Both Hastert and Frist were able to manipulate their respective chambers rules and practices successfully enough to give President Bush his legislative programs.

Without a working majority in the Senate, the Bush administration used the House to leverage the Senate in conference.⁹³ This was accomplished through the House Rules Committee. The Rules Committee operates as an arm of the Speaker because it is the Speaker who appoints the majority of the committee members including the chairman.⁹⁴ Although committee assignments must be ratified in the full House, both parties grant their top leaders the ability to select committee members.⁹⁵ House leaders tend to select the more partisan members to exert more party influence into the process. The committee is stacked in favor of the majority party with a 9-4 ratio to ensure majority party control.⁹⁶ The Rules Committee operates as a gatekeeper to the floor for important bills that require special rules.⁹⁷ A special rule governs the terms of debate and the number of amendments that may be offered to the bill.⁹⁸ In order to protect the President's legislative preferences, the Rules Committee frequently used closed rules when scheduling important executive programs for floor consideration. Closed rules permit no amendments to the measure under consideration. They serve a dual purpose: 1.) to protect a bill from amendments which could alter it dramatically, and 2.) they protect incumbents of the majority party from voting on politically controversial amendments offered by the minority party. As partisanship has increased in the House, the majority

leadership has increasingly turned to close rules to shepherd important bills through the chamber. Although the frequency of closed rules has risen since the late 1980's, the percentage of closed rules increased under GOP leadership by 17% during the Bush administration.⁹⁹ The standard process for passing legislation has traditionally been to hold hearings, markup the bill, and bring it to the House floor for consideration. However, in order to protect the administration's prerogatives, on several occasions the Speaker bypassed the committees of jurisdiction and sent bills directly to the floor. This was done with the energy bill during the 109th Congress.¹⁰⁰ More commonly, the Speaker would have committee chairman carefully guide a bill through committee hearings and markups to protect the President's position, vote the bill out of committee (mostly along party lines) and send it to the Rules Committee where the bill was granted a restrictive rule to mitigate or eliminate any alterations to the committee version of the bill.¹⁰¹ If the Speaker or the administration was displeased with the committee version of a bill, there were also occasions where the Rules Committee revised the committee version of the bill.¹⁰² On a unanimous vote of 36-0, the normally partisan Judiciary Committee passed the Patriot Act out of committee in 2001, but after the administration voiced its displeasure, House GOP leaders directed the Rules Committee to alter the bill and bring to the floor.¹⁰³ House leaders also used the Rules Committee to kill legislation opposed by the administration. A number of important bi-partisan bills passed out of committee were never given floor consideration because the Speaker refused to grant them a special rule.¹⁰⁴ When the appropriations committee passed a bi-partisan bill stripping a corporation of a \$10 billion government contract for relocating to Bermuda to avoid U.S. taxes, the Speaker used the Rules Committee to keep the bill from coming to the floor.¹⁰⁵ The entire process was cultivated to protect the Speaker's legislative preferences which were a reflection of the White House and the Republican Conference.

Once a bill back by the White House was on the floor, the Speaker's strategy was to use House conservatives to pass a bill far to the right of the President's preferences. The closer the vote on final passage, the more leverage conservative House members would have in conference. However, no controversial bill could pass in the House at that time without some moderate Republicans. Using a technique he developed as the Majority Whip, House Majority Leader Tom DeLay employed a tactic he called "catch and release."¹⁰⁶ On a close vote DeLay would convince a group of moderates whose constituents might be opposed to the bill to abstain from casting their vote until there were enough votes in favor of the measure.¹⁰⁷ His argument to moderates was the House version would not pass the Senate anyway, so it could not become law and they could still support it.¹⁰⁸ While Hastert operated as a consensus builder in his role as Speaker, DeLay was the enforcer.¹⁰⁹ Their ability to deliver for the White House was tested when they brought the Medicare prescription drug bill to the floor in November of 2003.¹¹⁰ With 19 Republicans voting against the bill, Hastert and DeLay held the 15 minute vote open for almost three hours until they rounded up enough votes to achieve a narrow victory.¹¹¹ Never before had a roll call vote in the House been

held open for such an extended period of time.¹¹² It was an unprecedented misuse of House rules which drew the ire of Democrats and for some veteran members, resurrected memories of Jim Wright.¹¹³

The centralized structure of power gives the Speaker the ability to intervene at any stage of the legislative process on behalf of the White House. For controversial legislation no stage of the legislative process is more crucial than the conference committee.¹¹⁴ House rules and Senate practice (a de facto standard) provide the Speaker of the House and Senate Majority Leader the ability to appoint conferees giving them the power to shape the direction of the conference (minority party leaders also appoint their own conferees).¹¹⁵ Although House and Senate rules limit conference negotiations to the disagreement of provisions contained within the bill, a growing number of conferences have circumvented these requirements because of the vague limitations which govern the conferences.¹¹⁶ Rather than negotiate in the context of the actual conference with Democratic conferees, House and Senate Republican conferees often met privately to forge an agreement.¹¹⁷ After reaching consensus they rejoined Democratic conferees for the actual conference in order to formally ratify the agreement.¹¹⁸ This informal arrangement gave House Republican conferees the ability to push their Senate counterparts closer to the White House position. Both the Medicare prescription drug benefit and the energy bill, two key presidential programs, were sent through “shadow conferences” before they were ratified and sent back to the House and Senate for final passage.¹¹⁹

Facing an entirely different set of institutional circumstances, Senate Majority Leader Bill Frist extracted legislative concessions for the White House through confrontation.¹²⁰ During the 108th and 109th Congresses, the majority party held 51 and 55 seats respectively.¹²¹ Nothing can be accomplished in the Senate without at least 60 votes to invoke cloture.¹²² The Senate Majority Leader faced the almost impossible task of negotiating through a myriad of holds and filibusters placed on important bills and nominations. He was under considerable pressure from the White House and caught between the most polarized Senate since 1879.¹²³ Without a sufficient supermajority, Frist took the unprecedented step of all out confrontation with Senate Democrats.¹²⁴ His objective was to put public pressure on them for obstructing presidential programs and executive nominations. In order to protect the President’s bills and nominees, Frist’s strategy was to file more cloture votes. Although he and other Republican designees did not file anymore cloture motions than the record set during the 104th Congress, Frist’s strategy did yield results.¹²⁵ In the 107th Congress, the consensus oriented Trent Lott (all of the withdrawn, vitiated, and invoked motions are counted as victories because cloture was invoked or a unanimous consent agreement was reached) yielded a 75% success rate on all cloture motions filed by him or another member of his party.¹²⁶ By the 108th Congress the new Senate Majority Leader Bill Frist and other Republicans had filed almost 85% more cloture motions, but producing only about a 36% success rate.¹²⁷ However, by the end of the 109th Congress, Frist and Senate Republicans had reached parity with Lott’s level of achievement in the 107th

Congress at a 75% success rate.¹²⁸ Frist's tactic of procedural confrontation did ultimately produce results getting the president's programs and nominees through the Senate

Frustrated over Senate Democrats obstruction of the President's judicial nominations, Frist launched a second offensive against Senate rules. In consultation with the White House, Frist proposed using the "nuclear option" which involved the chair ruling the filibuster out of order for judicial nominations and then allowing a simple majority to sustain the ruling of the chair.¹²⁹ Senate Democrats promised to retaliate by shutting down the Senate.¹³⁰ The end result of this parliamentary brinksmanship was that it placed pressure on centrist Democrats and Republicans.¹³¹ They ultimately brokered an agreement to avoid a showdown although it was interpreted in the press as a loss for the Bush administration.¹³² The original point of contention was over three appellate court nominees and they were all eventually given an up or down vote.¹³³ Secondly, Frist only agreed to suspend his threat to use the nuclear option temporarily, not indefinitely.¹³⁴ By confronting the obstruction of President Bush's programs and executive nominees Frist was able to successfully navigate them through the Senate. His tactics helped the Bush administration confirm more federal judicial nominees than President Clinton was able to get through the Senate.¹³⁵ Finally, confrontation did not end at the chamber door. In an unprecedented display of partisanship, Senator Frist actively campaigned against Senate Minority Leader Tom Daschle who was ultimately defeated in his 2004 reelection bid.

Presidents must work with members of Congress to enact their legislative programs. Not only do presidents depend on party leaders to cooperate and see their initiatives through the legislative process, they depend on the process itself. Process plays an important part in whether or not a president's program can be enacted into law. During periods of unified party government, process becomes even more crucial because presidents are not as flexible with their legislative agendas as they are in times of divided government. If the two-party system is highly cohesive during periods of unified party government, leaders from the majority party tend to extend great deference to the president because they share very similar policy preferences. However, if there is no working majority under these conditions, party leaders may manipulate the legislative process if the minority party is obstructing the president's legislative agenda. Altering the rules and customs of the House and Senate to accommodate the executive branch corrodes the Congress and is an encroachment on the separation of powers. The strength of the first branch of government is institutionalization, sustained by consensus and a will to jealously guard the institutional prerogatives of the first branch of government. Manipulating the legislative process to strengthen Congress against the executive branch during periods of divided government may prove effective in the short-term, but the institution is weakened in the long-term because it leaves Congress vulnerable to executive influence in times of unified party government.

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