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CHAPTER NINE

CONGRESS AND THE PRESIDENT

January 1998 started out great for Democratic President Bill Clinton. Budget forecasts projected federal surpluses for the first time since the 1960s and a strong economy showed no sign of weakening. The president's standing in public opinion polls was high, and he was about to propose popular policy initiatives on education, child care, health care for retirees, and others. Congressional Republicans were not settled on an alternative program and appeared quite frustrated as they headed into an election year. The president seemed ready to turn his February 4 State of the Union address into a pep rally for his program.

President Clinton's plans fell apart on January 20 when the nation learned that Independent Council Kenneth Starr, the prosecutor investigating a real estate deal involving the president and his wife, was looking into allegations that the president had had an affair with intern Monica Lewinski and may have encouraged her to lie about it. As a media frenzy erupted and talk of impeachment spread, Clinton rushed to deny the charges. Although public opinion on Clinton's performance in office remained strongly favorable, coverage of his legislative program evaporated and many observers considered the program dead-on-arrival.

The events of early 1998 were extraordinary but they illustrate the strengths and weaknesses of all modern presidents in the dealings with Congress. Modern presidents enjoy far better access to the mass media than does any member of Congress. Furthermore, the public has grown to expect presidents to take the lead in defining the nation's problems and proposing solutions. Together, media access and public expectations give the president an advantage in setting Congress's legislative agenda. Yet, setting the congressional agenda remains a political process, and the president's ability to do so is, to a considerable degree, contingent upon public support. Mass media can just as easily work against the president. Bad news related to the Chief Executive can cause members of Congress, who are not obligated to take up the president's legislation, to quickly alter their calculations about supporting the president. Ill-conceived strategies and bad luck, and sometimes objectionable behavior, can undermine the president's best efforts.

The basic rules of the legislative game laid out in the Constitution provide for three institutional players—the House, the Senate, and the president. Whereas the president is

expected to address the needs of the nation, he can do little without Congress passing legislation creating and funding executive agencies and programs. Conversely, the enactment of congressional legislation necessitates presidential approval, unless both chambers of Congress can muster up a two-thirds majority to override a veto. Furthermore, the Senate must ratify treaties negotiated by the president and must approve the president's choices for top executive and judicial posts. Interdependency, based on shared as well as separate powers, characterizes the relationship among the three institutions.

Interdependency would not be important if the House, Senate, and president held similar policy preferences on all-important issues. In fact, for very good reasons they often disagree about what issues should be given priority and what should be done about them. As indicated in Chapter 4, divided party control of Congress and the presidency is common. The U.S. electoral system minimizes the connection between congressional and presidential elections. Even when one party controls the House, Senate, and presidency, incumbents of the three institutions are not likely to have identical views. Representatives, senators, and presidents are elected on different cycles, and they have different constituencies. The result is that they are likely to anticipate and react to different mixes of political demands and conditions.

To complicate matters, the framers left ambiguities in the Constitution about congressional and presidential functions and powers. For example, the president is instructed to appoint ambassadors and make treaties with the "advice and consent" of the Senate, yet it is unclear as to how the president is to receive and account for senatorial advise. Furthermore, when the framers granted Congress the power to declare war, they did not anticipate the speed of modern military technology, which in some circumstances requires the president to make decisions about war without congressional involvement. In addition, when the framers gave the president the ability to kill a bill after a congressional adjournment by failing to take action, they were ambiguous as to what specifically constitutes an adjournment. In each case, and in many others, presidents have argued for interpretations that maximize presidential power.

Relations between the House, Senate, and president are a mix of conflict and cooperation. The three institutions face a common set of policy challenges even if their specific policy preferences differ in some ways. Nevertheless, the blend of conflict and cooperation does vary greatly over time, particularly in response to party control of the institutions. This chapter surveys the role of the president in the legislative game, as well as the resources and strategies employed by the president and Congress in interbranch conflict.

The President as a Legislative Player

The president is not always central to the legislative process. Many pieces of legislation do not interest the president and are routinely signed into law at the recommendation of trusted administration officials. On some issues, the president chooses to remain silent and inactive for political reasons. At other times, the president

seeks to influence only a few details of legislation, perhaps in areas of importance to major political supporters. Nevertheless, as the most visible actor in modern U.S. politics, the president faces a multitude of intense demands from the public and organized groups. As a result of formal Constitutional and statutory rules as well as basic partisan, public, and personal factors, the president is nearly always a central figure on legislation of consequence.

The President's Formal Role

The Constitution and various federal laws clearly establish that the president will recommend legislative action to Congress. This agenda-setting responsibility is complemented by the president's critical role at the end of the legislative game. Specifically, the Constitution grants the president the authority to sign or veto legislation that has passed the two chambers. Between recommending legislation and deciding whether to approve passed legislation, the president's involvement is not strictly defined by formal requirements and varies greatly.

Agenda Setting. The framers of the Constitution expected the president to stimulate and focus the legislative process. Article II, Section 3 of the Constitution provides that the president "shall from time to time give to the Congress information of the state of the union and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper." Of course, Congress is not required to consider matters the president brings to its attention. This is true even if the president calls a special session. Indeed, the president's powers and duties were designed to spur congressional action without giving the president coercive power over the activity of Congress or the ability to unilaterally impose new laws.

Presidents now address a joint session of Congress each January or February on the state of the union.[1] The speech is covered on live, prime-time television. It signals the president's priorities and is designed to generate support for those issues. Some recent presidents have sent to Congress longer versions of their addresses to provide more detail and rationale. Since the 1970s, a congressional leader of the opposite party has sought network television time after the speech to respond to the president. The major networks, however, have not always given opposition leaders the requested time.

Federal law also requires the president to submit statements and legislation to Congress. Of particular importance for the president's positive legislative powers is the requirement that the president submit an annual budget message and an annual economic message to Congress. The budget message, required by the Budget and Accounting Act of 1921, specifies the president's taxation and spending proposals for the forthcoming fiscal year. The economic message, prescribed by the Employment Act of 1946, provides a presidential assessment of the state of the U.S. economy and details the chief executive's economic projections for the coming fiscal year. These messages usually stir controversy and shape congressional debate over spending and tax policy each year.

Starting with President Truman in 1948, modern presidents have offered special messages providing additional detail—and often drafts of legislation—for the components of the administration's legislative program outlined by the State of the Union addresses and the budget and economic messages. The administration's legislation usually is introduced by members of the House and Senate as a courtesy to the president. Since Truman, presidents have devised time-consuming, complex processes for generating, synchronizing, and integrating legislative proposals from the bureaucracy and other sources.[2]

The implied powers of the president under the Constitution also contribute to the president's role in agenda setting. In particular, the president's implied authority to issue regulations and executive orders to subordinates in the executive branch without the direct authorization of Congress boosts the president's ability to influence policy. This power becomes particularly controversial when the president seeks to interpret laws in a manner inconsistent with the expectations of members of Congress. Presidential actions often stimulate Congress to clarify its position on new legislation, if such legislation can survive a presidential veto.

Congressionally Speaking . . .

Executive orders are edicts issued by the president to require or authorize action of executive branch agencies. Executive orders have been used to create new agencies—such as the Office of Homeland Security following the 9-11 terrorist attack. They have been particularly important for civil rights policy. President Harry Truman desegregated the military by executive order and President John Kennedy created the Presidential Committee on Equal Employment Opportunity by an executive order in which the term "affirmative action" was first used in federal policy. Many features of the intelligence agencies and mechanisms for keeping intelligence secrets secret were established by executive order. Most executive orders are not so important, but some have the effect of establishing an important policy by the unilateral action of the president. Some executive orders are authorized by law, but orders are often issued on the basis of the express or implied constitutional powers of the president. Executive orders are enforced by the courts as if they were statutes or regulations as long as they are not in violation of the Constitution or statute.[3]

Formal constitutional rules governing the negotiation of treaties and international agreements also empower the president at particular points in the legislative game. Specifically, the Constitution authorizes the president, "by and with the Advice and Consent of the Senate," to make treaties. Although the executive branch customarily initiates treaties and international agreements, the president does not have exclusive power over the treaty-making process. The president must submit treaties to the Senate and obtain two-thirds support. The Senate, however, is under no obligation to act on treaties presented by the president. Furthermore, the president is often dependent on the House for the appropriation of the necessary funds to comply with the terms of a treaty.

The Veto Power. The power to sign, veto, or take no action on legislation passed by Congress makes the president a critical actor in the legislative process. When the president vetoes a measure (a bill or joint resolution), he returns it to the chamber that first passed it, along with a message indicating his objection to the legislation in its present form. If the chamber that first passed the measure is capable of obtaining the votes of two-thirds of the members to override the veto, the measure is then sent to the other chamber. This chamber must also vote to override the veto by a two-thirds majority before the measure can become law.

Clearly, the process of overriding a veto is a daunting task. Thus, members necessarily consider both the president's veto point and the likelihood of forming a two-thirds coalition to override a veto in their decisions regarding legislative action. For example, members may choose to modify legislation that they know will be vetoed by the president and will not receive a sufficient number of votes to orchestrate an override. It should be noted, however, that there are instances in which congressional majorities that lack enough support for an override will present the president with legislation they know the president will find unacceptable. Typically, this is a strategic maneuver with the purpose of intensifying partisan differences or forcing the president to expend valuable political capital.

The veto record of modern presidents is shown in Table 9.1. Vetoes are seldom overridden by Congress—since 1789 just four percent of all vetoes have been overridden by both houses. Recent presidents facing opposing majority parties in Congress have increasingly resorted to vetoes in confronting Congress. President George Bush (1989-1993) used vetoes rather successfully; only one of his vetoes was overridden. Of the 37 vetoes issued by President Clinton during periods of divided government, only two were overridden. Less frequently, presidents challenge the House and Senate with vetoes when their parties have enjoyed majorities in both houses.

In some circumstances, the veto is a sign of a president's weakness. Failing to persuade Congress to pass legislation to his liking, the president resorts to a veto. For example, President Reagan in 1988—weakened by revelations of the Iran-Contra scandal—vetoed several bills that had broad congressional support, including measures to overhaul the nation's water pollution control and highway funding programs. The vetoes were swiftly overridden.

Presidents sometimes use the veto in the hope of killing legislative action in a particular policy area. Often, however, the president is willing to accept some form of the bill within this domain. An analysis of vetoed bills between 1946 and 1991 shows that Congress re-passed about 35 percent of them in a modified form. Of the re-passed bills, 83 percent became law, which reflects the fact that concessions made by Congress to the president were sufficient to gain the president's signature.[4]

The pocket veto—killing a bill by failing to sign it—allows the president to solely determine the outcome of legislation if Congress has adjourned within ten days (Sundays excepted) of enacting a measure. When Congress is not in session, its absence "prevents"

the president from returning the bill to Congress with an official veto message. Unlike normal presidential vetoes, pocket vetoes cannot be overridden by Congress.

Table 9.1. Presidential Vetoes, 1947-1996[5]

Year (Congress)	President (Party)	Total Vetoes	Regular Vetoes	Pocket Vetoes	Vetoes Overridden
1947-1948 (80th)	TRUMAN (D)	75	42	33	6
1949-1950 (81st)	**TRUMAN (D)**	**79**	**70**	**9**	**3**
1951-1952 (82d)	**TRUMAN (D)**	**22**	**14**	**8**	**3**
1953-1954 (83d)	*EISENHOWER (R)*	*52*	*21*	*31*	*0*
1955-1956 (84th)	EISENHOWER (R)	34	12	22	0
1957-1958 (85th)	EISENHOWER (R)	51	18	33	0
1959-1960 (86th)	EISENHOWER (R)	44	22	22	2
1961-1962 (87th)	**KENNEDY (D)**	**20**	**11**	**9**	**0**
1963 (88th)	**KENNEDY (D)**	**1**	**1**	**0**	**0**
1963-1964 (88th)	**JOHNSON (D)**	**8**	**4**	**4**	**0**
1965-1966 (89th)	**JOHNSON (D)**	**14**	**10**	**4**	**0**
1967-1968 (90th)	**JOHNSON (D)**	**8**	**2**	**6**	**0**
1969-1970 (91st)	NIXON (R)	11	7	4	2
1971-1972 (92d)	NIXON (R)	20	6	14	2
1973-1974 (93d)	NIXON (R)	12	11	1	1
1974 (93d)	FORD (R)	27	16	11	4
1975-1976 (94th)	FORD (R)	37	32	5	8
1977-1978 (95th)	**CARTER (D)**	**19**	**6**	**13**	**0**
1979-1980 (96th)	**CARTER (D)**	**12**	**7**	**5**	**2**
1981-1982 (97th)	REAGAN (R)	15	9	6	2
1983-1984 (98th)	REAGAN (R)	24	9	15	2
1985-1986 (99th)	REAGAN (R)	20	13	7	2
1987-1988 (100th)	REAGAN (R)	19	8	11	3
1989-1990 (101st)	GEORGE BUSH (R)	21	16	5	0
1991-1992 (102d)	GEORGE BUSH (R)	25	15	10	1
1993-1994 (103d)	**CLINTON (D)**	**0**	**0**	**0**	**0**
1995-1996 (104th)	CLINTON (D)	17	17	0	1
1997-1998 (105th)	CLINTON (D)	8	8	0	1
1999-2000 (106th)	CLINTON (D)	12	11	1	0
2001-2002 (107th)	*GEORGE W. BUSH (R)*	*0*	*0*	*0*	*0*

Democratic presidents facing a unified Democratic Congress appear in **bold**.
Republican presidents facing a unified Republican Congress appear in *italics*.
Presidents (D or R) under divided control of government appear in regular typeface.

What counts as a congressional adjournment has been challenged in several court cases. In response to a lawsuit filed by Senator Edward Kennedy (D-Massachusetts), the Ford administration in 1976 declared that pocket vetoes would be used only after the adjournment at the end of a Congress's second session. This move limited the president's ability to pocket-veto bills during the adjournment between the first and second sessions of a Congress, provided that Congress had made arrangements for receiving veto messages during the intersession period. President Reagan, however, maintained that intersession pocket vetoes were constitutional. Although the president's position was upheld by a federal district court, an appeals court reversed the decision. The appeals court ruling stands as the most definitive ruling to date. Since the Supreme Court has yet to rule directly on the issue, presidents may continue to challenge Congress with pocket vetoes employed after the adjournment of the first session.

Partisan Expectations

The president's service as the figurehead of his party also helps position him as a player in the legislative process. Parties are often seen as a means for bridging the gap between the legislative and executive branches, and much of the responsibility of building this bridge is borne by the president. The president is expected to provide the necessary leadership to forge a national consensus out of the interests represented in the House and Senate. Furthermore, members of the president's party usually expect the president to perform in a way that reflects well on the general reputation of the party, which enhances their own electoral prospects. In this respect, the party serves as a brand-name or signal to the public. Some scholars suggest that the success of political actors is partially a function of the value of the brand name at the time of elections.[6] Since public evaluations of presidential performance have a substantial effect on the electoral fortunes of the congressional parties, rank-and-file members and party leaders frequently voice their concerns to presidents about the policy and political consequences of presidential legislative programs and strategies.

Yet the relative weakness of American political parties makes it difficult for the president to command influence simply by virtue of his position as the head of his party's ticket. Factors such as the rise of split-ticket voting, candidate-centered congressional campaigns, and the weakening of party ties in the electorate have weakened the bonds between the president, candidates for other electoral offices, and voters. The manner in which the president's party in Congress significantly varies their proximity to the president based upon his status with the public clearly demonstrates the increasingly weak attachment that members have to a president of their own party. Certainly, when presidential approval is high, members use the president's popularity to their advantage, as done by House and Senate Republicans in the 2002 midterm congressional elections. Conversely, House Republicans in the 1990 midterm congressional elections made repeated efforts to distance themselves from President George Bush's reversal on tax increases. Even President Carter, under the unified government of his administration from 1977 to 1980, was unable to forge and maintain party unity on some of his most important legislative efforts. Under conditions of divided government, the problems are compounded for a president who faces strong partisan opposition in the House, the Senate, or both.

Public Expectations

Public expectations of presidential leadership continue to rise as well. The emergence of the president as the focal point of an expanding federal government after the Great Depression and World War II was accompanied by a surge in public expectations about the dominant role of the president in American politics.[7] Increased media concentration on the chief executive, as well as the president's tendency to resort to public appeals for support, has contributed to the president's standing as the most visible elected official in the country. In recent decades, the American public has increasingly expected the president to take action both at home and abroad, even in the face of declining party strength and his sharing of power with Congress.

The president's policy objectives are determined in part by the public commitments he makes during campaigns. President George Bush's campaign pledge of "No new taxes" effectively constrained his budget policy options for much of his first two years in office. When the president reneges on such public commitments, he risks losing public approval and electoral support from his various constituencies as well as from members of Congress, which is precisely what George Bush experienced when he broke his campaign promise by raising taxes. While in office, the president makes innumerable other public commitments. The chief executive's role as a player is also conditioned on public approval ratings. As presidents turn more and more to the public to mobilize public pressure on behalf of their policy preferences, presidents are increasingly constrained by the public stands they take.

Personal Considerations

The place of the president in the legislative game is also shaped by personal interests and commitments. The policies pursued by the president in such circumstances are colored heavily by personal preferences formed before taking office. President Jimmy Carter's desire to be a "human rights" president is a good example of such precommitments. The opening of his inaugural address, for example, called on the country to restore a moral fiber to its relations with oppressive governments. Carter's efforts to make human rights principles the cornerstone of U.S. relations with certain Latin American countries can well be attributed to personal policy interests brought by Carter to office. President Reagan's desire to reduce the size and role of the federal government can also be considered a personal program brought by Reagan into the policy arena. The positions taken by President George Bush on U.S.-China relations after the Tiananmen Square massacre in 1989 also show presidential reliance on personal background and commitments, as Bush repeatedly claimed a personal knowledge of China from his service in 1974 and 1975 as the official U.S. representative to China. This phenomenon was also evident in Clinton's efforts to reduce the federal deficit, which was a central policy objective throughout his presidency.

Presidents' Resources

The strategies adopted by presidents and members of Congress to control the policy process are largely a function of the quality and quantity of resources available to each. The president possesses numerous resources that serve to strengthen the role of the presidency in legislative politics (see the box on the next page). Some of these resources, such as formal powers, White House staff, information, and expertise, are relatively secure and may even expand during a president's term of office. Most obviously, the president is allowed to arrange his staff as he chooses. The size of the White House staff is largely controlled by the president and his top aides, although it is subject to congressional appropriations. In recent decades, White House staff has expanded, particularly in the offices for legislative affairs, communications, and domestic and foreign policy. In addition, presidents have expanded agencies within the larger Executive Office of the President, such as the Office of Management and Budget (OMB) and Council of Economic Advisers, to enhance their ability to influence policy outcomes.

From time to time members of Congress have moved to curtail the president's discretion. In the 1970s, after the OMB had gained great importance in the development and implementation of policy, Congress required the president to receive Senate approval on appointments to head this agency. Thus, the president's choice for director of the OMB became subject to the same confirmation process as cabinet secretaries. In the 1980s, when President Ronald Reagan was proposing cuts in domestic programs, congressional Democrats made sure that funding for White House staff was constrained as well. In 1992, House Democrats moved to eliminate funding for Vice President Dan Quayle's Council on Competitiveness to show their opposition to its role in disapproving regulations proposed by federal agencies. In general, however, presidents have been able to freely organize their staffs and White House decision-making processes.[8]

Some resources, such as information and expertise, may increase during a presidency as experience is acquired. For example, a lack of Capitol Hill experience was a serious shortcoming of President Jimmy Carter and his top aides when he entered office in 1977. As time went on, the Carter team gained familiarity with the people and ways of doing business in Congress. But Carter also recognized the limitations of his White House staff and moved to hire more experienced people. An important element of the change was giving more responsibility to Vice President (and former senator) Walter Mondale in the planning of legislative strategies.

In contrast, the president can expend other resources during a term of office. One scholar called this the "cycle of decreasing influence."[9] Party strength in Congress and public support usually diminish slowly during the term. Recent exceptions aside, the president's party typically loses Congressional seats in midterm elections. In addition, public support for an administration's domestic policy agenda usually declines over time, although presidents can sometimes "replenish" public support by their conduct in foreign affairs. These patterns were particularly problematic for President George Bush. Bush was awarded with a tremendous boost in approval ratings following successes in the war against Iraq in late 1990 and early 1991. Those ratings fell steadily, however, after the war news faded and the recession at home lingered.

Legislative Resources of Presidents

Partisan base in Congress. The size of the House and Senate caucuses of the president's party can boost presidential success in enacting their priorities. When a president's partisans in Congress are cohesive and ideologically in step with him, the advantages offered to the president increase.

Formal powers. Presidents gain leverage with legislators by using, or threatening to use, their formal powers. The most obvious power is the power to veto legislation. In addition, the president may issue executive orders that interpret laws or regulate the behavior and decisions of executive branch agencies.

Visibility and public approval. The national media concentrate on the president. Unlike Congress, which finds speaking with one voice difficult, the president can dominate the news and manipulate the types of information Americans receive about his activities. If presidents mobilize public support for their initiatives, members of Congress must weigh carefully the costs of opposing the president.

Expertise and information. Broad policy expertise is available to the president from the agencies of the executive branch.

White House staff. The president has a large personal staff in the White House that allows the president to monitor and communicate with Congress, lobbyists, the media, and others.

Patronage and projects. Presidents and top cabinet officials use personnel appointments to assert control of the bureaucracy and to do favors for members of Congress. Modern presidents make more than six thousand executive and judicial branch appointments. Presidents and top administration officials can influence decisions about who wins federal contracts and the location of federal installations and buildings.

National party organizations. The president effectively controls the resources of his party's national committees, which can be used to do favors for members of Congress.

Public opinion has effects on support for the president in Congress. As public support for a president wanes and members of Congress begin to focus on the next election, once-loyal partisans in Congress often start to distance themselves from the president.[10] As President Johnson reportedly once told his staff:

> You've got to give it all you can that first year. Doesn't matter what kind of majority you come in with. You've got just one year when they treat you right and before they start worrying about themselves. The third year, you lose votes. . . . The fourth year's all politics.[11]

Presidents eventually run out of time. The two four-year terms that a president may serve under the Twenty-second Amendment are a long time, to be sure, but they are shorter than the legislative careers of most members of Congress and far shorter than the time horizons of many lobbyists and most bureaucrats. In fact, the president often seems to be in more of a hurry than others in Washington. There is good reason for this. Beyond the diminishing political capital that results from typical patterns of decreasing public and congressional support associate with the natural progression of the presidency, members of Congress, lobbyists, and even bureaucrats tend to sever relations with incumbent presidents nearing the end of their office with hopes of investing in the future president. When that happens, the president loses much of his influence and may become little more than a caretaker of the White House.

Presidents' Strategies

Activist presidents, a category that includes most recent presidents, bring their resources to bear on Congress in a number of ways. No recent president has used a set formula to uniformly address the allocation of resources in the legislative process. Rather, strategies are usually tailored to individual bills. Although executed in a variety of ways, every recent president has confronted decisions about how to structure his legislative agenda, how to generate congressional support, how to employ the veto power, and how to control the bureaucracy in the face of competition from Capitol Hill.

Agenda Setting

Perhaps nothing affects presidential success in Congress as much as a president's decisions about what legislation to recommend to Congress, when to recommend it, and what priority to give each recommendation. Political scientist Paul Light observes that "control of the agenda becomes a primary tool for securing and extending power. Presidents certainly view the agenda as such."[12] The president's choices send a signal to a wide audience—Congress, administration officials, interest groups, the media, and the public—about the president's view of the lessons of the last election, the president's policy preferences, and the president's likely priorities. The president's choices shape the strategies of other legislative players and help set expectations by which the president's own success or failure will be judged.

In most situations, the president cannot force Congress to address his proposals. Rather, he must convince members of Congress to give priority to his legislation. Members of Congress may see national problems differently, give precedence to other issues, or approach problems in a different way. The president must, therefore, motivate Congress by generating support among important members or groups of members, organized interest groups, and the general public. He may employ the full range of presidential resources available to him to coax Congress to take his proposals seriously.

Except in times of national crisis, the president's ability to influence the legislative agenda is strongest at the beginning of his first term, followed, perhaps, by the beginning of the second term. At those times, the president's time horizon, public support, claim to an electoral mandate, and core congressional support tend to be the most advantageous.

Also at those times, opponents of the president's program are likely to be the most disorganized and least able to cohesively counter it. Just after a presidential election the president's opponents are likely to be weaker in Congress, internally divided about how to change their predicament, and suffering low public esteem.

Consequently, the ability to propose legislation immediately after entering office gives the president an edge in shaping the legislative agenda. A president, however, must carefully calculate which proposals to pursue. Since some proposals may be unacceptable to Congress, a president will prefer to avoid certain defeat and the reputation of ineffectiveness that might result. President Clinton, for instance, was criticized for failing to foresee the difficulties of overcoming a Republican filibuster on his economic stimulus package early in his first year in office. The experience led commentators to question the president's judgment and motivated the White House to reevaluate its legislative affairs personnel. Moreover, the president must not overload Congress and his own staff with too many proposals. Congress and its committees have a finite capacity to produce major legislation quickly. In addition, the administration has a limited ability to formulate detailed proposals, lobby Congress, and negotiate compromises in its first few months in office. The president is also unable to generate media attention and public support for more than a few proposals at a time. In President Clinton's first year, for example, the administration withheld its proposals on health care reform until after Labor Day, so that the public and Congress would not be distracted from his higher priority—a large economic package that would reduce the federal deficit.

Among recent presidents, Ronald Reagan appears to have used the early months of his first term most effectively. Reagan moved quickly, and set his priorities carefully by defining his agenda as two major bills, one for domestic budget cuts and one for tax cuts. Although both were complex, multifaceted proposals, Reagan was successful in leading the media and the public to focus on the broad effects of his proposals. The approach allowed the Reagan administration to concentrate its resources, stimulate public pressure on Congress for widely recognized proposals, and gain legislative action in its first year in office.

Attracting Congressional Support

On important legislation, modern presidents usually pursue a mixed strategy of quietly bargaining with members of Congress and lobbyists and more widely soliciting public support. In deciding how to allocate resources to inside and outside strategies, the White House takes into account how many members of Congress must be persuaded, which members must be persuaded, whether public opinion favors the president's position, strategies of the opposition, the commitment of resources to other issues, and how much time the president has before Congress makes a decision. Daily, even hourly, tactical adjustments are common in the midst of a tough legislative fight.

A president's strategy is often influenced by members of Congress. Congressional leaders of the president's party regularly consult with the White House and other administration officials about the substance of policy proposals and legislative tactics. As earlier discussed, the electoral success of members is partly determined by the

coordination of party strategies. Indeed, modern presidents have recognized the importance of this. In fact, recent presidents have met with their party's congressional leaders at least once a week while Congress is in session. Committee and faction leaders also press the administration to pursue certain strategies. Cooperating with important members, as well as with influential interest groups, bureaucrats, and others, may encourage these actors to employ their own resources on behalf of the administration's program.

Inside Strategies. The inside strategy is one of bargaining.[13] Although often seen as underhanded, presidents must frequently employ bargaining tactics to accomplish legislative objectives. This is particularly true when presidents are faced with an effective, committed opposition within Congress. Knowing when, where, and how to make a deal with the members and factions of Congress requires information and skill on the part of presidents and their legislative advisors. Successful bargaining also revolves around formal rules of the game, the composition of the Congress, public opinion, and other resources.

Presidents and presidential staffs with Capitol Hill experience seem to be advantaged in the inside game. Recent presidents have varied widely in their bargaining skills seemingly as a result of this. President Carter, for example, is often singled out as a president who suffered because of his inexperience in dealing with Congress. His reliance on equally inexperienced staff made matters worse. Presidents Reagan and George W. Bush can be situated somewhere in the middle of the spectrum. Although lacking in Washington experience himself, Reagan appointed political elites and Capitol Hill staffers to important posts and worked hard to develop strong personal relations with members. Thus far, George W. Bush has adhered to a similar model. At the other extreme is President Johnson, who had served as his party's Senate leader and was the consummate wheeler and dealer.

Bargaining tactics can extend from sizeable exchanges to more subtle efforts at negotiating compromises on the fine points of a given piece of legislation. In return for reporting legislation high on the president's priorities, for example, a subcommittee chair might secure favorable consideration for a Defense Department contract important to his or her district, gain the president's commitment to support an unrelated piece of legislation, acquire the nomination of a political supporter to an administration or judicial post, get the president to campaign on his or her behalf, or simply obtain use of the president's box at the Kennedy Center. Presidents often do such favors for members outside of bargaining scenarios to foster good personal relationships and incur their indebtedness.

Wheeling and dealing for votes also occurs. President Reagan's victory in getting the Senate to approve the sale of AWAC (Airborne Warning and Control Systems) planes to Saudi Arabia in 1981, for example, was attributable in part to favors that the administration reportedly bestowed on wavering senators. These favors were said to include funding for a Public Health Service hospital in Washington State for Senator Slade Gorton (R-Washington), acceleration of a U.S. attorney appointment for a

candidate favored by Senator Charles Grassley (R-Iowa), and a hint that the president might not campaign in 1982 against Senator Dennis DeConcini (D-Arizona).

Presidential Pettiness

Presidents are capable of punishing legislators who defect from negotiated agreements but their efforts are not always effective. A president may choose not to support a legislator's reelection campaign effort. In extreme cases, a president may even support primary opposition to a disloyal incumbent member. Furthermore, the president has the ability to manipulate agencies in manners that may be potentially damaging to a member's core support.

President Clinton reportedly punished Senator Richard Shelby, then an Alabama Democrat, for voting against Clinton's economic stimulus package by transferring ninety jobs in the National Aeronautics and Space Administration from Alabama to Texas. Shelby also was shorted in the allocation of tickets to a White House ceremony to honor the national champion football team from the University of Alabama. Shelby later changed parties to sit in the Senate as a Republican.

Presidents may try to punish members in more trivial manners, such as excluding them from White House functions. In 2001, President George W. Bush did not invite Senator Jim Jeffords (I-Vermont) to a ceremony to honor the teacher of the year—who happened to be from Vermont. News reports indicated that the slight was deliberate. Jeffords had not been an administration loyalist; in fact, in the previous month Jeffords had worked with Democrats to reduce the size of the tax cut pushed by President Bush. A few weeks later Jeffords left the Republican party, causing a switch in party control of the Senate.

One lesson may be that presidents should be careful about invitations to White House ceremonies.

Some of the foreign policy compromises negotiated at the outset of the Bush administration in 1989 involved more intricate bargaining. Secretary of State James Baker, for example, procured a bipartisan settlement with congressional leaders to end military aid for the Nicaraguan Contras. That agreement ended a multiyear standoff between Democrats in Congress and the Reagan administration over U.S. efforts to overthrow the Sandinista government in Nicaragua. The agreement was reached, however, only after concessions were made on both sides. Congressional negotiators agreed to extend more funding to the Contras; in return, the president gave four congressional committees the unilateral right to cancel the funding pending an interim review.

Outside Strategies. Observers of presidential strategies have noticed that presidents have become more reliant on outside strategies in recent decades.[14] Twentieth-century presidents as early as Theodore Roosevelt sought public support to strengthen their hand against Congress, but only recent presidents have routinely done so. Through such

activities as televised prime-time addresses, press conferences, domestic and foreign travel, exclusive interviews, timely leaks, and now television talk shows and call-in programs, presidents are increasingly cultivating external allies to strengthen their position within Washington.

"Going public," as the outside strategy is labeled by political scientist Samuel Kernell, is an attractive strategy for several reasons. First, technological advances such as transcontinental jets and live satellite feeds have increased the ease of reaching a wide audience. Second, campaign finance practices and declining presidential coattails have reduced members' dependence on support from the president and the parties. Third, the administration's advantage in information and expertise has weakened, as rank-and-file members have benefited from the diffusion of power and staff within Congress. Finally, budgetary constraints have reduced the president's supply of projects and other favors that he can use to trade with individual members.

Fundamentally, going public is about taking credit and issuing blame. With this strategy, the president seeks to demonstrate to the electorate the shortcomings of his opponents, while claming credit for both himself and his supporters. If successfully executed, going public raises the stakes for members of Congress beyond the policy choice itself. Of course, the strategy breeds counterstrategies. Opposition leaders are encouraged to develop public relations strategies of their own, and, in doing so, they are motivated to propose alternatives to the president's program that the president and his supporters would be embarrassed to oppose. In this way, outside strategies encourage early public commitments by legislators, foster partisan maneuvering and grandstanding, and discourage bargaining and compromise that require a softening of positions and a sharing of credit and blame.

For example, the credit-and-blame game obstructed progress on reducing the federal budget deficit in the 1980s. Republican presidents Reagan and Bush staked out highly visible positions opposing tax increases and pounded the Democrats for being the party of taxing and spending. Yet Republicans dared propose only limited spending cuts, because they feared the Democrats' criticism that they cared little about the middle class and favored the rich. Consequently, leaders of neither party proposed policies that would truly eliminate the deficit.

Unfortunately, few have systematically studied the effects of public appeals by presidents on congressional support. Political scientists have obtained mixed results in their studies of the relationship between presidents' popularity and their congressional support. It is fair to say that a president's overall popularity improves his legislative prospects a small, yet measurable amount.[15] However, the effectiveness of public appeals on particular issues has been given little attention. The few studies that exist seem to indicate that presidential appeals do make a difference in public opinion, although the connection between shifting public opinion and congressional support remains to be made.[16] Presidents clearly think that public appeals matter, at least to some degree, and on divisive issues the ability to sway a few votes in the House or Senate can be sufficient to change entire outcomes. For presidents, the trick is to identify when

public appeals will produce the marginal changes in congressional support that are needed.

A high-profile appeal, such as a special televised address to the nation from the Oval Office, entails risks for a president. This approach may produce resentment among members of Congress toward the president if the president's appeal creates electoral problems for them at home. Furthermore, since the president cannot make such appeals frequently, he must reserve this approach for only those issues of significant importance in which his appeal is likely to generate critical support. Failure to gain more public or congressional support may damage the president's reputation, reducing his effectiveness in future legislative battles and perhaps hurting his own reelection chances. Therefore, more cautious, less publicized, and more targeted approaches, such as speaking before certain groups and calling on small groups of newspaper editors, may be preferred at times.

The Veto

The veto inserts the president into the legislative game. A threatened veto may lead congressional leaders to set aside certain legislation or to make concessions to the president before passing the legislation. Particularly when control of the Congress and presidency is divided between the parties, the veto gives the president a critical source of leverage with legislators.

Veto threats must be credible if they are to be effective, and a president that consistently fails to follow through on threats may gain a reputation for bluffing. For Republican president George Bush, who faced Democratic majorities in both houses of Congress throughout his term, the veto was a central feature of legislative strategy. Indeed, Bush successfully built a reputation for following through on veto threats and sustaining them. In 1989 and 1990, during the first Congress of the Bush administration, thirty-eight pieces of legislation mentioned by the Washington Post were subject to at least a threatened veto by President Bush. In many cases, President Bush warned from the start that a Democratic proposal would be vetoed. In other cases, he did not threaten to veto a measure until the last minute, reserving the threat to help overcome an obstacle to an acceptable bill that arose in conference committee. In yet other cases, however, cabinet secretaries or other administration officials issued the threat, sometimes in testimony before a congressional committee, sometimes in a press conference, and sometimes through legislative affairs or press office staffer members. This tactic allowed the president to remain distant from the veto threat, in the event that he later felt compelled to sign the legislation for political reasons.

The Veto Process

To veto a bill, the president signs a veto message that is sent to Congress. The message may contain the president's reasoning. The house of Congress that first passed the legislation acts first on the veto. That house may attempt an override, pass new legislation without an override attempt, or take no further action. The bill dies if a two-thirds majority is not acquired to override the veto. If the house does override veto, the other house also may attempt an override, pass new legislation without an override attempt, or take no further action. The bill dies if a two-thirds majority is not acquired in that house to override the veto. New legislation may reflect concessions to the president. It must be approved by both houses and sent to the president for signature or veto.

Of the 38 measures subject to threatened vetoes in 1989 and 1990, President Bush actually vetoed 29, and none of those vetoes was overridden by Congress. Neither house attempted to override the president's veto in ten of the veto cases, presumably because the veto was sure to be sustained. In three cases, the House overrode the veto but the Senate did not, and in the other eight cases the first house to vote on the veto override failed to do so, thus killing the bill.[17] This is certainly a testament to the difficulty associated with overriding a presidential veto. In fact, Bush did not lose a veto battle with Congress until October 1992, his last year in office, when both houses voted to override Bush's veto of a bill to provide for regulation of prices and service in the cable television industry. President Bill Clinton, working with a similar Congress dominated by his own party, vetoed no bills in his first two years in office. Clinton's use of the veto, however, changed drastically in the following three congresses under Republican majorities, and began to resemble the strategy employed by his predecessor.

The veto game is played by members of Congress as well. Members frequently solicit a veto threat from the administration to solidify their bargaining position on Capitol Hill. Sometimes a congressional party will bait the president with a bill that it knows he will find unacceptable. A vetoed bill can be a rallying point for the president's opposition as it seeks to generate credit for itself and blame for the president. A well-documented example of this involves the 1995-96 battle over welfare reform. In this instance, a unified Republican Congress presented President Clinton with two virtually identical versions of welfare reform legislation, which they suspected would be vetoed by Clinton in both cases without the possibility of generating a two-thirds majority to override the vetoes. This was largely an effort made by Republicans to portray Clinton as an opponent to an issue area that would be central to the 1996 elections.

Naturally, vetoes occur most frequently when Congress is willing to pass bills that presidents find unacceptable.[18] A Congress dominated by the opposition party is most likely to produce legislation the president dislikes, although the difference in the number of vetoes under divided and unified party control of government is not as large as you might think (see Table 9.1). An unpopular president also faces more vetoes because Congress is more willing to challenge the president and meet public demands for governmental action. Moreover, midterm election years appear to be associated with a

large number of vetoes. This may be partially attributed to heightened levels of position taking among members in preparation for the elections, which tends to lead to a weaken deference to the president. In contrast, international crises are associated with fewer vetoes. Perhaps the preoccupation of the president with the crisis leads to fewer vetoes, or perhaps Congress decides to challenge the president less frequently at such times.

Statistically, attempts to override vetoes are associated with low presidential popularity, a strong opposition party in Congress, and bipartisan support for the legislation.[19] Low presidential popularity and bipartisan support for the legislation also contribute to successful override attempts. Generally, highly partisan legislation, as vetoed legislation tends to be, is not overridden since supermajorities are required. Parties seldom have close to the two-thirds of the seats in both chambers needed to override a veto.

Controlling the Executive Branch

Much of the competition between Congress and the president concerns control of the executive branch agencies whose responsibility it is to implement policy. Agencies become players in the legislative game once they are established and begin to perform functions that are valuable to others. They have resources of their own to bring to the legislative battle. Specifically, much of the information and expertise about federal programs resides in the agencies themselves. That information and expertise can be shared selectively with Congress and the White House. Agencies also have friends within the interest group community and the general public whom they can call on for assistance. By securing control over the vast federal bureaucracy, the president is better able to manage the signals emanating from the executive branch, eliminate sources of opposition to his legislative goals, and increase the probability that old and new laws will be implemented in a manner consistent with his preferences.

The need for agreement among all three legislative institutions—House, Senate, and president—advantages the continuance of the status quo. Therefore, political actors have incentives to manipulate existing laws to their gain. Naturally, members of Congress, presidents, and the organized interests seeking to influence policy look to influence agency decisions by means other than the legislative process. Presidential appointment powers and oversight authority, certainly contribute to the president's ability to control the activity of executive agencies. By appointing like-minded individuals to high ranking agency positions and curtailing agency decisions, the president has considerable influence over policy outcomes vis-à-vis the federal bureaucracy.

The central arm of the president's bureaucratic control is the OMB. This agency, like its predecessor, the Bureau of the Budget, constructs the president's budget proposals for the federal government. Furthermore, central clearance—the job of coordinating and approving all executive branch proposals sent to Congress—is the responsibility of the OMB. OMB responsibilities also entail scrutinizing written proposals and even preparing the congressional testimony of executive branch officials to ensure consistency with the president's policy goals. In addition, the OMB reviews enacted legislation to provide the president with a recommendation to sign or veto it.

In recent decades, the OMB has become more politicized and has expanded its bureaucratic control functions.[20] By placing aides ideologically in step with himself in charge of OMB, and by centralizing the rule-making process within OMB, President Reagan turned the OMB into a major instrument in shaping national policy and managing relations between the administration and Congress. Executive order 12291, issued by President Reagan, authorized the OMB's Office of Information and Regulatory Affairs (OIRA) to review regulatory proposals from agencies and departments to assess their value in terms of strict cost-benefit analysis and consideration of alternatives. In reality, granting this authority to OIRA provided a means for the president to make certain that agency activity was in step with his preferences or policy objectives. On numerous occasions during the Reagan administration, OIRA intervened with agency rule making and stopped the agency from issuing congressionally mandated regulations. This intervention was principally achieved through use of return letters—a letter from the administration that returns a rule for further consideration. These requirements notably undercut the independence of agency and department heads. Wholesale efforts to reorganize the bureaucracy—albeit unsuccessfully, as in Reagan's attempt to abolish the Department of Education—also figured in Reagan's efforts to increase White House control over executive agencies.

Under the George Bush administration, the OMB's regulatory review functions were supplanted to some extent by the efforts of the Council on Competitiveness, created by executive order in 1989. The council was officially located in the office of, and headed by, Vice President Dan Quayle. This organizational arrangement protected the council's inner workings from the public and congressional scrutiny, to which the OMB is subject. As the administration intended, members of Congress, lobbyists, and the media found it difficult to anticipate or react to unfriendly White House efforts to interpret law and mold regulations required by law.

President Clinton did not reestablish the Council on Competitiveness and instead relied on the OMB to oversee the bureaucracy. Early in the administration, Clinton issued Executive order 12866, repealing Executive order 12291 which had governed regulatory review in both the Reagan and George Bush administrations. In general, there were few differences between the executive orders. In fact, Clinton's executive order preserved the use of cost-benefit analysis in evaluating regulatory rules and their alternatives. Clinton's executive order did, however, mandate "the primacy of Federal agencies in the regulatory decision-making process." Under the Clinton administration, this is precisely what occurred. Although OIRA maintained powers of bureaucratic oversight, it reviewed only the most salient regulatory matters. Furthermore, Clinton restructured OIRA to allow for preferred interest groups to gain greater access to the decision making process.[21]

Under President George W. Bush, OIRA's role in regulatory oversight has returned to a state similar to that seen under the Reagan administration. Much like Reagan, George W. Bush used his broad appointment powers to place individuals with like ideologies in key agency positions. The president's appointment of John Graham, a professor at Harvard University and outspoken critic of regulation, to head OIRA sent the message

that the administration would closely monitor regulatory agencies and their proposals. In the July 2001-February 2003 period, OIRA has issued 19 return letters, reflecting opposition to agency proposals. In the Clinton administration, OIRA issued only nine return letters in eight years.

Foreign and Defense Policy

The legislative politics of foreign and defense policy are typically quite different from the politics of domestic affairs.[22] The rules of the game often advantage the president in this arena. Under the Constitution, the president more clearly takes initiatives and has greater autonomy over action related to foreign and defense matters than he does in domestic affairs. He appoints ambassadors (with the advice and consent of the Senate), makes treaties (subject to the approval of a two-thirds majority in the Senate), receives the ambassadors of other countries, serves as the commander in chief of the armed forces and of state militias when they are called into the service of the federal government, and commissions the officers of the United States. Although senators have become increasingly involved in monitoring treaty negotiations and limiting presidents' reinterpretation of treaty provisions, the president largely retains control over U.S. diplomacy.

Congress is not helpless, of course. In fact, the Constitution gives Congress many resources. In particular, control of appropriations inserts Congress as a critical actor in foreign and defense policy, since funds are necessary to these activities. The Constitution also gives Congress the power to declare war, create and organize armed forces, regulate foreign commerce, and define offenses against the law of nations. Yet in practice, substantial ambiguity exists about the proper role of the two branches. How much discretion is granted to the president in using troops, making minor agreements with other governments, or conducting secret negotiations is not clearly defined in the Constitution. For the most part, the courts have left it to Congress and presidents to work out their differences.

Presidents who claim broad implicit powers argue that they are free to ignore Congress on some matters of foreign and defense policy. This position has been strengthened by the increasing importance of world affairs during the twentieth century. Scientific and technological advances have integrated economies and yielded weapons of mass destruction, increasing the importance of the president's ability to coordinate U.S. policy and act with secrecy. Presidents often argue that the dangers of the modern world and the prominent role of the United States in international affairs, requires that the president be free to conduct diplomacy, launch secret operations, and even deploy armed forces as he sees fit. Several Supreme Court cases have endorsed an unfettered right of presidents to conduct foreign policy. Chief among these rulings was *United States* v. *Curtiss-Wright Export Corp.*, a 1936 ruling asserting that even if extensive powers over foreign affairs were not spelled out for the president in the Constitution, the president is best suited to assume those responsibilities.[23]

Furthermore, as international affairs gained importance to the United States, control of national security was increasingly centralized and institutionalized in the White

House.[24] The 1947 National Security Act consolidated control of the military in a single Defense Department and created the Central Intelligence Agency and National Security Council. All three organizations are headed by individuals that are directly subject to the president—the secretary of defense, the director of central intelligence, and the national security adviser. These developments have enhanced the president's ability to collect and digest information and act promptly without substantial congressional participation.

Moreover, public expectations of presidential leadership continue to give the president an advantage in the area of foreign policy. Since the electorate supports centralized leadership on national security matters, particularly in times of international crisis, Congressional opposition to an assertive president is unpopular with the electorate. The public is especially supportive of the president if the lives of Americans are at stake.

In the decades after World War II, the liberties given to the president to fight world communism led some observers to believe that Congress was acting as if it ought to defer to the president on matters of foreign affairs.[25] By the early 1970s, as Congress was beginning to assert itself against presidential policies it opposed, views about congressional deference to the president began to change. However, the national consensus about cold war policy generated a basic agreement between Congress and presidents about international affairs that effectively returned Congress to a state of greater passivity. When that consensus once again began to disintegrate, members of Congress began to look for ways to recapture their influence in foreign and defense policy.

The reassertion of congressional power in the early 1970s represented the beginning of a tug-of-war between congressional Democrats and White House Republicans that would last into the 1990s (see the accompanying box). Between 1969 and 1992, with the exception of the four-year Carter administration, Democrats controlled the House and usually the Senate, while Republicans controlled the White House. Therefore, partisanship confounded matters by reinforcing institutional conflict between the branches. In addition, legislative action became increasingly central to the making of foreign policy as international economic relations, human rights, environmental problems, and other issues gained a more prominent role in this sphere of policy making. Legislation, of course, requires the approval of both houses, so congressional Democrats gained more opportunities to exercise influence in this arena.

Policies governing the intelligence agencies have been a prime source of conflict between Congress and the president. The tension between the branches increased after the revelations of the Iran-Contra affair. In 1985 and 1986, the administration secretly sold arms to the Iranians in efforts to negotiate the release of American hostages in the Middle East. Furthermore, the administration used the profits from the arms sales to fund the Contras in Nicaragua, which violated congressional restrictions on funding and covert assistance to the Contras. Under such conditions, Congress's ability to monitor intelligence operations was extremely limited.

War Powers

The Constitution grants Congress the power to declare war (Article 1, Section 8) but also makes the president the commander in chief of the armed forces (Article 11, Section 2). Congress has formally declared war only five times—the War of 1812, the Mexican War (1846-1848), the Spanish-American War (1898), World War I (1917-1918), and World War II (1941-1945).[26]

Presidents have used the commander-in-chief power, various treaty obligations, resolutions of the United Nations, and their implicit duty to provide for national security as grounds for committing U.S. forces abroad without a declaration of war. By one count, the United States had been involved in 192 military actions without a declaration of war by 1972. At least eight more have occurred since then, including the response to the Iraqi invasion of Kuwait in 1990 (the Persian Gulf War), the use of troops in Somalia beginning in 1992, and the military efforts in Afghanistan that followed the events of September 11, 2001. Many of these commitments were very brief, and Congress had no time to respond. In other cases, such as the Vietnam War, Congress implicitly supported the president by approving the funding he requested for the effort.

The costly Vietnam War in the 1960s and early 1970s stimulated efforts in Congress to limit the war powers that presidents had assumed. In 1973, Congress enacted, over President Richard Nixon's veto, the War Powers Resolution. This law requires that the president notify Congress about any commitment of military forces within forty-eight hours and terminate the commitment within sixty days unless Congress approves an extension or is unable to meet. The commitment may be extended by the president for another thirty days. Congress may halt the action at any time by concurrent resolution (that is, by a resolution that does not require the president's signature).

No one seems particularly satisfied with the 1973 law. Supporters of broad presidential discretion argue that the act infringes on the president's constitutional powers; supporters of a literal interpretation of the Constitution claim that the act gives away Congress's constitutional powers by allowing the president to conduct short wars. Since 1973, presidents have observed the reporting requirement but have sought alternatives to formal congressional approval. In 1983, President Reagan and Speaker O'Neill negotiated a timetable for the involvement of U.S. Marines in Lebanon. In 1991, Congress approved a resolution that authorized President Bush to use "all necessary means" to enforce the United Nations resolution calling for the removal of Iraqi forces from Kuwait. In both cases, the president avoided endorsing the constitutionality of the War Powers Resolution; in neither case did Congress actually declare war.

The line between congressional and presidential war powers remains an unsettled issue.

Congressional Resources and Strategies

The tendency to see legislative-executive relations as a zero-sum game is strong. That is, observers tend to think that if the president is gaining power, then Congress must be losing power. This perspective, however, is too simplistic. Both Congress and the president have gained power as the role of the federal government has expanded over the decades. Moreover, neither branch is monolithic. Within the executive branch, power has been distributed in a variety of ways between the White House, departments, and independent regulatory commissions. Within Congress, the somewhat different constitutional responsibilities of the House and Senate have meant that their power has not always shifted in the same direction. Moreover, developments that seem to affect the power of Congress adversely may enhance the power of certain members, factions, or parties within the institution. Since members of Congress and the president represent different audiences with different interests, it may also be the case the changes in the legislative-executive relationship benefit both branches even if one side appears to be reaping an advantage.

Thus, it is wise to keep in mind that Congress doesn't really use its resources—individual members, groups of members, and legislative parties used the institution's resources as they pursue their political goals. The exercise of congressional power is usually the by-product of the competition among members within the institution. For example, statutory regulations of executive agencies passed by Congress typically emerge from competition among members. After all, defining agency responsibilities can benefit members whose constituents have interests in line with specified agency objectives, and disadvantage those members that represent constituents with divergent preferences. Therefore, it is seldom that all members of Congress consider themselves to be winners on important matters.

Congress's most fundamental resources are the formal powers granted to it by the Constitution (see Chapter 2). The ability to exercise those powers effectively depends on the human and technological resources of the institution. The membership's motivation, committee and party structures, parliamentary procedure, staffing arrangements, electronic information systems, relations with outside experts and information sources, and other factors affect Congress's performance. Congress has periodically attempted to equip itself better to compete with the expanding capabilities of the president. The legislative reorganization acts of 1946 and 1970, among many other less-extensive efforts, expanded staff, reorganized committees, and changed procedures. In sum, Congress has developed a larger repertoire of strategies for responding to challenges from the executive branch.

Periodic Authorizations

Historically, most agencies and programs have continued indefinitely once they were created. Although they must receive annual appropriations from Congress, most of the basic laws creating and empowering agencies have been permanent. Delegating authority to an executive branch agency in such a manner increases the difficulty of retracting or altering the authority later. After all, a new law requires the agreement of the House,

Senate, and president, or, in the case of a presidential veto, a two-thirds majority in both houses of Congress.

In recent decades, Congress has moved away from permanent authorizations. When Congress enacts legislation creating a program or establishing a new policy, it may limit the lifespan of the authorization. That is, the law may include a "sunset" provision, such that new authorizing legislation must eventually be passed to keep a program alive. This approach requires administration officials to return to Congress to justify the continuation of the program as well it ensures that Congress will periodically review the law underlying the program. In recent decades, periodic authorizations have been used more often by Congress to keep a rein on executive agencies. When a program must be reauthorized periodically, an agency or a president controlling the agency knows that Congress may modify the agency's authorization if its existing power is not used in a manner that is more or less consistent with Congress's preferences.

An important case is the authorization for the Department of Defense, which must be passed each year.[27] Before the 1960s, defense programs were authorized for an indefinite period. However, throughout the 1960s and 1970s Congress gradually added more defense programs—military personnel, weapons systems, research and development, and so on—to the annual defense authorization bill. The immediate effect was to give members of the armed services committees greater influence over the activities of the Department of Defense. The long-term effect was to give all members of Congress a regular opportunity to influence the direction of defense policy. Issues such as arms control have been addressed on defense authorization bills.

Designing Agencies

In practice, much of the conflict over legislation is about the design of the agencies charged with implementing policy.[28] The line of authority, decision-making and appeals procedures, decision-making criteria, rule-making deadlines, reporting requirements, job definitions, personnel appointment processes and restrictions, and salaries all may affect the ability of Congress, the president, the courts, and outside interests to gain favorable action by agencies. Legislators, responding to political pressures from organized interests and others, generally seek to insulate agencies from unfriendly influences, including future Congresses and presidents, and to guarantee that agencies are guided by their policy preferences. Presidents, on the other hand, generally seek to secure new programs in the hierarchy of executive departments to which they can appoint politically loyal individuals to important administrative positions. Thus, congressional and presidential views about the organization and control of agencies are often in conflict.

The effort to elevate the Environmental Protection Agency to department-level status—making the head of the EPA a member of the president's cabinet—is a good example of structural politics.[29] Democrats in Congress sought to modify the EPA's status in 1990 to give environmental programs more priority and authority within the executive branch. The bill, passed by the House on a vote of 371 to 55, also called for the creation of a Bureau of Environmental Statistics, which was to be independent of the new department. In addition, the bill would have established a separate Commission on

Improving Environmental Protection, with the purpose of coordinating the regulations of the new department and other federal agencies with environmental jurisdiction.

The independent department was designed to be insulated from political manipulation. In fact, the bill required the department to report its findings directly to Congress, without review by the OMB or the new secretary of the environment. Furthermore, the multimember commission would have added a policy-making unit outside of the president-department line of authority. The White House, which wanted a bill that would reinforce President Bush's claim to be the "environment president," opposed the bureau and commission because they undermined the president's line of authority over agency activities. The bill stalled in the Senate because of credible threats of a filibuster by Republicans after the administration threatened a veto.

In the next Congress, the bill passed the Senate on a voice vote after its Senate sponsors met the Bush administration's demands by folding the statistics bureau into the new department and restricting the policy-making authority of the commission. House Democrats refused to act on the Senate bill. The bill died in the House Committee on Government Operations because House Democrats wanted to deny President Bush an opportunity to claim credit for pro-environmental legislation in an election year.

The EPA bill is typical of the conflict between Congress and the president over the structure of agencies. Agreement about the general policy was not enough to guarantee enactment, because the conflict over presidential control of the agency proved to be too divisive. Conflict over the control of information and personnel in this case was at least as controversial as the specification of policy. Specifically, the issue of contention was whether an executive branch official controlling the information going to Congress regarding the state of the environment would be responsible to the president or a more independent bureau chief. The president's veto power ultimately forced concessions from Senate Democrats, but House Democrats were more concerned about the political sacrifices than about raising the EPA to cabinet status.

Structural politics is not limited to original authorizations and reauthorizations. The fight is continuous, as the issue of personnel ceilings demonstrates. In recent decades, Congress has become more specific in dictating the design of executive agencies. On occasion, administrations have undermined congressional efforts to bolster agency resources by refusing to hire or replace important personnel.[30] The appropriations committees have responded in committee reports by specifying a minimum number of personnel for agencies, requiring reports on deviations, and insisting on a formal presidential request when an agency seeks to reduce spending with a personnel ceiling. Increasingly, Congress has imposed statutory restrictions on personnel ceilings, thus limiting the administration's control over agencies' personnel resources.

Plainly, the structure of executive agencies is the result of compromise. This give-and-take process can produce a variety of possible outcomes, ranging from agencies that are distant from the president and responsive to Congress to agencies that are firmly under the control of the executive administration. The decision of political actors to make

concessions on some aspects of structural policy and not on others is principally a function of the impact that the given agency has upon preferred constituents. Members of Congress and the president are reluctant to relinquish power over an agency when the agency under consideration has a significant direct effect—either positive or negative—on constituents of interest. For example, presidents with substantial support from the corporate sector have historically been unwilling to abdicate control of the EPA, especially when Congress has incentives to expand environmental regulation.

The Power of the Purse

A major congressional strategy for controlling policy and its implementation involves Congress's "power of the purse"—the constitutional provision that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." Since laws must originate in Congress, the legislative body can refuse to appropriate funds for certain purposes or condition the use of funds upon certain stipulations. Thus, the authority over appropriations gives Congress the ability to shape the actions of the executive branch in a manner consistent with congressional preferences. Certainly, conditioning appropriations upon specific activity explicitly mandates behavior consistent with the will of Congress. Although less overt, the constant threat that appropriations for an agency or program can be reduced or eliminated, effectively achieves the same end. In fact, if members of Congress want to take drastic action, as they sometimes do, they may even refuse to support appropriations for whole departments or agencies. For example, House Agriculture leaders' dissatisfaction with the actions of an assistant secretary of agriculture once led appropriators to strike all funding for the secretary and his office. The power of the purse gives Congress an important source of leverage over the executive branch.

In the field of foreign and military affairs, the power of the purse is often the only effective tool for Congress to influence policy. Congress's ability to restrict the uses of appropriated funds is well supported by court decisions, giving Congress a clear avenue of response to a president who asserts broad constitutional powers. By forbidding the executive branch from spending federal monies for certain purposes, Congress can prevent the president from pursuing a policy it opposes. Alternatively, Congress may withhold funds for some purpose favored by the president to gain leverage with the president on another matter.

Committee Reports

Committees often make clear their expectations about the implementation of programs in the reports that are required by House and Senate rules to accompany legislation when it is sent to the floor. Reports usually indicate the objectives of the legislation and sometimes interpret the language used, both of which may guide rule-making decisions by agencies. At times, committee reports indicate that the committee "clearly intends," "expects," or even "anticipates" that an executive branch official or agency will or will not do something. Although they are not legally binding, committee reports often guide courts when they seek to interpret ambiguous statutory language.[31] More important, reports make explicit the expectations of major members of Congress who will influence future legislation affecting an agency.

Packaging Strategies

The Constitution requires that the president have an opportunity to sign or veto legislation passed by Congress, but it does not indicate the size or format of the legislation Congress presents to the president. For example, a variety of items are often included in one bill to facilitate bargains among members of Congress, the president, and other interested parties. By using their ability to package legislation, members of Congress may encourage or discourage a presidential veto.

The growing use of omnibus bills affects congressional as well as presidential control over the policy process. As earlier discussed, OMB director David Stockman under President Reagan revolutionized the budget process by collapsing all budget decisions into one take-it-or-leave-it reconciliation package, so as to strategically aid the president's ability to enact his domestic policy agenda in the early 1980's. Likewise, House and Senate players can also use packaging strategies to their advantage in the legislative game. When multiple bills or aspects of bills are combined into one package that includes legislation both favored and opposed by the president, Congress makes it more difficult for the president to control national policy.

The advantages and disadvantages of packaging can be seen in the use of omnibus continuing resolutions (known as CRs), which combine two or more regular appropriations bills for the coming fiscal year into one giant package. CRs are required when Congress and the president fail to appropriate bills enacted before the beginning of a new fiscal year. If the president vetoes the bill that contains the funding for some executive agencies and no new bill is enacted, those agencies must shut down. Hence, the president needs to weigh carefully how effective a veto would be. Congress also risks losing measures packed into the CR that provoke the president's opposition. For example, Representative John Dingell's attempt in 1987 to codify in the CR the "fairness doctrine" governing broadcasters (a bill previously vetoed by President Reagan), was dropped from the bill after Reagan drew attention to its inclusion in the CR. The bundling strategy on these bills and other "must pass" legislation—such as bills to raise the federal government's debt ceiling—thus have the potential to help Congress reassert influence over the legislative game.

Legislators sometimes use "riders" as packaging strategies. Riders are amendments to House appropriations bills that have little relevance to the subject matter of the bills to which they are appended. Typically, they are proposals that, due to presidential veto or minority opposition in the Senate, would be unlikely to pass on their own. Therefore, members of congress seek to attach riders to bills that have a particularly high probability of passing, such as appropriations measures. Riders often place presidents in difficult positions, since a president may be unwilling to risk loosing a favorable piece of legislation as a result of a veto specifically directed at a rider. The 1995 "timber salvage rider" effectively demonstrates this scenario. The "timber salvage rider" was amended to the Supplemental Appropriations for Disaster Assistance and Rescissions act (H.R. 1944), which allocated money to counterterrorism and relief efforts for Oklahoma City, disaster relief for the Northridge, California earthquake, and debt relief for Jordan. This

bill included monetary concessions made by Republicans after President Clinton had vetoed an earlier version. The rider, however, remained in the legislation regardless of Clinton's requests. Due to the importance of the legislation and his previous obstruction, Clinton was under considerable pressure to sign the measure. Although Clinton disapproved of the amendment, calling it "logging without laws," he signed the bill, and subsequently received a great deal of criticism from environmental organizations.

Packaging legislation is a particularly important congressional strategy. Recent presidents have promoted the line-item veto as a means to combat Congress's packaging strategies. Adopting the line-item veto, an authority held by forty-three state governors, would allow the president to strike out individual provisions nestled in individual or omnibus spending bills. However, creating a line-item veto would require a constitutional amendment, since the Supreme Court ruled the line-item veto as passed by Congress in 1996 unconstitutional (see chapter 2). Such action would, therefore, require a two-thirds vote in both houses (and ratification by the States), and recent Congresses have refused to make the move.

Presidential Nominations

The Senate is given a special opportunity to influence the administration every time the president nominates someone for a top executive branch post. Beyond judges, ambassadors, and "other public ministers and consuls," the Constitution allows Congress to determine by law who must stand for confirmation by the Senate. Currently, the Constitution and public law subject about three thousand civilian executive branch positions to confirmation by the Senate (see the accompanying box). Judicial nominations and confirmation are considered in the next chapter. In addition, the promotions of all military officers are submitted to the Senate.

The Senate tends to defer to the president on executive branch appointments, particularly on positions below the cabinet level. This is not to say, however, that the president's appointments go unchecked. In fact, in 1989 President Bush's first nominee for secretary of defense, former senator John Tower, was rejected by the Senate largely because of concerns about the senator's private behavior. The president swiftly moved to nominate House Republican Dick Cheney, a choice calculated to be far more acceptable to the Senate. In 1993, President Clinton's first nomination for attorney general was withdrawn when it was discovered that the nominee, Zoe Baird, had hired illegal aliens as household help. He eventually appointed Janet Reno, a Florida prosecutor, who was readily approved by the Senate. According to the Senate Historical Office, Baird became the fifth cabinet-level nomination to be withdrawn by a president. Only ten cabinet-level nominees have been rejected.

Congressionally Speaking . . .

The Constitution and many statutes require that the president submit the names of certain appointees to the Senate for confirmation. The Constitution also allows the president to make a *recess appointment* when the Senate is not in session at the time the president names someone to fill a vacancy. A recess appointment is good until the end of the next session of Congress. Presidents have used recess appointments to avoid the regular confirmation process, but presidents usually announce their intention to forward a regular nomination to the Senate at the time appointments are made. Presidents have interpreted the Constitution's phrase, "end of their next session," to mean the end of the next full session of the Congress, which could be a year in duration.[32]

Occasionally, Congress acts to require that certain executive officials be subject to Senate confirmation. In 1973, Congress required the president to receive Senate confirmation on appointments to director of the OMB. In 1986, Congress extended their authority by requiring that the president also receive Senate confirmation on appointments to head OIRA. When Congress approved legislation to create the Department of Homeland Security in 2002, the new secretary of the department automatically became subject to Senate confirmation.

Moreover, Congress may, and does, get involved in executive branch personnel matters beyond Senate action on presidential nominations. Congress is able to specify in law the qualifications required of presidential appointees, and it may even grant department heads, rather than the president, the authority to appoint certain officials. Congress may also limit the ability of the president or agency heads to dismiss employees. In these ways Congress may seek to insulate certain executive branch officials from White House pressure.

Oversight

A member of Congress dissatisfied with agency performance or with presidential directives to an agency can choose from several oversight strategies to try to bring the bureaucracy into line. Oversight strategies centered on formal hearings include routine congressional hearings, which regularly bring agency heads in front of congressional committees, special hearings designed to draw attention to a disputed policy or agency action, and more dramatic investigations, such as the Watergate hearings in 1973 and 1974 and the 1987 Iran-Contra hearings. The highly publicized Watergate and Iran-Contra hearings earned historic fame uncharacteristic of more common oversight efforts.

The Iran-Contra Affair

A Lebanese newspaper reported in early November 1986 that the Reagan administration had been engaged in trading arms to Iran for release of hostages held by Islamic extremists in Lebanon. When Attorney General Edwin Meese later that month uncovered a memo outlining the diversion of profits from the arms sales to the Nicaraguan Contras, a series of executive and congressional investigations ensued. Together, these events sparked the biggest scandal of President Reagan's two terms in office and helped precipitate Reagan's marked decline in popularity and influence.

An investigation by special House and Senate panels into the Iran-Contra affair uncovered a remarkable series of events, in which officials of the Reagan administration lied to Congress and helped subvert normal democratic decision-making processes. The Reagan administration essentially pursued private policies that were in direct conflict with public policy objectives. On one hand, the administration's public policies were to ban arms shipments to Iran and to make no concessions for the release of hostages. On the other hand, the administration pursued private policies of selling sophisticated missiles to Iran and trading weapons to get the hostages back. Although Reagan originally told a special investigatory commission that he approved the shipments, he later reversed this statement. Finally, he testified that he could not remember whether or not he had approved the shipments.

Reagan's advisors admitted to directing the covert arms transactions and the subsequent attempts to divert the profits to the Contras. Furthermore, they confessed to concealing and, at times, outwardly lying about the activities to Congress. The arms sales violated laws requiring that such transactions be reported to Congress. Even though a series of Boland amendments were in place at the time prohibiting military or paramilitary assistance to the Contras, national security staff under the guidance of Lt. Colonel Oliver North and National Security Advisor John Poindexter secretly assumed direction and funding of the Contras' military efforts. Denied funds by the U.S. Congress for the Contras, the National Security Council (NSC) staff sought illicit funding from foreign countries and private citizens, and turned over much of the operation to arms merchants Richard Secord and Albert Hakim. Their private "enterprise" accumulated approximately $10.6 million, carrying out covert U.S. policies with private funds entirely unaccountable to Congress.

In the end, more hostages were taken and the military situation in Nicaragua worsened. But the policy failures pale in comparison to the failure of democratic and constitutional processes at the heart of the affair.

Less formal methods of monitoring and influencing agency behavior include written and telephone communications with agency officials, discussions during informal office visits, and timely public statements. Such approaches can be useful in congressional efforts to increase agency responsiveness to the interests of Congress.[33] Although a

considerable amount of bureaucratic oversight occurs within the committee forum, there are oversight mechanisms available to members that are independent of committees. Members seeking to influence agency actions in their districts also have recourse to informal visits and more formal inquiries conducted by staff. Often, members acting on behalf of communities in their district will pressure agency officials to respond to local concerns. For example, individual members frequently push the Environmental Protection Agency to investigate hazardous waste sites or to initiate cleanups in their districts. At other times, members will compel the administration not to act in their district when agencies have the potential to adversely effect preferred constituents.

Some observers have distinguished between "police-patrol" and "fire-alarm" oversight.[34] Under police-patrol oversight, Congress pursues routine, systematic surveillance of executive branch agencies on its own initiative. In contrast, fire-alarm oversight is more decentralized. Instead of initiating and maintaining patrols, Congress develops a system that lets others pull their local alarms. Citizens, interest groups, or the media trigger alarms and spur members of Congress to respond to certain agency decisions. Members may prefer fire-alarm oversight because it is more cost-efficient and because it allows them to claim credit for acting when the alarm bells ring.

Yet police-patrol oversight appears to have become more common since the early 1970s.[35] Fiscal constraints may have led members to turn away from legislation for new programs and instead to focus on overseeing the implementation of established programs. Expanded committee staffs and the independence of subcommittees, some devoted exclusively to oversight activities, have also facilitated more regular oversight. Furthermore, the centralization of the executive branch's regulatory process in the OMB and the Council on Competitiveness motivated members to pursue formal oversight hearings more aggressively. In addition, partisan rivalries in an era of divided party control of Congress and the White House stimulated members to be more cautious of executive branch activities.

In the same period, because of the expansion of its duties in the Legislative Reorganization Act of 1970 and the subsequent demand for its services from Congress, the General Accounting Office (GAO) has expanded the range and number of its audits and analyses of program effectiveness.[36] The GAO is an agency of Congress and is authorized to examine any federal agency. It gives members of Congress the option of having its expert, non-partisan staff conduct an investigation of executive branch performance without a large commitment of time on the part of members or their staff.

In recent decades, Congress has more frequently required the president and executive agencies to provide written reports on their actions and performance. In some cases, the requirement is designed to ensure the timely receipt of information—for example, just before Congress must reauthorize a program. In other situations, Congress demands that an agency conduct a special study of a problem and report the results. Executive branch officials often complain that they spend too much time writing reports that few members, if any, read. From Congress's perspective, however, the exercise is another in aspect of police-patrol oversight; one that shifts the burden to agencies themselves.

Beginning in 1978, police-patrol oversight was extended by the creation of offices of inspectors general within major departments and agencies. Inspectors general are given substantial independence from political appointees and agency heads, are authorized to conduct wide-ranging audits and investigations, and are required to submit their reports directly to Congress. With few exceptions, Congress has looked favorably upon having a full-time, on-site bureaucratic oversight mechanism.

Police-patrol oversight is also reflected in Congress's intensified scrutiny of "reprogramming" by agencies.[37] Congress usually appropriates funds for executive branch activities in large lump-sum categories, with the understanding that the funds will be spent in accordance with the more detailed budget justifications that agencies submit each year. Frequently, variation from the budget justifications—reprogramming—is deemed prudent or even necessary because of changing conditions, poor estimates, or new congressional requirements. Agencies and the White House, however, have occasionally taken advantage of reprogramming discretion to spend money for purposes not anticipated—or even opposed—by Congress. Congress has responded by establishing more and more requirements, such as demanding advanced notification of reprogramming actions and even requiring prior approval by the appropriate committees.

Legislative Veto

A congressional strategy of disputed constitutionality is the use of the legislative veto.[38] A legislative veto is a provision written into legislation that delegates authority for certain actions to the president or agencies, subject to the approval or disapproval of one or both houses of Congress, certain committees, or even designated committee leaders. For decades, the legislative veto mechanism gave Congress a way to check executive branch action without having to pass new legislation that would have to gain presidential approval. In effect, Congress was trying to avoid writing very detailed legislation by delegating rule-making power to the executive branch, while reserving for itself the last move in the game of formulating and implementing policy.

Legislative vetoes may, at first glance, appear to be a strategy used exclusively by congressional players against the president. The origins of the legislative veto, however, convey a different story. In 1932, Congress and President Herbert Hoover reached an agreement on executive branch reorganization that included the first legislative veto. The compact delegated reorganization powers to the president, provided that Congress did not disapprove his plan within sixty days. The agreement effectively gave the president wide latitude in exercising powers delegated to him, but it also gave Congress a chance to control those actions without having to enact another law. The provision seemingly benefited both Congress and the president.

The Supreme Court eventually saw it differently and declared legislative vetoes unconstitutional in 1983 in *Immigration and Naturalization Service* v. *Chadha*. The majority of the Court noted that some legislative vetoes circumvent constitutional requirements that legislative actions be passed by both chambers. Perhaps more important, the Court said, legislative vetoes violate the constitutional requirement that all

measures subject to congressional votes be presented to the president for signature or veto. The Court's position was evident: If Congress wants to limit executive branch use of delegated authority, it must pass new legislation by the traditional route.

Congress has devised no consistent strategy to replace the legislative veto. At times, Congress has written more detailed legislation or committee reports, added new procedural requirements for agencies, or turned to sunset provisions. At other times, it has turned toward informal agency-committee spending agreements, which require agencies to notify certain committees before they act. Although advance notification requirements have been upheld by the courts, committees actually retain a implicit form of veto under these arrangements vis-à-vis the power of authorization and appropriations. More specifically, agencies encountering opposition by the committees that fund them are not likely to proceed with their original plans out of fear of reprisal when their authorizing and appropriations legislation is next before Congress.

Moreover, Congress continued to add new forms of legislative vetoes to new laws in spite of the Court's 1983 ruling. In just over a year after the Chadha decision, an additional fifty-three legislative vetoes were enacted into law. By the completion of the 105th Congress, more than four hundred new legislative vetoes had been enacted.[39] New forms of legislative vetoes are still being attempted, and in some cases enacted. Although never enacted, the Senate passed a bill in 1998 that called for the creation of a congressional panel to govern the activity of the Government Printing Office (GPO). If enacted, the panel would have been given power, analogous to a legislative veto, to negate presidential directives. Such creative arrangements, which affect reprogramming and many other areas, reflect the efforts made by Congress, the president, and the executive agencies to find mutually acceptable ways to balance the delegation of power with checks on the use of that power. The president and agency officials know that courts would rule in their favor if they chose to challenge such arrangements, but they agree to comply because such arrangements often are a necessary condition for the latitude that Congress gives them.

A convenient inference is that the Supreme Court's 1983 decision had little practical effect on inter-branch relations. Such an inference is premature and probably incorrect. A scholarly review of inter-branch relations in the foreign policy arena indicates that the 1983 decision eliminated an important means for resolving conflict.[40] Where Congress and the executive branch are in serious disagreement, the executive branch appears unwilling to accept even symbolic legislative veto provisions, and Congress seems unwilling to delegate power that the executive branch seeks. Thus, changing the rules of the game seems to have affected the ability of the branches to identify cooperative strategies.

Conclusion

This review of congressional and presidential strategies suggests how dynamic and complex the relationship between the legislative and executive branches has become. As political conditions have evolved, senators, representatives, presidents, and bureaucrats have devised new and sometimes ingenious strategies. Dissatisfaction with the likely or

experienced outcomes of the game has often yielded institutional innovations, such as expanding the responsibilities of the OMB, the line-item veto, the legislative veto, and periodic reauthorization. Incrementally, the web of statutes, court rulings, and informal understandings produced by this process of innovation has made interbranch relations more complex. What keeps the system operating is a minimal level of agreement among the House, Senate, and president, or at least an understanding that compromise is essential to prevent complete gridlock.

The three-institution legislative game of the House, Senate, and presidency generates cooperation and conflict as the policy preferences and political interests of officeholders vary across issues and over time. However, the requirement that the three institutional players agree before new law can be made, in the absence of sufficient congressional support to override a veto, necessitate accommodation. Accommodation is frustrating to players set on gaining outright victories, and it often is possible only after a long struggle. Furthermore, accommodation produces unstable results. New Congresses and presidents seeking new strategies to meet their own political needs, frequently alter the state of the institutions. Consequently, relations between the branches seldom remain in equilibrium for long.

NOTES

[1] Although Presidents George Washington and John Adams delivered their addresses in person, the practice was ended in 1801 by Thomas Jefferson. It was not until the presidency of William Howard Taft in 1909 that the address was regularly used to outline the president's legislative goals. And it was not until 1913—with the inauguration of Woodrow Wilson—that presidents resumed the practice of delivering the address in person. For an assessment of the importance of Wilson's innovation, see Jeffrey Tulis, *The Rhetorical Presidency* (Princeton, NJ: Princeton University Press, 1987).

[2] Stephen J. Wayne, *The Legislative Presidency* (New York: Harper & Row, 1978), Chapter 4.

[3] Kenneth R. Mayer, *With the Stroke of a Pen*: *Executive Orders and Presidential Power* (Princeton, N.J.: Princeton University Press, 2001).

[4] Charles M. Cameron and Nina Fischman, "Veto Bargaining," Columbia University, mimeo, March 1993.

[5] Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress, 2001-2002* (Washington, D.C.: Congressional Quarterly, 2002), p. 151. Updated by the authors.

[6] See Gary W. Cox and Mathew D. McCubbins, *Legislative Leviathan: Party Government in the House* (Berkeley: University of California Press, 1993).

[7] For a discussion of the growth of the presidency after World War II, see Fred Greenstein, "Change and Continuity in the Modern Presidency," in Anthony King (Ed.), *The New American Political System* (Washington, D.C.: American Enterprise Institute, 1979), pp. 45-85.

[8] For more discussion of the growth of White House staff, see Samuel Kernell, "The Evolution of White House Staff," in John E. Chubb and Paul E. Peterson (Eds.), *Can the Government Govern?* (Washington, D.C.: Brookings Institution, 1989), pp. 185-237; and Samuel Kernell and Samuel Popkin (Eds.), *Chief of Staff. Twenty-five Years of Managing the Presidency* (Berkeley: University of California Press, 1986).

[9] See Paul Light, *The President's Agenda,* revised edition (Baltimore: The Johns Hopkins University Press, 1991). Light also covers in greater detail the range of resources available to presidents in pursuing their domestic policy agenda in Congress.

[10] For analysis of presidents and parties in the legislative game, see George C. Edwards III, *At the Margins: Presidential Leadership of Congress* (New Haven: Yale University Press, 1989), and Jon Bond and Richard Fleisher, *The President in the Legislative Arena* (Chicago: University of Chicago Press, 1991).

[11] As quoted in Light, *The President's Agenda,* p. 13.

[12] Light, *The President's Agenda,* p. 2.

[13] This classic statement of presidents' need to pursue bargaining strategies comes from Richard Neustadt, *Presidential Power* (New York: John Wiley, Inc., 1976).

[14] See Samuel Kernell, *Going Public: New Strategies of Presidential Leadership* (Washington, D.C.: CQ Press, 1986).

[15] For a summary of the literature, see Bond and Fleischer, The *President in the Legislative Arena,* pp. 23-29.

[16] See George C. Edwards III, *The Public Presidency* (New York: St. Martin's Press, 1983), pp. 39-46.

[17] *Congressional Quarterly Weekly Report,* February 15, 1992, p. 366.

[18] David W. Rohde and Dennis M. Simon, "Presidential Vetoes and Congressional Response: A Study of Institutional Conflict," *American Journal of Political Science,* August 1985, pp. 398-427.

[19] *Ibid.*

[20] For arguments about why these changes occurred, see Terry M. Moe, "The Politicized Presidency," in Chubb and Peterson, *The New Direction in American Politics* (Washington, D.C.: Brookings Institution, 1985); and Kernell, "The Evolution of White House Staff."

[21] Terry M. Moe, "The Presidency and the Bureaucracy: The Presidential Advantage," in Michael Nelson (ed.), *The Presidency and the Political System* (Washington, D.C.: CQ Press, 2003), pp. 425-57.

[22] See Barry M. Blechman, *The Politics of National Security: Congress and U.S. Defense Policy* (New York: Oxford University Press, 1990), and Thomas E. Mann (Ed.), *A Question of Balance: The President, the Congress, and Foreign Policy* (Washington, D.C.: Brookings Institution, 1990).

[23] For a detailed look at the implications of *Curtiss-Wright* and related judicial decisions, see Harold Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (New Haven: Yale University Press, 1990).

[24] I. M. Destler, Leslie H. Gelb, and Anthony Lake, *Our Own Worst Enemy: The Unmaking of American Foreign Policy* (New York: Simon & Schuster, 1984), Chapters 4 and 5; and Christopher Deering, "Congress, the President, and War Powers," in James A. Thurber (Ed.), *Divided Democracy* (Washington, D.C.: CQ Press, 1991), Chapter 9.

[25] The classic statement of the "two presidencies" thesis appears in Aaron Wildavsky, "The Two Presidencies," in Aaron Wildavsky (Ed.), *Perspectives on the Presidency* (Boston: Little, Brown, 1975), pp. 448-461. Wildavsky's argument was challenged subsequently by, among others, Lee Sigelman, "Reassessing the 'Two Presidencies' Thesis," *Journal of Politics,* 41, p. 1198, and George C. Edwards III, *At the Margins.*

[26] Francis D. Wormuth and Edwin B. Firmage, *To Chain the Dog of War. The War Power of Congress in History and Law,* 2nd ed. (Urbana, Ill.: University of Illinois Press, 1989).

[27] James M. Lindsay, "Congress and Defense Policy, 1961-1986," *Armed Forces and Society,* Spring 1987, pp. 371-401.

[28] Terry M. Moe, "The Politics of Bureaucratic Structure," in Chubb and Peterson (Eds.), *Can the Government Govern?* pp. 267-329, and Mathew McCubbins, Roger G. Noll, and Barry R. Weingast, "Structure and Process as Solutions to the Politician's Principal-Agency Problems," *Virginia Law Review*, 1989, pp. 431-482.

[29] Phillip A. Davis, "A Beleaguered EPA Struggles to Find a Cabinet Seat," *Congressional Quarterly Weekly Report*, April 6, 1991, pp. 851-853.

[30] Louis Fisher, *The Politics of Shared Power*, 3rd ed. (Washington, D.C.: CQ Press, 1993), pp. 68-73.

[31] William N. Eskridge, Jr., and Philip P. Frickey, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* (St. Paul: West Publishing, 1988), pp. 709-717.

[32] See the opinion of the administration in a letter to a Senate committee chairman: http://www.gao.gov/decisions/other/290712.htm.

[33] For an in-depth treatment of strategies for dealing with the bureaucracy, see Joel A. Aberbach, *Keeping a Watchful Eye* (Washington, D.C.: Brookings Institution, 1990), and William T. Gormley, *Taming the Bureaucracy: Muscles, Prayers, and Other Strategies* (Princeton, NJ: Princeton University Press, 1989).

[34] See Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms," *American Journal of Political Science* 2, February 1984, pp. 165-179, for an argument that fire-alarm methods are more effective and common than police-patrol style oversight.

[35] Aberbach, *Keeping a Watchful Eye*, Chapter 4.

[36] Joseph Pois, "The General Accounting Office as a Congressional Resource," *Congressional Support Agencies*, U.S. Congress, Senate, Commission on the Operation of the Senate, 94th Congress, 2nd Session.

[37] Louis Fisher, *Presidential Spending Power* (Princeton, NJ: Princeton University Press, 1975), pp. 75-98, and Fisher, *The Politics of Shared Power*, pp. 68-71.

[38] The history of the legislative veto and its constitutional implications are covered extensively in Barbara H. Craig, *Congressional Control of Legislation* (Westview: 1983), and Barbara H. Craig, *Chadha: The Story of an Epic Constitutional Struggle* (New York: Oxford University Press, 1988).

[39] Walter J. Oleszek, *Congressional Procedures and the Policy Process, 5th Edition* (Washington D.C: Congressional Quarterly, 2001), p. 280.

[40] Martha Liebler Gibson, "The Legislative Veto, American Foreign Policy, and the Irony of Reform," paper presented at the annual meeting of the American Political Science Association, Chicago, September 3-6, 1992.