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## **Presidential Power: Congress and Foreign Policy**

### **Introduction**

The president of the United States is arguably the most powerful person in the world. The power yielded by the Office of the President is executed in a number of different settings, notably in areas dealing with Congress and foreign policy. The power of the president has grown considerably since the Framers originally outlined the executive branch in the Constitution. This growth in power is somewhat seen in dealings with Congress, but is on exceptional display in the field of foreign affairs. In these areas, it is evident that the president has too much power.

John F. Kennedy, George W. Bush, and Barack Obama all display the power yielded by the Office of the President. In similar, but notably different ways, each man demonstrated the considerable capacity carried by the presidency. Each also contributed to the growth of the presidency by expanding said power in a number of ways.

### **Presidential Power and Congress**

The president maintains a number of powers over the Congress of the United States. While restricted in some regards, there are a number of ways through which the president can easily navigate through, or often times around, Congress.

These powers include the president's power to veto legislation passed by Congress, the power of presidential appointments and commissioning, the power to convene Congress, and the

power to “take care” that the laws of the United States are being faithfully executed (Milkis and Nelson 51). Each of these enumerated powers grants the president a certain level of freedom in acting without the consent, or rejecting the consent, of the U.S. Congress.

The presidential power to veto legislation passed by Congress as outlined in Article I, Section 7, Clause 2 of the Constitution cannot be underestimated. Consider, for a moment, the true implication of this simple action. Legislation passed by the United States’ most direct representatives, a 535-person body consisting of locally elected officials, can be vetoed by one, single individual. To overturn a presidential veto, the House must hold a reconsideration vote and garner two-thirds support in order to override the president’s decision (Lecture).

Another important component of the United States Constitution to consider when examining the power of the president over Congress is the Faithful Execution Clause, which states that the president “shall take Care that the Laws be faithfully executed” (Article II, Section 3). This clause allows for the president to ignore some laws by simply not enforcing them, while strictly following others. This clause not only grants the president the power to *enforce* the law, but it also grants the ability for the president to *interpret* laws. This clause is often used by presidents in excess, giving them significant power over Congress.

Often times the president can effectively legislate through the use of executive orders, defeating the purpose of the democratically elected Congress. An executive order is when the president issues a directive to an executive agency which carries the force of law and are generally reasoned by commanding authority by the Constitution or by a statute of Congress (Lecture). The president acts completely autonomous in issuing legislative orders, foregoing the entire legislative process established in the Constitution. A number of historical American

milestones have been through the act of executive orders, like affirmative action, the desegregation of the military, and allowing women to fight in combat zones (Lecture).

## **Presidential Power and Foreign Policy**

In the area of foreign policy, the United States has centralized the power of decision making nearly solely in the hands of the president. While the Framers intended the president to play a large role in the area of foreign affairs, they did not intend for the president to play the lead role in deciding to engage in warfare (Lecture). In addition to the enumerated powers of making treaties, appointing diplomats, and receiving ambassadors the president also now possess the power to execute large, military operations without Congressional consent (Lecture). The only real say Congress has over such operations would be through budgeting for military expenses, but large cuts to such areas are not viewed favorably by the American public.

James Madison wrote about the issue of executive influence in declaring war saying, “in no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department.”<sup>1</sup> So how, then, has such a shift occurred from the intention of the Founders that the power to declare war now falls completely to the president? This has been a gradual process that has increased exponentially since World War II, with roots in actions taken by Abraham Lincoln during the Civil War (Lecture). This increase in power has generally coincided with the advancement of military technology which calls for faster response times in decision making, as well as the

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<sup>1</sup> James Madison, Letters of Helvidius Nos. 1-4, University of Chicago, 2000  
<[http://press-pubs.uchicago.edu/founders/documents/a2\\_2\\_2-3s15.html](http://press-pubs.uchicago.edu/founders/documents/a2_2_2-3s15.html)>

establishment of a large, standing military (Lecture).

Presidents justify these swift actions by not officially categorizing them as “acts of war.” For example, Harry Truman, the first president to act in this manner, described his movement of American troops to South Korea as a “police action” (Lecture). This method has since been replicated by presidents following Truman’s lead, and the U.S. Congress attempted to restrict this power through the War Powers Act of 1973. However, this has been largely ineffective in reining in the power of the president in the area of foreign affairs.

### **Kennedy, Bush, and Obama**

In serving as President of the United States, John F. Kennedy, George W. Bush, and Barack Obama have all yielded the immense powers of the Office. These three individuals, in dealing with Congress, did not specifically exert any more exceptional powers than presidents who preceded them. Jack Kennedy had a truly unremarkable relationship with Congress, and outside of his foreign policy ventures, rarely tried to circumvent Congressional power with the exception of one notable executive order—affirmative action (Lecture). Beyond that, Kennedy tried and failed to pass a number of reforms to Medicare, educational programs, and civil rights, but ultimately the Southern Democrats in Congress shot down these proposals (Milkis and Nelson 339).

In the area of foreign policy, President Kennedy’s independence was much more evident. Kennedy initiated the United States’ “ill-fated” involvement in Vietnam, and also authorized the failed Bay of Pigs invasion in Cuba, both without Congressional consent (Milkis and Nelson

338). Further, during the height of the Cold War, Kennedy oversaw the 13-day long Cuban Missile Crisis, which pushed the United States and the Soviet Union to the brink of realizing “mutually assured destruction.” During this conflict, Kennedy implemented the aptly named “quarantine,” which was in reality a full-scale military blockade. Kennedy is largely credited for having directed the United States and Soviet Union to a peaceful conclusion of this serious crisis (Milkis and Nelson 339).

George W. Bush encountered a high level of support from Congress in the early years of his administration, including six years of a Republican-controlled Congress (Milkis and Nelson 442). In this, President Bush was able to pass sweeping tax cuts, education reform, and was given extensive war powers in fighting the self-described “Global War on Terror” (Milkis and Nelson 443). The level of support enjoyed by President Bush in Congress largely withheld him from flexing his presidential powers to override legislative decisions. In fact, for his first five and a half years in office, President Bush didn’t issue a single veto—the first time any two-term president had gone veto-free for that period of time since Thomas Jefferson.<sup>2</sup>

George W. Bush’s dealings with foreign policy was much more overreaching than his domestic policy programs he implemented with the consent of Congress. Following the September 11th, 2001 attacks George Bush took a number of actions that fully displays the power of the president over foreign policy. For example, the President issued an executive order establishing military tribunals, with no right to appeal, to try “unlawful military combatants” of the United States instead of holding trials in civil court (Milkis and Nelson 447). Following the attacks, the Bush Administration “openly pursued the possibility of a war with Iraq,” seeking

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<sup>2</sup>Drew Cannon, *The President as Prime Minister: George W. Bush and Congress, 2001-2007* George Mason University <<http://www.thepresidency.org/storage/documents/Fellows2008/Cannon.pdf>>

Congressional approval to do so (Milkis and Nelson 447). But, as Milkis and Nelson note, this was only a partial concession to Bush's unilateral view of the presidency, as he noted that he would not be bound by an "adverse vote." Bush further approved sweeping secret "enhanced interrogation" programs that arguable broke U.S. and international law (Milkis and Nelson 448).

Barack Obama also enjoyed early support from Congress, allowing him to pass his signature health care legislation officially known as the Affordable Care Act, but now known amongst most Americans as "ObamaCare" (Milkis and Nelson 472). In addition to this overhaul of health care in the United States, Obama also continued notably "nonpartisan" issues like further economic relief in the wake of the 2008 financial crisis. Even though these policies were nonpartisan, many of Obama's legislative achievements in his first two years garnered zero votes from Republicans in either House of Congress (Milkis and Nelson 471). Following the 2010 midterms, Republicans took back control of the House, returning America to a divided government. During this period, President Obama slowly lost his ability to garner support for legislation, and has since resorted to signing executive orders in order to maintain legislative relevance (Lecture).

In terms of foreign policy, Barack Obama continued many of the unilateral policies championed by his predecessor. These include, but are not limited to, indefinitely detaining military combatants, trying combatants in military courts, expansion of the drone program, and implemented a surge in Afghanistan comparable to the surge implemented by George Bush years earlier in Iraq (Milkis and Nelson 474-475). In addition to this, recent revelations have uncovered that President Obama expanded many of the domestic spying programs implemented by George W. Bush, which include the collection of meta data of U.S. citizens. Similar to

President Bush's call for a vote of Congressional approval for an invasion of Iraq, President Obama called for a vote to approve a military intervention in Syria after it was uncovered chemical weapons had been used—however Obama noted, like Bush, that he would not be bound by an adverse vote. While Obama campaigned as an agent of change, in the area of foreign policy, Obama has been a disappointment to many of those on the left (Lecture).

## **Conclusion**

Modern presidents currently possess too much power in terms of foreign affairs, and to a lesser extent, relations with Congress. For the past several decades, the presidency has slowly collected near-unilateral power over the American military and related security programs. This overreaching power is a threat to democracy and to American's personal liberties, which are encroached on by domestic spying programs implemented by George W. Bush and further expanded by Barack Obama. In the area of Congressional relations, the president has a number of options which afford him considerable, and perhaps excessive power over Congress (namely executive orders). In all, it seems clear that the president yields far too much power in general, and significantly more power overall than envisioned by the Founding Fathers.