

Presidency

Support or critique Richard Neustadt's argument that the president's formal powers are insufficient for presidents to govern effectively in the modern era.

In Neustadt's seminal work on the presidency (1960), he claims that presidential power derives from his ability to persuade others. In Neustadt's view, the formal powers outlined in the Constitution are insufficient to achieve the kind of power needed to lead the country in modern times. Rather, presidents rely on their public prestige and professional reputation to ensure that others follow through on stated orders. While I concur that these informal sources of authority complement the formal powers designated to the presidency, I also believe such formal powers provide the critical base upon which presidents act. Here, I will outline the formal powers of the presidency; discuss how these formal powers influence the relationship between the president and (a) Congress, (b) the Court, and (c) the bureaucracy; and conclude with an important exception to my argument: the power of public appeals by the president.

According to the Constitution, the President can (a) command the military; (b) grant pardons; (c) make treaties; (d) make bureaucratic and judicial appointments; (e) veto bills passed by Congress; and (f) take a variety of other measures, such as convening or dismissing Congress and receiving foreign ambassadors. Many of these enumerated powers are constrained in some way by the Constitution. For example, while the President commands the military in times of war, technically only Congress is able to declare war. Similarly, in most cases, the President's treaties and appointments must be confirmed by the Senate. As a blunt

measure of the relative strength assigned by the Constitution to Congress and the Presidency, the article describing Congress (Article 1) consists of 10 sections and more than 2,200 words; Article 2, describing the presidency is a mere 4 sections and only just exceeds 1,000 words (of course, the section on the Courts is less than 400 words!).

One of the most important groups the president must negotiate with is Congress. Kernell (1986; 2007) explains that, historically, the modal president-elect was a Senator, with experience and skill at bargaining within Congress to gain the passage of bills that he desired. More recent presidents, as “outsiders” from Washington, DC, may have to rely on other skills to work successfully with Congress. One tool at the president’s disposal is the veto. Cameron (2000) shows that presidents rarely invoke this power; only 434 vetoes were used between 1945 and 1992, when Congress passed more than 17,000 bills during that time period. Indeed, in his spatial model with perfect information, a president will *never* veto a bill, as Congress will pass one that exactly meets the president’s minimum standards. It may be intuited from these results that the threat of a veto is more important than the actual formal veto power itself. However, the threat must be credible. For example, in 1995, the Republican Congress did not believe Clinton’s threat to force a government shutdown by vetoing a continuing resolution. Clinton’s decision to veto this bill, while risky, led to a strengthening of the president’s position relative to Congress. Without the formal power to veto *every* bill Congress passes, the presidency would certainly be a weaker institution.

The president does not often deal directly with the Supreme Court (or its lower federal branches), though during the 2008 term alone, the Department of Justice filed 62 briefs or amicus briefs on behalf of the federal government (DOJ). It may be assumed then, that presidents have limited formal powers over the judicial branch of government. Indeed, Segal, et. al. (2000) provide a brief history of presidential disappointment with their nominees to the Supreme Court. However, these failures seem to be notable exceptions in an otherwise clear trend of court support for presidential positions. Rohde and Spaeth (1976) found that less than a quarter of Supreme Court justices made decisions contrary to the president that appointed them. Ducat and Dudley (1989) conduct similar tests at the district court level, and find that presidents are also moderately successful at the district level. Moe and Howell (1999), in developing a theory of executive strength relative to the other branches, find that despite a lack of direct interference with court decisions, there are “fundamental forces” that support presidential positions, particularly with regard to interbranch strength (pg 866). In particular, the power of appointment to the courts provides presidents leverage over who will be deciding the cases they see. Additionally, as Moe and Howell point out, court decisions must be implemented by the president, as specified by a constitutional duty to “take Care that the Laws be faithfully executed.” These two formal powers of the presidency do much to ensure more even footing between these two branches.

Finally, Neustadt’s thesis that “presidential power is the power to persuade” mainly concerned the president’s relationship with the bureaucracy. It may be that the president’s formal powers are sufficient to ensure rough parity among the

branches, but are insufficient to control actions within the executive branch.

Neustadt provides a wealth of evidence that presidents do not, as a matter of course, make “self-executing orders.” Hammond and Knott (1996) develop an extensive theoretical model to determine agency autonomy and find that the more disparate the preferences of the presidency and the Senate (who would confirm replacement appointments in a situation in which the president fired an agency head had divergent policy opinions from the president), the more autonomy an agency head will have. However, their model assumes that the Senate will use its power to prevent the appointment of presidential nominees with whom it disagrees.

Empirically, however, Moe (1987) found that the Senate has typically deferred to the president to form his own bureaucratic team. If the Senate is unlikely to constrain the president’s ability to appoint agency leaders with similar viewpoints, it seems as though the power to hire and fire could, on its own, provide the president considerable leverage with the bureaucracy. Indeed, Neustadt’s story of Truman firing General MacArthur to change the policy in the Korean War seems to be a perfect example of the extent of presidential power in this arena (pg 11-13).

Given all these arguments in support of the authority derived from the president’s formal powers, I nonetheless agree with Neustadt’s argument that presidents wield significant power through their popularity, especially when they use such popularity in making public appeals. Across all branches of the federal government, scholars have noted that a president’s popularity (and, by extension, his ability to tap into his popularity by taking his case to the people) can be key to successful negotiations. Kernell (1993) notes that presidents increasingly “go

public” in an attempt to force Congress to yield in policy debates. He also notes that Reagan’s early success in influencing the contentious budget process was due in large part to his national popularity; as Reagan’s popularity fell, so did his ability to bend Congress’ budgetary will (pg 174-175). In working with the courts, Ducat and Dudley’s review of district court decisions involving presidential issues also found that the likelihood that the courts would return a verdict in favor of the executive was related to the level of presidential approval. Finally, as mentioned, Neustadt claims that presidential authority within the bureaucracy derives, in part, from his popularity and how he chooses to use such approval. Canes-Wrone (2001) takes these arguments a step further by finding that “going public” can be a successful strategy for presidents, even when their popular approval is low. So long as presidents strategically choose to make public appeals on *issues* that are popular, personal popularity is irrelevant to the success of these appeals.

With this notable and important exception, however, the evidence suggests that presidents’ formal powers provide a great deal of independent authority when dealing with members of Congress, judges, or the president’s own bureaucracy. The importance of these powers seems to have been short-changed by Neustadt’s arguments.

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