# Executive Power in American Institutional Development

*By Keith E. Whittington and Daniel P. Carpenter*

In striking contrast to the legislatures in most modern democracies, Congress retains an important place in American politics and policy making. Especially in recent years, this has led many observers to question the importance of the presidency and bureaucracy to the real work of American governance and the extent to which political actors in the executive branch generally exercise power. This narrative of congressional dominance has been particularly bolstered by recent scholarly interest in principal-agent models of interbranch relations. The assumption of congressional centrality, however, obscures many important features of American politics. Over the course of American history, institutional development in particular has often been driven by either autonomous executive action or conflicts between Congress and the executive. We develop an approach for assessing executive power in institutional politics and illustrate the logic of executive influence with three cases: the rise of federal food-and-drug and forestry regulation, and the growth of the federal farm extension service in the early twentieth century; the rise of the national security state in the mid-twentieth century; and the evolution of budgeting and spending practices over the course of the twentieth century.

After September 11, 2001, George W. Bush positioned himself as a wartime president and, in so doing, revived and redefined his presidency. The effects are striking, but also very particular. Prominent Democratic operative Robert Strauss recently observed, "[T]he White House is a power center in ways that I haven't seen in a long, long time—all the way back to Lyndon Johnson."[1] But it remains uncertain how far President Bush's power extends beyond matters of war, where most of his energy has been directed and where presidents have long been recognized as at their strongest. The Cold War gave rise to fears of an "imperial presidency" that eclipsed Congress; but subsequent events, from Watergate-era reforms to the collapse of the Soviet Union, showed the president in a very different light.[2] It was not so long ago that President Bill Clinton felt the need to explain to reporters that despite losing a congressional majority in his first midterm elections, the "Constitution gives me relevance. . . . The president is relevant."[3] Though British and Canadian newspapers suggested that Clinton was merely "a titular head of state with a flashy role in foreign policy," the president notably pointed to his veto power to explain why "I don't consider myself a titular head of state."[4]

It is perhaps unsurprising that political observers in parliamentary countries would jump so quickly to the conclusion that the switch in party control of Congress would disable the president. But the American president is clearly not a prime minister. At the same time, the American president is not as formally powerful as the chief executive in most other presidential systems. The unilateral policy making powers of the U.S. president are comparatively anemic. The U.S. Congress has been able to maintain its active political role far more effectively than have national assemblies elsewhere, whether in parliamentary or presidential systems. By comparison to other democracies, the political system of the United States is remarkably tilted toward the legislature.[5]

Although his activities are high-profile, the president often seems marginal to the real work of Washington. While he dominates the public's attention, political science gives greater attention to Congress. For an earlier generation of scholars, the growth of the presidency in this century—especially since the New Deal—was the single most remarkable feature of American politics. Many contemporary scholars, however, adhere to a narrative of legislative dominance of American politics, in which Congress is the preeminent branch of government and controls policy outcomes. This tenor is especially widespread in the literature on executive-legislative relations and American bureaucracy, particularly among formal theorists and quantitative students. The narrative of legislative dominance is often *implicit,* as scholarly attention is pulled toward the frenetic and visible actions of legislators proposing, advancing, bargaining over, voting upon, and formalizing government policies.

In addition to this implicit narrative, an explicit congressional-dominance thesis has also been advanced, largely as a result of recent theoretical developments in the positive theory of institutions (PTI).[6] Despite the obvious importance of administrative agencies in actually making policy in modern government, Congress has seemed curiously lax in its oversight of the executive branch. A number of PTI scholars have proposed that this lack of

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active oversight is a sign of legislative success rather than failure.[7] In that model, legislative intervention should occur only under extraordinary conditions, when the executive has failed to comply with legislative preferences.

Such delegation models have proven quite useful in explaining particular legislative behavior, but they can also paint a misleading picture of American politics as a whole. Specifically, the narrative of congressional dominance ignores three entrenched properties of the American political system: (1) the power of the president as party leader (a fact that renders the independence of "congressional parties" highly dubious), (2) the ability of the executive branch to engage in autonomous policy innovation, and (3) the ability of the executive to shape the national policy agenda (or as Stephen Skowronek might put it, the ability of presidents to "make politics").[8] For all of its allure and simplicity, legislative-dominance scholarship has never presented convincing evidence to rebut these three tendencies of American politics.

The greatest shortcoming of legislative-dominance narratives, we conclude, is that they ignore the extent to which institutional development—even changes in Congress *itself*—occurs through interbranch conflict. By effectively reducing the American constitutional system to its legislative components, delegation models have been unable to account adequately for important features of American politics, such as the rise of the executive budget system in the 1910s and 1920s, the replacement of party patronage with merit hiring in the federal bureaucracy, the War Powers Resolution, or the growth of the Office of Management and Budget. In none of these crucial transformations in American political history did Congress substantially get its way, and much congressional institution building has come in response to *executive* initiative.

To more fully capture these elements of the American political experience, Congress needs to be re-placed into a constitutional system of separated powers. A variety of scholars have recently called into question particular aspects of the congressional-dominance narrative—for example, by highlighting the possibility of unilateral presidential action and examining the effectiveness of the presidential veto in the legislative process.[9] Our endeavor here is in some manner more general, in another manner more specific, than these recent efforts. Our relative generality lies in our effort to lay bare the *bases* of executive power: not simply the implications of veto power or the ability to act unilaterally, but the authority and resources that underlie such capacities (an exceptional party leadership position, a distinctive claim to national representation, unique constitutional authority). Our relative specificity rests in our focus. We are less concerned with whether presidents have an impact upon policy than with whether they shape the evolution of institutions, including the evolution of Congress itself.

We believe that the executive should be recognized as a routine force in American politics, not just a showy, occasional player on the policy scene. The executive branch has substantial resources to engage in independent policy making. Moreover, subconstitutional executive branch officials often possess many of the same advantages and resources as the president does. For many purposes, of course, presidents and lower executive branch officials need to be examined separately, but there is also a benefit in considering some of the capabilities that they share relative to the legislature. Our contributions in this essay are four. First, we expose some of the assumptions of the legislative-dominance narrative. Second, we develop a logic of executive power that highlights the authority and resources available to the executive branch to alter political outcomes. Third, we advance a counterfactual-based condition for assessing when executive power is operative in the transformation of institutions. Fourth, we briefly outline three specific cases that illustrate the logic of executive power and the limits of the legislative-dominance narrative. We conclude by emphasizing the dynamic interaction among multiple institutions in American politics and noting how that interaction has contributed to American political development.

## The Narrative of Legislative Dominance

For many earlier scholars, legislation and legislative politics appeared to be less important than they once were. James Sundquist, for example, described a long period of the "decline of Congress" relative to the president, with a recent but limited congressional "resurgence" during the Watergate period.[10] Even so, he argued, "the modern aggrandizement of the presidency was the product of considered legislative action." Congress "acquiesced" to its own decline, primarily because of the inadequacy of its own decision-making capabilities.[11] This "abdication hypothesis," Roderick Kiewiet and Mathew McCubbins contended, seemed to hold that "congressional parties have repeatedly forfeited the central policy-making role that they might otherwise have played by turning the job over to others. In this view, delegation leads inevitably to abdication."[12]

Recent scholarship views congressional delegation as less problematic. Congressional reliance upon executive expertise in making complex policy need not imply that Congress has any less control in adopting the final policy. This delegation model posits a history of unvarying congressional dominance of American politics, even as executive activity in the policy-making process has increased during the twentieth century. According to this model, political scientists have been seduced by the mere "appearance of power" and the "nominal decisionmakers in the executive," while ignoring the indirect means that Congress uses to achieve its objectives.[13] The logic of delegation leads these scholars to reject "the presidential ascendancy story" in which the president has come to dominate national politics and the bureaucracy makes important policy choices.[14]

Statutes are regarded as the primary element of national policy making in this literature, and Congress is the main site of interest competition over policy priorities. Given this basic perspective, both the executive bureaucracy and the presidency itself become secondary to the analysis. Institutions develop, in this narrative, as Congress designs instruments to more effectively advance its interests. Elizabeth Sanders dismisses the accounts of "intellectual historians" who have found Progressive Era reform ideas debated within the executive bureaucracy for failing to recognize the source of actual political power in American government: "Proposals that might have been generated elsewhere were seized upon by regional politicians" in a "territorially based American legislature."[15] Similarly, Samuel Kernell and Michael


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President Lyndon B. Johnson facing a joint session of Congress in January 1968, delivering his State of the Union address.

McDonald have emphasized the centrality of Congress in "the transformation of the Post Office from patronage to service." Presidents, they note, may have extended the civil service through their executive orders, but they did so only by "invoking the authority granted in the Pendleton Act." Congress "delegated to the president authority to issue executive orders moving additional jobs from patronage to the new civil service" for its own electoral reasons.[16]

The narrative of congressional dominance assumes that the executive is motivated by the legislature and not merely constrained by it. However, a central feature of the American constitutional system is the degree to which nonlegislative actors have independent goals. Independence of action is intrinsic to, and valued by, the constitutional design. Executive officials have independent grounds of authority to act on their distinctive interests. The legislature lacks a key feature of agency relationships: the authority and ability to instruct. The realization of executive autonomy has often forced Congress to be reactive and accommodating, rather than initiate national policy. By assuming congressional authority over the executive and focusing on legislative grants of power, models of legislative supremacy ignore the ways in which the executive has wrested power and authority away from Congress and the ways in which the two branches have struggled between themselves over public authority.

The problem here is that abdication and delegation do not exhaust the possibilities. If presidents or executive bureaucracies have an independent power base, then congressional bowing to executive initiatives is best described not as abdication or as delegation, but as *acquiescence*. Just because Congress is not fully abdicating power to the executive does not mean that Congress is fully getting its way. As Terry Moe has noted, "[T]his kind of control may make legislators happy, but it does not necessarily tell us much about why agencies behave as they do."[17] If our concern is with explaining institutional development over the course of American history, we will need to take fuller account of executive behavior as a spur to such development. The political order of legislative supremacy is relatively seamless. But the American system is composed of myriad, disjoined pieces.[18] Conflict among these pieces tends to spark institutional developments, as differently situated interests seek to fortify their own position and advance their policy goals. The executive branch has been reshaped over time not merely to facilitate the achievement of congressional goals, but also specifically to frustrate those goals and advance the interests of other political actors, such as the president. Similarly, legislative institutions have at times developed *defensively* in order to deal with the autonomy and divergent interests of the executive branch.



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## The Logic(s) of Executive Power

Given the primary concerns of political scientists, executive influence on American politics is distinctly difficult to pin down. Our concern in this section of our article is to sketch out a partial logic of executive power, noting why and when we might expect executive power to matter and how it might be recognized. We hope to build on related efforts to call attention to the importance of multiple and diverse institutions in driving American political development. For example, Karen Orren and Stephen Skowronek have developed the idea of "patterned disorder," a condition that results from the interaction of multiple institutions.[19] Politics is defined by the disjunctures between institutions within a given political system and the abrasions between them that help drive political change. Somewhat differently, Moe has cogently argued that the original structure of the bureaucracy does not reflect the coherent vision of a congressional majority, but rather embodies the incoherent compromises of the legislative majority and minority, the president who possesses the veto, and a wide variety of interest groups—in short, all "those who exercise political power."[20] Our goal is to build on these insights while providing a specific logic and set of test conditions for why and when presidents and executive branch officials will matter to political outcomes and institutional development.

We do not wish to replace the congressional-dominance narrative with one of executive dominance. Although the growth of presidential power in the twentieth century is an important aspect of American political development that fits uneasily within recent Congress-centered approaches, the presidency should not become the centerpiece of a new ordering schema. We hope to offer a dynamic approach to a system of separated powers instead of reconstructing either a static congressional system or a static presidential one. This constitutional "invitation to struggle" does not simply lead to gridlock or alternating influence, but rather encourages institutional and political development in ways that fully satisfy neither legislative nor executive wishes.[21] New institutions emerge and old ones evolve not merely as the instrumental product of a prior political agreement, but often as the tools and by-products of conflicts between these basic constitutional agents. Moreover, the executive can be expected to exercise power when congressional interests are fragmentary or inchoate, or when slack is not realistically avoidable. Under such conditions, quite common in the American context, the executive can take independent action that cannot be reasonably modeled as simply responsive to congressional preferences.

### *Independent authority bases as a resource*

Central to the narrative of congressional dominance is the assumption that political conflict is primarily the result of competing social interests. The story of congressional decision making is one of sublimating conflict and producing order, in the form of legislation and the instruments for executing the legislative will. The Constitution produces conflict as well as order, however. By separating the institutions of government and raising them to constitutional status, the American constitutional system frustrates the establishment of an overarching political order. Like the judiciary, the president has an independent authority rooted in the Constitution. As Terry Moe and Scott Wilson have noted, the president "is not Congress's agent."[22] Part of his responsibilities as the chief executive is to enforce the law, so he will necessarily be cognizant of the legislative will and seek to advance it in many of his activities, just as the courts do. Moreover, in order to pursue his own policy goals more effectively, the president can be expected to coordinate his actions with Congress. But his responsibilities and institutional sense of purpose cannot be reduced to the mechanical enforcement of the law, and cooperation is not the same thing as subservience.

Like Congress, and unlike judges, the president is elected. The president is elected separately from Congress, however. Although presidential candidates also run under party banners, their election cycle is distinct from that of legislators, their constituency is national rather than local, and the presidential campaign apparatus is largely independent of congressional campaigns. As a consequence, the president can be an ally of congressional party leaders, but he cannot be regarded as a mere component of a unified party based in the legislature. The consequences of the president's national constituency will be considered further in the next section of this article.

In addition to being elected separately from Congress, the president is constitutionally charged with a different set of responsibilities. The president's role as a legislative participant, if not a legislative leader, is only one of his many tasks.[23] For present purposes, it is worth calling particular attention to the executive features of the presidential office. Both the Constitution and legislative practice have bestowed upon the president the roles of chief executive, chief law enforcement officer, and chief of foreign affairs, in both war and diplomacy. The Constitution not only created "separate institutions sharing power," as Richard Neustadt famously put it, to force coordination and check arbitrary power.[24] It also separated powers "in order to equip each branch to perform different tasks. Each branch would be superior (although not the sole power) it its own sphere and in its own way."[25]

While Congress might be more concerned with representativeness and deliberation, the executive is probably more motivated by efficiency, effectiveness, and national strength. The distinctive executive perspective is likely to have several consequences. It may lead the executive to pursue a different set of policy goals than would be primarily favored by legislators, resulting in policy conflicts between the two institutions. In setting fiscal policy, for example, the executive may be concerned with macroeconomic goals, whereas legislators may be more focused on the distributional aspects of budgeting. The distinct institutional mission of the executive might also foster distinctive policy initiatives. Not only could the executive possess greater expertise in certain policy areas, but the executive perspective could also give play to different goals and priorities, such as cost efficiencies. Although the policy initiatives that emerge out of the executive branch may eventually find legislative favor, those same initiatives might not have independently emerged from the legislative branch. The varied perspectives embodied in different political institutions will often result in similarly varied policy initiatives and development, as well as policy conflicts among those institutions.


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Notably, the executive possesses both autonomous powers and a distinctive source of legitimate authority, which reinforce each other. By separating the executive branch from the legislative, the Constitution created an institution capable of acting on its own interests and asserting an authority that other political actors will recognize as legitimating its actions. Moreover, the diverse and growing functions of the presidency tend to interact with and feed on one another to enhance the authority of this "office whose power and prestige are something more than the arithmetical total of all its functions."[26] The mechanisms in support of an independent executive, and especially presidential, authority are numerous, and presidents have the incentives to exploit them. The president has substantial authority to manage and coordinate subordinate officials in the executive branch. At various points in American history, this authority has been contested; but especially in the twentieth century, presidents have increasingly been able to make and sustain claims to this power, and to develop the institutional resources to support such claims.[27] Similarly, the president's authority—although not as substantial as the decree authority exercised by presidents in some other nations—has spawned the use of executive orders to make policy unilaterally. Presidents, then, can take independent action that is exceedingly difficult for Congress to reverse or sanction.[28] At the extreme, presidents (beginning with Thomas Jefferson's refusal to recognize and enforce the Sedition Act as valid law) have even claimed the authority not to execute laws that they regard to violate the Constitution. Even if Congress were able to write a statute eliminating executive discretion, the president's independent constitutional responsibilities would give him control over whether and how a law is executed.[29] As elaborated below, the president's special responsibilities, both as chief executive and as Clinton Rossiter's "Manager of Prosperity," have been used not only to influence what funds Congress appropriates in its budget, but also to decide unilaterally whether and how those funds are spent.[30] Somewhat differently, the president has traditionally claimed substantial authority in conducting foreign policy, and Congress has on many occasions proven both unwilling and unable to challenge that claim. The presidential authority to secure the peace is not readily confined to foreign lands, as demonstrated by cases from the Whiskey Rebellion to Reconstruction, to turn-of-the-century labor disputes, to Cold War domestic surveillance, to current homeland security. Exclusive presidential control over the foreign policy apparatus often makes effective congressional monitoring of executive actions impossible, and expansive constitutional authority of the president in these areas encourages legislative and judicial deference to apparent presidential prerogatives.

The result is an executive who has both the power and the will to act autonomously. The independent authority possessed by the executive is itself a political resource, hampering the ability of legislators to respond to executive action and sometimes encouraging an active deference to the president's exercise of power in his constitutional roles. Legislative acquiescence to particular elements of executive growth feeds into a larger institutional regime that is mutually reinforcing and develops ideological supports that help maintain it. For those within the institution, the sense of institutional responsibility can motivate behavior. It is also valuable precisely because it can serve to legitimate that behavior to external constituencies. Others—including citizens, judges, and legislators—can be expected to recognize the authoritative force of presidential and executive actions.[31]

The executive is likewise situated differently from the legislature in regards to policy making and implementation. The development of the national security state provides particularly clear examples of this feature of separated powers and its consequences. Franklin Roosevelt quickly saw the domestic intelligence gathering possibilities of the Bureau of Investigation and exploited the close relationship between the White House and the Bureau to dramatically expand and reorient the latter's activities, with minimal congressional involvement.[32] Myriad other intelligence agencies were later created by presidential directive, with minimal legislative guidance through statutory charter or continuing oversight.[33] The intrinsic need for secrecy, the informational gap between daily operations and occasional legislative briefings, and the enhanced asserted constitutional authority of the president all served to undermine the possibility of substantive congressional involvement or intervention in intelligence activities. Informational asymmetries and ideological inheritances effectively blocked the capacity of Congress to monitor its putative agents and undercut any claim that Congress was in control, while creating substantial practical obstacles to the legislature's regaining of influence. Although the intelligence agencies form a particularly stark case, it is suggestive of the broader dynamics of institutional interaction and development when the executive enjoys a privileged relationship to policy initiative and implementation.

### *Party leaders and coalition builders*

The president is, of course, the sole authority in American politics whose electoral constituency is the entire nation. This fact both alters the executive's perspective on political and policy problems and creates opportunities for the exercise of increased political influence. As numerous scholars of the presidency have noted, this fact also predisposes presidents toward concern with national as opposed to local problems, with public as opposed to private goods, with informational "policy" as opposed to distributive "politics." Yet it also connotes power vis-à-vis Congress, in three ways.

First, presidents often appeal to their unique stature as the only genuinely national political official to gain advantage over what are portrayed as the more blinkered and parochial concerns of legislators. In asking for the nation's indulgence for his new administration, Jefferson attempted to preempt his legislative opponents by arguing that even "when right, I shall often be thought wrong by those whose positions will not command a view of the whole ground."[34] Similarly, though less successfully, Andrew Johnson denounced the Reconstruction Era Congress for its partial perspective. Noting that the president alone "is chosen by the people of all of the States," Johnson contended that the "President of the United States stands towards the country in a somewhat different attitude from that of any member of Congress" and has a special claim to representing the truly national interest.[35] Over the course of American history, the



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president has asserted his representative and prudential credentials (superior by virtue of his national constituency)—a strategy used regularly for putting Congress on the defensive.

Presidents also have the singular ability to "go public," or to appeal to national constituency interests in their battles with Congress.[36] Particularly since the origins of the "modern presidency," they have had an almost unique command of the attention of national media organizations.[37] This conduit for presidential rhetoric has been institutionalized with the creation of a White House press corps, which knows no counterpart on Capitol Hill. But institutionalized access to the media is not limited to the White House. Executive agencies also run media offices. Scarcely a week goes by that local and national news services do not run a story that reports almost verbatim a press release from even such relatively unglamorous agencies as the U.S. Food and Drug Administration (FDA). In several crucial historical instances, these media offices affected the development of public policy. As Stephen Ponder argues, U.S. Department of Agriculture (USDA) Chief Forester Gifford Pinchot's "press shop" was instrumental in stoking media support for the USDA's conservationist agenda after 1900, and even helped to build the Progressive conservation movement.[38] Charles Jackson's history of the Food, Drug, and Cosmetic Act of 1938 shows that the FDA's public relations office built widespread support for stronger food-and-drug regulation with several highly publicized media exhibits and widely read publications.[39] J. Edgar Hoover's legendary efforts to cultivate relationships with the press and the producers of popular culture were effective in creating the image of the G-man as a national hero and building political support for Bureau initiatives and autonomy.[40] The executive has the interest and capacity to speak to a national audience, circumventing and challenging the more provincial representative claims of legislators and mobilizing political support for favored policies.[41]

A second source of the president's power is his (usually unique) position as *national party leader,* a role that he can fill far better than can members of Congress. This role has been observed throughout American political development, from Martin Van Buren's coalescence of the Democrats, to Theodore Roosevelt's bold attempts to reorient the Republicans, to FDR's leadership of the (often fractious) New Deal coalition, to Richard Nixon and Ronald Reagan's forging of the post-Vietnam Republicans.[42] Notably, presidential party leadership extends beyond maintaining the party discipline of legislators, the central concern of the congressional-dominance narrative. Presidents are equally concerned with the electoral and organizational features of the political parties, which may be politically essential but are difficult for legislative leaders to nurture.

Presidents are able to unify their party under an agenda partly because they have control over party resources—most crucially, campaign funds and endorsements. In the nineteenth century, even during the supposed era of "weak presidents," this control was rather dramatic: it was presidents, not members of Congress, who had ultimate authority over patronage, and legislators acutely felt their vulnerability.[43] Even in contemporary politics, the ability of presidents to garner campaign contributions for individual members and to raise massive funds for general party campaigns leaves both floor leaders and individual members in Congress beholden to the executive. Presidents also can set their party's agenda by enumerating a select set of goals. The presidential campaign often becomes the defining campaign for the party as a whole, privileging the president in the postelectoral task of governing. Moreover, it is worth remembering that the whole concept of a presidential mandate arose out of struggles between the president and Congress, illustrating our thesis of institutional development through interbranch conflict.[44] Presidential elections were transformed from being "neutral with respect to presidential power" to arming "the executive with authority beyond that provided by the Constitution."[45] But perhaps the most important reason that presidents unify their parties under a common agenda is that they *must* do so if they are to survive electorally and succeed in policy making. Far more than individual members of Congress—even majority and minority leaders—presidents must worry about the "vision" of their party. They have a particular responsibility for maintaining the ideological coherence of the party and preserving the recognizable meaning of the party label, both of which have electoral advantages for all party members.

In light of the president's active role in the legislative process, it remains puzzling that scholars of American politics repeatedly study parties as if they were exclusively or primarily *congressional* entities. As Charles Jones has pointed out, the mid-twentieth-century vision of presidential power was often rooted in an image of "party government, typically one led by a strong or aggressive president."[46] Both the more recent experience of divided government and the rise of theories of legislative parties have served to undermine that assumption. In its place has arisen a new theory of "party government," but one in which parties are organized and led entirely within Congress.[47]

The significance of this congressional-party perspective can be seen in Samuel Kernell and Michael McDonald's ascription of the popular and transformative rural free delivery (RFD) program to Congress, noting the partisan distribution of RFD routes after 1900.[48] But regardless of the eventual distribution of routes, the RFD was the invention of Postmaster General John Wanamaker and was what Richard Kielbowicz has called a "reformist cadre" in the Post Office Department under Republican presidents, not the creation of the congressional Post Office committees.[49] It was the executive branch that identified the policy innovation that could be used to partisan advantage.[50] Kernell and McDonald take the fact that Republicans in competitive districts received 11 times as many RFD routes as Democrats in competitive districts to be decisive evidence of congressional dominance in the creation of the RFD. But once presidents are recognized as party leaders, and not just as technocratic Progressive reformers, such evidence can be readily seen as epiphenomenal. William McKinley and Theodore Roosevelt certainly had as much interest in preserving House Republican majorities as members of Congress did; and more important, it was the Post Office Department that had the authority to distribute routes. In other words, the partisan distribution of benefits is as much attributable to a Republican *president* as it is to a Republican Congress. Scott James has similarly shown that the creation of the Interstate


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Commerce Commission and the Federal Trade Commission was as much due to partisan coalition building strategies of Democratic presidents—Grover Cleveland and Woodrow Wilson—as to the parochial or ideological concerns of congressional Democrats.[51] Analyses focusing on the clash of interests within Congress can easily miss the ways in which those interests are defined by executive activity outside Congress.

A third source of executive power that stems from national representation is the ability of presidents to form cross-national, diverse coalitions. Like the media, interest groups are an independent political resource that can be exploited by the executive branch in its struggle with the legislature. Especially in the twentieth century, presidents have reached beyond parties to build individual ties to political interests. In doing so, presidents can cut across the existing structure of congressional interests to build new coalitions in their own terms, a strategy that is particularly useful in the context of divided government. Theodore Roosevelt was among the first and most explicit in developing this presidential power. He turned the White House from a passive organization into a legislative clearinghouse and proposal factory, forging alliances with conservationists, business groups, rural interests, and moral reformers.[52] To take a more recent example, it was Ronald Reagan who, through rhetoric and the facilitation of new liaisons with powerful individuals in evangelical circles and business groups, brought a new partisan marriage to fruition.[53] Presidents are particularly well positioned to move forward legislative proposals that transcend existing party divisions.[54] Even if congressional leaders possess some tools to encourage partisan loyalty, presidents can most effectively reach across party lines to appeal to the crucial pivotal voters.[55] As Benjamin Ginsburg and Martin Shefter note, this coalition-making power surfaces repeatedly in presidential politics:

> Presidents . . . are not in fact limited to dealing with some predefined or fixed constellation of forces. At times, presidents can reorganize interests, destroy established centers of power, and even call new groups into being. Thus, rather than simply contend with existing groups, presidents can attempt to enhance their own power and promote their own policy aims by constructing a new, more congenial configuration of social forces.[56]

The White House serves as a crucial interest-group liaison in national politics.[57] Coalition building also occurs in the executive bureaucracy. As numerous historians have noted, mid- and upper-level bureaucrats create policy coalitions behind their favored policies.[58] The cases considered below likewise indicate the ability of the president and the executive branch more generally to independently build interest coalitions in support of executive policies, regardless of prior congressional preferences.

### *Presidential power through agenda setting*

Another source of executive power is agenda setting. The capacity to take the initiative in policy development was once regarded as an important innovation and a cornerstone of modern presidential power. Theodore Roosevelt's pioneering of the presidential "bully pulpit" enjoys a prominent place in the history of the presidency and the growth of presidential power. Even before Neustadt wrote his seminal work on presidential power, he was struck by the modern presidents' centralization of executive proposals for legislation.[59] Similarly, Rossiter referred to the presidency as "a sort of prime ministership," noting that "upon many of our most celebrated laws the presidential imprint is clearly stamped. Each of these was drafted in the President's offices, introduced and supported by his friends, defended in committees by his aides, voted through by a party over which every form of discipline and persuasion was exerted, and then made law by his signature."[60]

While it is certainly true that congressional preferences are an important constraint on executive legislative leadership, the executive nonetheless can play an important role in structuring legislative preferences and their articulation. Presidents interpret election returns and popular opinion so as to create a mandate for their policy agenda.[61] By selectively mobilizing and demobilizing political interests, the president can induce a new set of legislative preferences. Presidential use of the media to pressure legislators reveals that the president has more than the power just to propose. Legislative proposals emerging from the executive branch, and in particular from the White House, often come attached to a larger political effort on behalf of those proposals, which can mobilize public support for the president's own favored issues and crowd other issues off the legislative agenda. Congress need not buckle under to presidential pressure, but Congress cannot ignore the presidential agenda without costs.

Executive policy innovation can itself influence the legislative agenda by coalescing political support. Congress is a collective institution, not a unitary actor. As a consequence, agenda setters and policy innovators can exploit the process of collective decision making. Executive branch officials often act as political entrepreneurs who champion particular social problems, and develop and advocate new solutions to those problems. In doing so, they can reconstitute legislative majorities around their favored outcomes. By altering the set of policy choices available to legislators, the executive can significantly affect the dynamics of legislative decision making.

There are a variety of reasons that the executive has inordinate power to affect legislative choices. Often, executive agencies do not only propose new policies but also take action on their behalf, forcing a response from Congress in order to alter the administrative path. Given the difficulties of taking positive action in Congress, such initiatives may be quite hard to overturn. Delegation of administrative discretion within the context of a nonunitary principal creates unavoidable opportunities for the executive to exploit that discretion to alter outcomes and restructure legislative preferences. Control over the instrumentalities of the executive branch empowers the president and executive officials to undertake reform on their own initiative. For example, over the past three decades the presidency has consolidated increasing control—through the Presidential Personnel Office and the aggressive use of executive orders—over executive branch administration, dramatically altering "the presidency's structural capacity for the exercise of power."[62] By claiming and exercising "residual decision rights" in such areas as administrative staffing, budgeting and spending, and regulatory policy



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making, presidents have found new ways to exercise political and policy leadership. Moreover, such policy innovation by the executive can often stimulate the spread and mobilization of new interest groups, which may render further change politically difficult. The executive ability to act first, even when the legislature is formally capable of responding, may often matter in determining the eventual political and policy outcome.[63]

Even absent such preemptive policy shifts, executive proposals affect the public and are necessarily difficult to keep entirely off the legislative agenda.[64] In addition to calling attention to favored issues and policies, presidents can also reframe issues and change the terms of debate so as to enhance the attractiveness of their favored policies.[65] A corollary of this observation is that policy innovation is not politically neutral. Congressional control over the political agenda can be disrupted not only by affecting the issue space of the legislative session, but also by affecting the particular policy responses to those issues. By offering new policy approaches to old political issues, the executive can destabilize the status quo and build new legislative majorities. Through policy innovation, the executive can redefine "congressional interests." Even if congressional majorities favor the final policy results, the process by which they emerged cannot be regarded as consistent with a narrative of congressional dominance.

More generally, presidents can affect the political climate as a whole. As Moe and Wilson note, "If there is a single driving force that motivates all presidents . . . [i]t is leadership."[66] Leadership means more than developing the details of legislative proposals or advocating on behalf of particular policies; it also means fostering a particular vision of government. This is a role that presidents are expected to play as national and party leaders, and one that they are uniquely well positioned to play as the head of state. The means by which presidents make politics have varied, but as Skowronek has demonstrated, this has been a regular feature of the presidency.[67] To the extent that presidents are successful in this project, congressional politics will take place against this presidentially dominated backdrop.

## Assessing Executive Power

A central aim of this paper is to advance an empirical method for assessing when executive power has figured significantly in policy change. Importantly, this requires moving beyond congressional voting on legislative proposals. The congressional-dominance literature is insufficiently attentive to processes both prior to and following congressional action. We offer a simple rule of thumb for determining when executive power matters. Whenever presidential or bureaucratic action—action that is not prompted or induced by legislative action—is a historically necessary condition for the *existence, timing,* or *form* of institutional change, then some measure of executive power exists, and the principal-agent model (at least as developed by congressional-dominance scholars) will fail to capture it.

How much executive power prevails in a given narrative is more difficult to ascertain, but here too our counterfactual condition can offer some guidance. Consider first that in some cases—we submit that the cases of policy innovation in agricultural education by the USDA and the impoundment-induced budgetary reforms of the 1970s are two candidates—executive action of a certain variety (coalition building, "going public," unilateral action, et cetera) is a *sufficient* historical condition for the occurrence, timing, or form of meaningful institutional change. In cases where historical sufficiency as well as historical necessity can be plausibly established, executive actors are exercising more power than where only historical necessity can be demonstrated. And in cases where executive action is a historically necessary but not sufficient condition for institutional change, scholars can assess the *degree* of historical necessity in a particular narrative. Indeed, sound scholarship will always consider the extent to which presidential or bureaucratic action is or was necessary for particular institutional outcomes.

In the following sections, we support our argument with three brief empirical cases, primarily intended to illustrate the logic of executive power and to show how the exercise of such power might be recognized. These three cases alone are clearly not sufficient to demonstrate that the congressional-dominance narrative is incorrect. We believe, however, that there is ample empirical support for the propositions elaborated here—and enough to encourage researchers to consider how the system of separated powers might affect American institutional and political development. These three cases, while perhaps not "critical" tests, are nonetheless of particular interest. They all represent policy areas of great political salience to legislators, and two of them—agricultural policy and budgetary policy—are where the congressional-dominance narrative would seem to stand on firm ground.[68]

In each case, the executive emerges as an important and autonomous actor capable of making policy to serve its own interests. These cases indicate that the choice between congressional abdication and congressional delegation is too stark and too one-dimensional to account for important features of American political development. Institutions have developed as various political actors have sought to put their own stamp on public policy and to locate the tools by which to do so.

## Bureaucratic Autonomy and the Department of Agriculture

At first glance, agriculture might not seem to be the place to find executive power in national politics. Our casual portrait of agricultural politics is one of well-organized interests with enduring connections to established congressional committees with sectionally based membership. Farmers, organized around commodities and against industrial interests, used the burgeoning congressional committee system of the early twentieth century to erect commodity price supports and effect a broad redistribution of wealth from the consumers of food to its producers. The interest group–committee liaison, the story goes, gave Congress a strong entrenchment with organized farmers at the very time that farmers were breaking from the Republican and Democratic parties. But recent scholarship has begun to overturn this older view. Before the rise of the farm lobby in the 1920s, John Mark Hansen shows, congressional committees were little enmeshed with organized farmers, who did not have an established presence in the nation's capital and tended to wield their influence through the parties rather than through legislative lobbying.[69]


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The organization that eventually gave organized farmers a permanent lobbying presence in American government was the American Farm Bureau Federation (AFBF), perhaps the most powerful lobby in the twentieth-century United States. Depending on the period one examines, however, the AFBF was as likely to advance the interests of the powerful executive bureaucracy as it was to provide a direct link between the House Agriculture Committee and the nation's farmers.[70]

The Farm Bureau was, after all, not an organization built by farmers from scratch, but one that emerged county-by-county alongside USDA extension agents. Starting in northern New York in 1912, USDA county agents combined with agricultural college officials to build county-based "farmers' improvement associations," later "bureaus" that would assist USDA extension agents in disseminating information and advice to farmers. The USDA had already developed a broad network of extension activities in the South, a development that occurred a full decade before the party of the South came to power in Congress and the White House. USDA officials were ex officio members of the Farm Bureau's governing board throughout its early years. As the AFBF's own president admitted in 1922, "[T]he [USDA] county agent is the strong right arm of the Farm Bureau."[71]

But did the USDA's pervasive presence in the AFBF lead to a consistent pattern of bureaucratic power? The evolution of the important Smith-Lever Act of 1914 and much subsequent legislation suggests that independent bureaucratic influence upon policy did prevail. As Roy V. Scott shows in his exhaustive study of extension, the Smith-Lever Act buried the "farmers' institute" model of county extension (in which farmers would travel to lectures at land-grant colleges).[72] In its place, the Act erected the USDA's favored program—county-based extension (in which extension agents would live alongside farmers). The Smith-Lever Act passed only when USDA extension agent Seaman Knapp personally persuaded Agriculture Committee Chair Asbury Lever (a Democrat from South Carolina) of the efficacy of the USDA's county-agent model and of the uselessness of the congressionally favored institute alternative. (Lever was so much in Knapp's pocket that he proclaimed himself Knapp's "devoted disciple.")[73] As a result, Congress ended up passing a law that reflected not its own preferences, but those of an executive bureaucracy. Prior to executive intervention, Congress had already made its own preferred structure clear, since every Congress from 1908 to 1913 passed bills that favored an institute-based extension program. Once it received authority through discretionary lump-sum funds and the Smith-Lever Act, the USDA not only favored its own model but even chased farmers' institutes into extinction altogether. Congress acquiesced, but the policy was the consequence of bureaucratic innovations.

The Smith-Lever Act is hardly the only example of autonomous policy making by the USDA. Indeed, the USDA and Theodore Roosevelt developed numerous policies in the face of congressional opposition from 1901 to 1908. Two of the most instructive cases of executive and bureaucratic policy reform in this sense are Progressive Era forest regulation and pure food and drug legislation. Forest regulation under the Transfer Act of 1905 met entrenched opposition from the majority Republican Party in Congress. House Speaker "Uncle" Joe Cannon and other Republicans stood to lose heavily under the Act, which would transfer authority over the national forest reserves from the Interior Department to the Agriculture Department. Such a move would forfeit thousands of patronage jobs in the Interior Department's General Land Office (GLO), and it would also subject western forests to the conservationist impulses of Pinchot's USDA Bureau of Forestry (as opposed to the laissez-faire minded GLO). With help from Roosevelt, Pinchot—who stood at the center of the Progressive environmental movement as did no other American citizen—persuaded key congressional leaders of the efficacy of his Bureau, end-running Speaker Cannon and securing the transfer in 1905. Pinchot then proceeded to submit western forest reserves to unprecedented regulations and fees that were not even contemplated in the Transfer Act, brazenly resisting the attempts of congressional leaders to rein in his actions.[74]

The Pure Food and Drugs Act of 1906, which forms the basis for the modern-day FDA, was also a product of bureaucratically driven policy change. Under the Old Guard of the Republican Party, congressional opposition to food and drug legislation was staunch from the 1880s to 1906. No national regulatory authority over nonmeat foods or pharmaceutical products existed, and Cannon and his committees would not allow any bill contemplating such authority to pass. Yet fully four years before the Cannon Revolt of 1910, USDA chemist Harvey Wiley copied Pinchot and found a way around the Speaker of the House. Wiley used the impressive publicity powers of his Bureau of Chemistry to build a broad-based coalition behind a national pure-food law that, not surprisingly, gave the Bureau enforcement authority. Several summaries of Progressive food and drug legislation resound almost perfectly with our empirical condition for executive power.[75] The *New York Times* reasoned that Wiley "was the prime mover in all the pure food legislation that has been placed on the statute books."[76] The two most thorough historians of the 1906 Act have agreed with this assessment. James Harvey Young argues that Wiley "established himself beyond question as the generalissimo of the pure-food coalition to press for the passage of a law."[77] Oscar Anderson concludes that "Wiley was in large part responsible for the fact that food and drug legislation came when it did and in the form that it did."[78] As if to punctuate the fact that the legislation was an achievement not of Congress but of the executive bureaucracy, Wiley used his authority under the 1906 Act to prosecute whiskey firms in Cannon's district, incurring no restraint whatsoever from either Congress or the federal courts.

### *Case summary and counterfactual*

What, then, are political development scholars and institutional political scientists to make of these episodes of bureaucratic policy reform? It flies in the face of existing theory to suggest that Congress delegated the ability to develop policies that its own median voters, majority party leaders, and committee chairs opposed, only to turn around and pass laws consistent with bureaucrats' policy preferences. Yet that is precisely what happened in the Transfer Act of 1905 and the Pure Food and Drugs



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Act of 1906. In both cases, USDA leaders built multifaceted coalitions around these policies, compelling the Old Guard–dominated Congress to accept them. To point to the environmental and anti-adulteration movements as the "source" of these policies, rather than bureaucratic initiative, misses the point. These movements were centered in the executive branch of the early 1900s.

The core property that sustained policy making power in the Progressive Era executive branch was its independent power base. Quite simply, no coalition, no party organization, and no committee in Congress commanded the specific but far-flung political allegiances that the USDA commanded—the allegiance among organized farmers after 1910, among conservationists after 1900, and among women's groups and public health advocates after 1900. Entrepreneurs such as Wiley and Pinchot could engage in policy building because they had more sustained ties to organized citizens than did any other actors in the national policy arena.

We can now pose this simple counterfactual (based upon the executive power flowing from national representation): In the absence of the bureaucratically centered coalitions for pure food and drug legislation and—indeed, in the absence of Wiley and Pinchot—would these Acts have passed? Not likely. The diverse and multifaceted coalitions behind these policies would never have materialized. (It is worth recalling that the core components of these coalitions were uniquely mobilized for these efforts and never resurfaced in other policy areas in the Progressive period.) In short, the historical necessity of bureaucratic action is sufficient for our intended demonstration of executive power.

## The Evolution of the National Security State

Within the narrative of congressional dominance, foreign policy is rarely considered. Its absence is telling, given the recognized presidential dominance of that field and its evident importance to domestic politics.[79] Questions of foreign affairs cannot be disentangled from questions of domestic policy and politics.[80] The national security state stands astride the artificial boundaries between them and has displayed an executive-led "mission creep" that benefits executive political and policy interests at home as well as abroad. Through much of American history, national security has a distinct domestic component concerned with identifying and marginalizing internal enemies who might threaten the nation's interests. Partly as a consequence, Congress often has distinct and intense interests in these issues.

The development of the national security state illustrates the resources that enable autonomous executive action. In this case, both (1) the president's enhanced constitutional authority in the area of national security and (2) the institutional realities of intelligence operations have served to facilitate independent executive action. Intelligence-gathering institutions were developed largely at the behest of executive officials in order to service their own political priorities. The fragmented character of congressional interests in this area allowed the executive to forestall determined legislative intervention, even as the executive took positive action to muster independent political support for its positions. In order to challenge presidential hegemony, Congress was forced to engage in an extensive publicity campaign of its own design to highlight executive abuses and build public and legislative support for reform; even then, the congressional ascent was limited.

By the time of Franklin Roosevelt's administration, J. Edgar Hoover had already transformed the Bureau of Investigation "from an old-style detective agency to a nonpolitical scientific law enforcement organization that was firmly under his control" and that had a bureaucratic constituency that extended all the way down to local police departments.[81] The kidnapping of the Lindbergh baby in 1932 sparked a wave of public fear about crime, and Congress responded with two narrowly drafted bills. That initial spark was soon fed by Roosevelt's Attorney General Homer Cummings, who aggressively encouraged public belief in a national crime wave that required a response by the federal government. In his annual message of 1934, Roosevelt asserted that the criminal threats to "our security" required "the strong arm of Government for their immediate suppression."[82] The attorney general, meanwhile, declared "a war with the organized forces of crime" and famously ordered Bureau agents to "shoot to kill."[83] Cummings's crusade led to an expanded budget for the Justice Department and the Bureau, as well as new crime control legislation in 1934 (requested and drafted by the administration) that dramatically increased the number of federal criminal offenses. Hoover's Bureau greatly benefited from Cummings's leadership, and Hoover capitalized on his new resources and opportunities by building public support specifically for the Bureau and its G-men. In a Depression Era environment that initially favored romantic gangster figures, Roosevelt was determined to "build up a body of public opinion . . . sufficiently active or alive to the situation in which we find ourselves."[84] Cummings hired a special assistant in 1933 to be in charge of public relations, but Hoover quickly developed an aggressive public relations department within the Bureau that did everything from ghostwriting popular magazine articles under the director's signature to working with movie producers, fiction writers, toy manufacturers, and comic book artists to recreate the G-man as a national hero.[85] Such agenda-setting activities helped secure the institutional resources that the executive could later exploit to its own advantage.

Even as the Bureau and the administration built public support for greater resources, the Bureau launched a variety of domestic surveillance efforts that perhaps most systematically reflected Hoover's own priorities but actively aided the political and policy concerns of the president. From as early as the summer of 1933, the White House directed through informal requests that the Bureau develop information on a wide range of political activities, organizations, and individuals. The domestic intelligence efforts of the Bureau were soon expanded and routinized, especially as Hoover and the administration's attention shifted from organized crime to political subversives. In a 1936 meeting, the president directed that Hoover launch a general investigation into "subversive activities in the United States" and how they "may affect the economic and political life of the country as a whole," and Hoover promptly issued orders to the Bureau's field offices "to obtain from all possible sources information concerning subversive activities being conducted in the


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United States."[86] Hoover sent the administration unsolicited dossiers that he thought the White House might find useful, but administration officials also routinely made specific requests for information, such as submitting lists of people and organizations that the White House wanted to investigate, including prominent critics of the administration. Surveillance of administration critics became even more intensive as the nation entered World War II, and in 1942 Roosevelt explained to Attorney General Francis Biddle that "I think very definitely that the F.B.I. can run down things like this. Senators and members of Congress are, of course, protected in a sense by the Constitution, but this must be strictly construed. There is absolutely no valid reason why any suspected subversive activities on their part should not be investigated by the Department of Justice."[87] As the Bureau developed its domestic surveillance programs in the 1930s, Hoover successfully resisted any effort to seek a legislative charter that would authorize such activities, arguing that it would be "undesirable to seek any special legislation which would draw attention" to the program and potentially invite "criticism or objections" by "ill-informed persons or individuals with some ulterior motive."[88]

Hoover's Bureau of Investigation was only the beginning of a massive national security apparatus built within the executive branch almost entirely at presidential initiative. Throughout the 1940s, central intelligence organizations capable of engaging in intelligence analysis, propaganda efforts, and even psychological and guerrilla warfare were formed and dismantled within the executive branch entirely at presidential directive. Congressional participation in these institutional developments was not sought until the director of Central Intelligence turned to Congress to bolster his position relative to bureaucratic competitors in the FBI, War Department, and State Department. Congress obliged with the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, which more firmly entrenched the CIA while more generally reorganizing the military structure.[89] The National Security Act gave little substantive guidance to the newly formed CIA, however, and borrowed its language directly from an earlier executive order. It did not, for example, explicitly authorize the Agency to engage in covert actions, but merely "to perform such other functions and duties related to intelligence affecting national security as the National Security Council may from time to time direct."[90] The CIA was soon supplemented by a host of other executive-initiated intelligence services.[91]

Having secured the place of the CIA within the intelligence bureaucracy, Congress largely withdrew from the scene. The special intelligence oversight subcommittees lapsed into near inactivity during most of the postwar period. During this time, Congress did not develop the institutional capacity to set its own policy interests or to ensure that the intelligence agencies adhered to those concerns. But Congress participated in an ideology of presidential leadership in this arena, such that many legislators questioned their own authority to intervene in intelligence matters that were understood to be the province of the executive branch. Those who might have objected to executive policy making in this area were simply kept in the dark.

Congressional acquiescence to presidential control over intelligence was accepted practice at both ends of Pennsylvania Avenue from the 1940s until the early 1970s. Presidential adviser Clark Clifford, who was heavily involved in the formation of the CIA during the Harry Truman administration, noted that "Congress chose not to be involved and preferred to be uninformed."[92] Other observers, however, doubted whether the executive was amenable to greater congressional involvement. CIA Director Allen Dulles told the Warren Commission that he felt obliged to tell the truth about CIA activities only to the president.[93] Senator J. William Fulbright—who, despite being chairman of the Foreign Relations Committee, attended oversight hearings only as an invited guest—found that executive branch officials "would never reveal anything of significance. They would never tell us how much money was being spent, where it was in the budget, or what they were doing with it. There was no stenographic record kept [of the hearing]. . . . All this was basically a device to silence the critics in the Senate."[94] The CIA and the other intelligence services cultivated an air of secrecy and competence that discouraged congressional inquiries and undermined the ability of congressmen to challenge executive actions.

Many in Congress were complicit in fostering the executive's belief in its own autonomy in intelligence activities. Senate Appropriations Chairman Carl Hayden argued that congressional interference with intelligence activities "would tend to impinge upon the constitutional authority and responsibility of the President in the conduct of foreign affairs."[95] Similarly, in opposing measures to expand congressional oversight of the intelligence agencies, Senator Richard Russell assured his colleagues that "we must take some matters on faith."[96] Such long-held attitudes led to the atrophy of institutions that could have allowed Congress to monitor executive activities. As the postwar intelligence regime was collapsing, CIA Director William Colby explained to Representative Les Aspin that there were no procedures in place for responding to congressional objections to a CIA operation. The Agency had not thought it necessary to plan for such a contingency. Legislators were usually informed of CIA operations only after the fact, if at all.[97]

This Cold War consensus that intelligence was accountable only to the president was changed only with great difficulty, and even then only partly. The combination of the Vietnam War, Watergate, and domestic social upheaval undermined the belief in presidential leadership of foreign affairs and further politicized the meaning of "national security." Reformers such as Frank Church and William Fulbright were dismissive of the idea that Congress did not have the right to be fully informed of intelligence activities. Even so, reforms occurred only after public exposure of dramatic intelligence abuses, and with executive cooperation. By the time legislative investigations into intelligence activities were completed, however, the era of congressional reform was largely over. Congress put in place a new system of oversight that established a better flow of information between the executive and the legislature and ensured that intelligence officers would be more cognizant of congressional political interests. Each house of Congress created a new permanent oversight committee (the Select Committee on Intelligence) with expanded staff and subpoena powers, budget authority over the intelligence agencies, and specific agency reporting requirements. But



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Congress did not redefine the underlying relationship between the intelligence community and the presidency. Many legislators remained convinced that intelligence was an inherent prerogative of the president, and efforts to ground the intelligence agencies in statutory authority floundered.[98] The executive remained essentially autonomous in the development of policy.

***Case summary and counterfactuals***

Congress never controlled the development and operation of the national security state; and for much of the postwar period, Congress did not even present a serious constraint to executive action in this area. The design of the intelligence agencies and the direction of intelligence policies largely took place within the executive branch, often without any reference to statutory authority. Congressional interests were fragmented and often reactive to executive leadership. Moreover, as a consequence of its own ideological commitments, the design of its oversight mechanisms, and the choices of the executive branch, Congress was largely uninformed about the activities of the intelligence community. The theoretical consequences of this informational deficiency are substantial, for Congress did not even know the parameters of what it did not know. Despite the important domestic and foreign activities of these agencies, the legislature had no mechanisms in place, whether active or passive, to identify when the executive might encroach on congressional interests. In other words, no "fire alarm" oversight was or is possible in intelligence policy. Even relatively powerful potential reformers, such as Fulbright, were given no leverage to challenge the executive branch.

Both the postwar development of the intelligence apparatus and the intelligence reforms of the 1970s conform better to a narrative of executive power than to one of legislative dominance. The emergence of new intelligence agencies and the post-Vietnam reforms fulfill our counterfactual requirement for a demonstration of executive power in institutional change. The FBI's domestic surveillance program and the intelligence agencies of the twentieth century would not have been created (1) at the *time* they were created or (2) in the *form* they were created had not the Roosevelt and Truman administrations launched them. Neither action had been even contemplated by Congress at the time.

We pose another counterfactual in the form of a question: In the absence of the aggressive executive actions of the 1960s and early 1970s, would intelligence reforms and a change in congressional intelligence institutions have occurred when they did and in the same form, or would they have occurred at all? The historical narrative answers all parts of this question quite patently in the negative. Reform came only after extensive and difficult legislative investigations designed both to inform Congress of what policies were actually being pursued by the executive branch and to build political support for reform. Even amidst the exposure of past executive abuses, the president was able to keep Congress on the defensive regarding its capacity to secure the national interest in such a sensitive area.[99] In the end, Congress had to radically restructure its own oversight structure in order to institute constraints on intelligence operations and partly counter the inherent institutional advantage of executive officials. Even so, Congress refrained from involving itself in the operational details of intelligence activities, and also from specifying the broad principles that should guide and constrain executive actions in this area.

The intelligence agencies are an extreme case of executive power, but they reflect central features of the postwar presidency. Presidents have always had expanded power in times of crisis. What is distinctive about the twentieth century, as Neustadt observed, is that American politics operated within a permanent state of crisis.[100] Presidents increasingly came to view domestic social upheaval and international instability as fundamental threats to American national security that required a response. They constructed within the executive branch the institutional capacity to make such a response, while building public support for their efforts.

## The Impoundment Controversy and Budget Reform

Although Congress clearly has powerful tools for advancing its interests in the budget-making process, even federal budgeting has not been firmly or exclusively under congressional control. We focus here on the growth of the presidential power to impound appropriated funds—that is, to delay or prevent entirely the actual expenditure of funds that have already been appropriated by Congress through statute. Presidential impoundments have always been small relative to the aggregate budget, but the impoundment controversy provides some useful insights into the process of institutional development in a system of separated powers. The postwar presidents' claims to the authority to impound funds mark an extreme, but telling, extension of the power of the twentieth-century presidency, *and* of costly congressional institution building in response to that power.

Presidential impoundments eventually sparked a crisis during Nixon's presidency and provoked far-reaching reforms in the budgeting process, but the impoundment power had been gradually developing over the course of several administrations. Arguments on behalf of the president's authority to impound appropriated funds built upon multiple layers of inherent executive authority, statutory authorization, and public necessity.[101] Any particular statutory effort to empower the president thus contributed to a larger regime in which it was accepted that presidential duties were not merely of a ministerial nature and were not limited to proposing legislation for congressional action.

The Budget and Accounting Act of 1921 was a landmark in executive budgeting not only because it created the Bureau of the Budget and centralized budget requests, but also because it emphasized a Progressive sensibility of managerial efficiency and accountability that made itself felt after the legislative process was over. The first Budget Director, Charles Dawes, at the behest of President Warren Harding, used his position to advance "the reorganization of the routine business of government," seeing the Bureau and executive orders as "an agency of executive pressure."[102] He immediately issued regulations establishing that "appropriations from Congress were to be treated as a mere ceiling on expenditures rather than as a directive or invitation to


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spend the full amount."[103] Harding was equally direct, telling agency heads that "I expect you all to effect some savings from your appropriations in the coming fiscal year."[104] Nonetheless, it required several more years before the president developed the institutional capacity to fully enforce such expectations, when Franklin Roosevelt transferred control over apportionments from department heads to the budget director. Roosevelt later informed Senator Richard Russell that "the mere fact that Congress, by the appropriation process, has made available specified sums for various programs and functions of the Government is not a mandate that such funds must be fully expended."[105] Concerns with "efficiency" and "economy" were central to the institutional perspective of the president, and the executive institutions that grew out of the Budget and Accounting Act gave the president the resources to act on those concerns. Although Progressive-minded reformers in the executive branch were apt to view their efforts as apolitical, they were often sharply at odds with congressional interests for whom the full expenditure of federal funds was less likely to be perceived as mere "waste."

Fiscal economy and macroeconomic management were regarded as inherent executive functions that were, to a greater or lesser extent, encouraged by statute. The president's authority as commander in chief supplemented these executive powers of the presidency to legitimate the presidential refusal to spend appropriated funds. In keeping with his aggressive efforts to reduce the size of the Navy, President Jefferson left funds for naval ships unspent for more than a year, since in the president's judgment the changing international climate no longer required "an immediate execution of that law" and a different model of ship was preferable to the one contemplated by Congress.[106] More recently, President Truman refused to spend appropriated funds that would have expanded the Air Force groups beyond the number the president had requested in his budget proposal. Despite the administration's sharp criticism of wasteful spending by the Pentagon, the House had fought for the inclusion of a substantial increase in the size of the Air Force in the budget. Readily mixing national security and macroeconomic rationales, Truman announced that the congressional appropriation would be ignored.[107]

In justifying impoundments and executive budgetary controls, the Cold War presidents were as likely to emphasize their special administrative capacity as chief executive as they were their particular responsibilities as commander in chief. The presidential strategic vision readily extended across military planning, macroeconomic management, and fiscal economy, and postwar presidents were prepared to ignore "misguided" or "parochial" congressional appropriations. Even in the nineteenth century, President Grover Cleveland signed a river and harbor bill while announcing that he would not spend funds appropriated for projects he regarded as "of purely private or local interest," and his agriculture secretary, Julius Sterling Morton, impounded tens of thousands of dollars in "free seed" funds that he saw as an "unwieldy, unnecessary, and extravagant" expenditure.[108] More recently, Lyndon Johnson refused to spend funds on various particular projects to which he objected and refused to spend agricultural appropriations that exceeded his own budget requests. A presidential concern with fighting inflation made the added appropriation "most unwise" and overrode what would otherwise be "a proper exercise of congressional prerogative" to modify executive budget requests.[109] With presidents such as Cleveland and Johnson, Congress did not have the authority to dispose of presidential proposals after all.

Prior to Nixon, impoundments tended to be relatively limited in scope; equally important, presidents exercising their impoundment power had been able to secure enough political support to prevent congressional reprisals. Presidential impoundments tended to divide and conquer congressional interests while playing on the enhanced presidential authority to attain broad national security and macroeconomic goals. Nixon impounded more funds than his predecessors did, and his actions were more dramatic in that they tended to cut off entire programs and to target programs favored by the Democratic majorities in Congress. Although pointing to typically flexible language in the specific statutes involved in some of these cases (later changed by Congress), the administration defended its actions primarily by invoking general public policy considerations and the constitutional responsibilities of the president. Litigation over Nixon's impoundments generally went against the administration, but the courts were slow to settle these cases and extremely narrow in their final judgments.[110]

Nixon was most aggressive in impounding funds after the elections of 1972. "Irresponsible" congressional spending and inflationary pressures were prominent themes of the president's reelection campaign, and the administration reemphasized those issues when impounding funds. Congress, Nixon told his radio audiences, "suffers from institutional faults" and "arrives at total Federal spending in an accidental, haphazard manner."[111] Only the president had the capability of making the "hard choices" that were necessary to protect "the national interest in general prosperity."[112] Nixon used his bully pulpit to ensure that the political debate would focus as much on congressional deficits as presidential irregularities.

Nixon's actions and rhetoric put Congress on the defensive. Neither tightening statutory language nor relying on judicial enforcement of appropriations was seen as an adequate response to the challenges made by the president. As many congressmen admitted, narrow efforts to mandate expenditures would not address the inherent executive authority over some spending decisions, nor would it make up for the legislature's inability to express its will on the budget as a whole. Representative Dave Martin spoke for many in the debate when he contended that the "Executive has not seized control of the budget. Congress has abdicated."[113] Although few legislators were willing to defend Nixon's impoundments as such, many admitted that his actions were a natural outgrowth of the existing budgetary regime. Unable to make the "hard choices," Congress had created a power "vacuum" and the president had "rushed to fill the void."[114] As soon as Congress turned to the general problem of impoundments, it faced the necessity of restructuring the budget-making process as a whole in order to reestablish congressional capacity vis-à-vis the president.[115]

The result was the Congressional Budget and Impoundment Control Act of 1974. The Act radically remade congressional budget structure. Notably, it created new institutions such as the Congressional Budget Office and the House and Senate Budget



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Committees to provide the information and planning necessary for unified congressional budgeting, and new procedures so that Congress would set an entire federal budget and not just approve individual appropriations. Title X of the Act created new procedures for dealing with impoundments. Although Title X began with a disclaimer that it was not "asserting or conceding the constitutional powers or limitations of either the Congress or the president," it marked the first formal recognition by Congress of an expansive presidential power to impound funds.[116] Like the contemporaneous War Powers Resolution, the Budget Act did not attempt to prevent the president from initiating action; it merely sought to impose reporting and requirements of post hoc legislative approval. These requirements have been significant, however, in reducing both the incidence and success of executive impoundments. The amount of impounded funds has dropped from nearly 9 percent of the total federal budget (before the passage of the Act) to under 2 percent, and those remaining impoundments have been less responsive to presidential policy goals than were earlier ones.[117]

***Case summary and counterfactual***

In the absence of unilateral executive impoundment strategies from Truman through Nixon, would the dramatic overhaul of congressional budgetary institutions have occurred in the first place, or occurred *when* it did or in the *form* that it did? It is severely difficult to imagine these reforms as purely reflective of congressional preferences and strategies. The very inclusion of "impoundment control" in the title of the 1974 budget reform act illustrates the importance of the executive in the process of institutional development in this case. Presidents had used their claimed constitutional authority as chief executive to frustrate various particular congressional interests, culminating in Nixon's aggressive use of presidential impoundments in the early 1970s. Without the political and policy pressure of the executive—consistent with the *national representation* logic of executive power—it is exceedingly unlikely that congressional budget reform would have happened how and when it did. Although presidential impoundments can be regarded as the executive agent's exploitation of his legislated discretion, it is notable that the reduction of executive discretion in spending appropriated funds proved inadequate. The "agency costs" faced by Congress in budgeting not only involve the problems associated with the executive's delegated authority to develop initial budget estimates and proposals; they also involve the constitutionally mandated division between the legislature that appropriates funds and the executive that spends them. Congress did not merely tighten statutory language to constrain executive choices, but developed entirely new institutions to challenge presidential budgetary decisions. New congressional committees, budget procedures, and research support institutions—all of them costly both in funds and in internal delegation of power—were created.

## Conclusion

Congress has encountered repeated reminders that the president is "relevant" and that members of the executive branch are often important, autonomous political actors. A bolder executive branch has cut a deep swath across the landscape of twentieth-century American politics. In response, Congress has fundamentally restructured itself in ways that would not have occurred in the absence of a more powerful executive branch. In budgetary politics, environmental regulation, national security, agricultural programs, and many other policy areas, institutional development has flowed not from the conflict of legislative principal and executive agent, not from the struggle between congressional statute and presidential veto, but from the bargaining, assertion of prerogative, and rhetorical battling so essential to modern institutional politics.

In contrast to the assumptions embedded in the narrative of congressional dominance, important political institutions and policies do not simply reflect the political order preferred by congressional interests. Congressional interests have often been fragmented or inchoate, creating opportunities that the executive has exploited to advance its own policy preferences. Likewise, the congressional ability to respond to executive initiatives has been restricted not only by its internal collective-action problems, but also by its limited capacity to monitor or sanction executive officials and by the inadequacy of political alternatives. Institutions are not simply designed to advance legislative interests. Executive officials have historically enjoyed space for autonomous action, and institutions have developed dynamically through the interaction of the legislature and the executive. The executive may be constrained by Congress, but it has not simply represented congressional interests.

Our argument notes several bases for executive power. First, there are constitutionally recognized and historically entrenched capacities of executive action, formally recognized and legitimated authorities beyond the veto, that provide the executive with the power of initiative and enhanced information. Second, there are broad constituency bases and independent power bases to which presidents and their bureaucracies can lay claim. Third, presidents have powers as party leaders—a sustained ability by virtue of national prominence, media exposure, control of party resources, and fund-raising ability to set party agendas, to coalesce otherwise wayward legislators and voters, and to provide "visions" (or "focal points," as game theorists would put it) for party members. When any of these factors is at work, the existence of executive power can be assessed by light of historical counterfactual. For any instance of institutional change or policy reform, we ask the following question: in the absence of unprompted action by the presidency (or the executive bureaucracy), would the timing, form, or occurrence of institutional change have been different? In the development of national budgetary structure, in the Transfer Act of 1905, in the Pure Food and Drugs Act of 1906, in the Congressional Budget and Impoundment Control Act of 1974, and in the Smith-Lever Act of 1914, there is simply no historically reasonable negative answer to this query. Indeed, at times our conditions for executive power have been met even when congressional authority and institutions have *expanded*. In the development of a congressional budget apparatus in the 1970s, it was executive action that forced a decisive shift in congressional fiscal institutions. Far from a situation in which Congress unilaterally chose institutions to control budget outcomes, it was the incremental development of


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impoundment authority and budgetary centralization within the executive branch that forced the hand of Congress and compelled new and costly institutional forms to allow Congress to challenge the executive for control over the budget.

Indeed, our primary point is not that institutional reform is always primarily driven by executive and/or bureaucratic action. Surely it is not. The executive may be important without being imperial. We argue instead that sustained *conflict* between legislative and executive actors lies at the center of institutional change in American political development. Under the conception of executives as agents, such conflict is hard to understand. A better understanding of the political foundations of executive autonomy and the conflicts that autonomy provokes is a necessary supplement to an understanding of the internal dynamics of the legislative process.

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## Notes

1 Nagourney 2002, A1.
2 Schlesinger 1973.
3 Purdum 1995, A1.
4 Walker 1994, T10; Fraser 1995, A1; Harris 1995, A25.
5 Shugart and Carey 1992.
6 The positive theory of institutions applies game theory and formal analysis derived from economics to the study of political institutions.
7 McCubbins and Schwartz 1984.
8 Skowronek 1993.
9 Moe and Howell 1999; Howell 2003; Cameron 2000. See also Orren and Skowronek 1994; Skowronek 1993; Carpenter 2001.
10 Sundquist 1981, 29.
11 Ibid., 35.
12 Kiewiet and McCubbins 1991, 3.
13 Ibid., 19; McCubbins 1991, 117.
14 McCubbins 1991, 116.
15 Sanders 1999, 3.
16 Kernell and McDonald 1999, 793.
17 Moe 1987, 486.



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18 Schickler 2001.
19 Orren and Skowronek 1994; Orren and Skowronek 1996.
20 Moe 1989, 267.
21 Corwin 1940, 200.
22 Moe and Wilson 1994, 21.
23 Rossiter 1960.
24 Neustadt 1960, 42.
25 Tulis 1987, 41.
26 Rossiter 1960, 41.
27 Bruff 1989; Strauss 1984; Moe and Wilson 1994.
28 Howell 2003; Mayer 2001.
29 Easterbrook 1989–1990.
30 Rossiter 1960, 37.
31 Ducat and Dudley 1989; Skowronek 1993.
32 O'Reilly 1982.
33 Darling 1990; Richelson 1995.
34 Richardson 1897, volume 1, 324.
35 Ibid., volume 6, 404.
36 Kernell 1992.
37 Page and Shapiro 1985.
38 Ponder 1986.
39 Jackson 1970.
40 Powers 1983.
41 Canes-Wrone 2001.
42 Remini 1959; Skowronek 1993; Frymer and Skrentny 1998.
43 Whittington 1999.
44 Ellis and Kirk 1995.
45 Ceaser 1979, 74; see also Sullivan 1990; Conley 2001.
46 C. Jones 1994, 9.
47 Cox and McCubbins 1993; Kiewiet and McCubbins 1991.
48 Kernell and McDonald 1999.
49 Kielbowicz 1994.
50 Carpenter 2000.
51 James 2000.
52 Sklar 1988.
53 Ginsburg and Shefter 1988.
54 C. Jones 1994.
55 Brady and Volden 1998.
56 Ginsburg and Shefter 1988, 311.
57 Peterson 1992; Laumann and Knoke 1987.
58 Young 1989; Jackson 1970; Fuller 1964.
59 Neustadt 1954.
60 Rossiter 1960, 29.
61 Conley 2001.
62 Mayer and Weko 2000, 183.
63 See also Pierson 2000.
64 Cohen 1995.
65 B. Jones 1994; Riker 1990.
66 Moe and Wilson 1994, 11.
67 Skowronek 1993.
68 Consider the arguments of Kiewiet and McCubbins 1991, and McCubbins 1991, as congressional-dominance narratives in budgetary politics argument. We admit that congressional-dominance arguments are less persuasive prima facie in the context of the national security state, but as recent events remind us, the organization and use of the national security apparatus can have substantial domestic significance. We believe that matters associated with national security are too often excluded from the study of American politics generally, obscuring the fullness of congressional politics. See Mayhew 2000.
69 Hansen 1991 and n.d.; see also Skocpol and Finegold 1995.
70 Shideler 1957, chapters 5–7; Kile 1921; Howard 1983; True 1928.
71 True 1928, 166.
72 Scott 1970.
73 Ibid., 298.
74 Hays 1959; Ponder 1986; Peffer 1951; Carpenter 2001.
75 Kolko 1967.
76 Special to *The New York Times* 1911, 1.
77 Young 1989, 121.
78 Anderson 1958, 196; also 133.
79 Sparrow 1996.
80 Trubowitz 1998; Katznelson and Shefter 2002.
81 Poveda 1990, 17.
82 Roosevelt 1938, volume 3, 12.
83 O'Reilly 1982, 642.
84 Roosevelt 1938, volume 3, 495.
85 O'Reilly 1982, 643–5; Powers 1983.
86 O'Reilly 1982, 646. By then, Hoover already had substantial experience gathering information on political activists and critics. Williams 1981.
87 O'Reilly 1982, 650.
88 Senate Select Committee 1976, volume 2, 28.
89 Darling 1990; Senate Select Committee 1976, volume 4.
90 § 102 (d)(5) 61 Stat. 495 (1947).
91 Richelson 1995.
92 Smist 1994, 5.
93 Johnson 1985.
94 Smist 1994, 6.
95 Elliff 1977, 196–7.
96 Smist 1994, 6.
97 Johnson 1985.
98 Johnson 1985; Smist 1994; Whittington 1999.
99 Smist 1994; Whittington 1999.
100 Neustadt 1960.
101 Pfiffner 1979; Whittington 1999.
102 Mayer and Weko 2000, 197.
103 Fisher 1975, 37.
104 Ibid., 38.
105 Miller 1965, 512.
106 Richardson 1897, volume 1, 348.
107 Fisher 1975.
108 Richardson 1897, volume 9, 4,331; Baker et al. 1963, 34.
109 Johnson 1967, 980, 981.
110 Fisher 1975.


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111 Nixon 1973, 965, 1,010.
112 Ibid., 743.
113 *Congressional Record,* 93d Cong., 1st sess., 1973, vol. 119, pt. 20, 25543. See also *Congressional Record,* 93d Cong., 1st sess., 1973, vol. 119, pt. 30, 39349–51, 39353, 39356, 39360, 39695; *Congressional Record,* 93d Cong., 2d sess., 1974, vol. 120, pt. 6, 7147–8.
114 *Congressional Record,* 93d Cong., 1st sess., 1973, vol. 119, pt. 30, 39352–53.
115 Schickler 2001, 194–6.
116 Title X, § 1001, 88 Stat. 332 (1974).
117 Wlezien 1994.


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