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PSCI 204

FDR to Nixon to Biden: The Evolution of Executive Power Under the Modern Presidency

In the nearly 250 years since the Framers wrote the Constitution, the powers of the president have evolved from those initially established by the Constitution. As institutional conflicts have arisen and settled throughout the years, various presidents, Congresses, and courts have both expanded and diminished the powers of the office. The expansion or diminishment of executive power often depends on if the government is split between parties, the nation is in a time of crisis, and whether the most recent presidents have had the approval by the public and Congress, one such example being the actions Congress and the courts took during and after the Watergate era to reduce the executive's power. At other times, the president himself has worked to expand his powers around Congress and the courts through executive orders, executive agencies, and other measures taken without Congressional approval, for example, President Franklin Roosevelt's actions during the Great Depression and World War II to expand the executive's powers. As the president has often tended to have tenuous relations with Congress and the courts, cooperation between the branches is always dependent upon approval of policies and actions taken. The expansion under FDR during the Depression and WWII, and the diminishment of executive power after President Nixon by Congress and the Courts in the 1970s have defined and limited the powers that lie within the president's scope, shaping the office to what it has become today.

Executive power was first broadly defined in Article II of the US Constitution, listing several powers, including the president's position as Commander in Chief, vetoing legislation, convening Congress, and nominating government officials and federal judges. The vesting clause contained within the article has often been interpreted to mean that the President is the head of the Executive Branch while remaining limited within that branch, sometimes subject to Congressional oversight. Others, however, have read this clause to mean the President has full control over the Executive Branch, meaning any decisions or actions made would not be dependent upon Congressional review ("Executive Power"). Since the beginning, with George Washington, the scope of the presidency and its powers have grown and been defined. In Washington's first term, for example, several decisions were made in favor of expanding executive power, including the right for the President to dismiss executive officials without Congressional consent (Milkis and Nelson 93), and the Neutrality Proclamation allowing the President to declare the country would not go to war, while Congress could only declare if the nation were going to war, defended by Hamilton in the Pacificus-Helvidius debates (Milkis and Nelson 99-100). In later years, the presidency saw a diminishment of similar powers, such as with the Tenure of Office Act in 1867 during Andrew Johnson's presidency, requiring Senate approval for dismissal of Cabinet members (Milkis and Nelson 222). With early occurrences of the evolution of executive power, all three branches of government have acted similarly since to expand and restrict the scope of the president and his powers as the modern presidency was born, particularly under FDR and Nixon.

Under President Franklin Roosevelt the modern presidency grew and expanded to involve several aspects still present today. Following his first election, FDR worked to expand

his executive power in the emergency of the Great Depression. FDR, calling on the examples of President Wilson during WWI, felt and claimed that expanding his power as president, such as by creating more executive agencies and departments, was crucial to successfully battle the Depression. With the pre-existing structure of the office, FDR knew he would not be capable of being quick and successful, and as such spent his first few months in office restructuring the branch to provide fast and powerful results to his goals (Cronin and Hochman 279). Beyond just his impact on executive power, however, FDR set precedents maintained by presidents today. It was FDR who coined the idea of the president's "First 100 Days" (Kamarck), created lasting agencies and departments within the executive branch, most notably the Executive Office of the President. During his first 100 days, FDR exercised the most influence over legislation in American history, working diligently to provide hope to the people (Cronin and Hochman 279-280). His New Deal programs furthered his abilities to regulate the economy (Peterson), and as the nation moved past the Depression and entered WWII, FDR campaigned to the people as working on their behalf and protecting the nation.

During World War II, FDR followed similar actions as President Lincoln during the Civil War, sometimes without the consent of Congress. By pushing a couple of War Powers Acts through Congress, Roosevelt was able to increase his authority to organize major parts of the executive branch and independent government agencies to further the war effort, making himself intricately involved in the war effort as Commander in Chief, and gave himself the authority to censor mail, while pulling previously confidential information from the census, to enable the Japanese American internments (Peterson). It is often agreed that WWII saw the beginnings of the modern presidency, as Congress delegated many powers to the president, leading to the

decrease in the legislative branch's influence. It was FDR's response to the Depression and actions during WWII that birthed the idea of the necessity for a strong president, as Americans came to expect an active government led by the president, aware of the struggles of the public.

Without FDR's stronghold on the presidency and increased executive power, it is unclear how the US would have survived the Great Depression or managed to wage a successful world war. While some actions were questionable and were checked by the courts at times, FDR's charismatic personality and connection to the people helped reassure his knowledge that the public would be in support of his actions because he advertised them as being for the benefit of the people. At the time, many favored FDR, and his developments, as it was thought the atmosphere and circumstances demanded a president with imperialistic tendencies, willing to act strong, while many now will accuse him of taking too much power (Cronin and Hochman 284). While it is true he pushed the constitutional boundaries of executive power, FDR transformed the presidency from a mere implementer and follower of Congressional will to become the driving force and leader in working towards solutions to problems posed both domestically and globally, giving the nation a stronger global presence and reputation. Nearly a century later, many of FDR's developments to executive power have lasted, exercised by successive presidents in times of war, crisis, and even peace.

Richard Nixon's time in office was marked by a style of leadership now referred to as his "administrative presidency," in which he made attempts to bring his presidency closer to imperialist practices (Milkis and Nelson 429-433). His predecessor, Lyndon B. Johnson, had drawn on examples set by previous presidents, such as FDR during WWII, during his 5 years in

office for both the Vietnam War and his Great Society programs. During that time, the nation had seen a rise in strong presidential leadership; however, by the end of Johnson's term, his loss of party control and overreaches in the Vietnam War saw a growing distaste for strong presidents (Milkis and Nelson 432). Following Johnson, once in office Nixon took the chance to reorganize the executive branch, using his new structure to implement many of his policy objectives through administrative motions (Milkis and Nelson 429). He quickly learned, however, that the president could not be fully imperial as the power of the president is dependent upon the willingness and approval of the other branches and the public.

In the months following the 1972 Watergate break-in at the Democratic National Convention, Nixon's chances of survival plummeted as the press continuously pushed the story and threatened the public trust government depends upon. With his already battered relations with Congress, it became clear Congress was ready and willing to investigate and take the steps to remove him from office. While originally, Watergate appeared to be simply dirty politics, as the scandal continued to unfold, with Nixon making claims of absolute executive privilege and acting to prevent the presidency, and by extension the nation, from looking weak to other nations (Milkis and Nelson 433-434), Watergate quickly became an issue of executive power and overreach.

The time of Watergate and the post-Watergate era was marked by various attempts of Congress to take back the power the presidency had claimed during the years prior. In 1973, following nearly a decade of US involvement in the Vietnam War, Congress passed the War Powers Act. In 1964, Johnson felt the US needed to be involved in Vietnam and win the war, as

to not would risk the global community doubting America's commitment to helping others and a domino effect of Communist nations in Southeast Asia (Milkis and Nelson 419). When the US Navy sent news that a ship was attacked, Congress passed the Gulf of Tonkin Resolution. Johnson took this resolution with a liberal interpretation, beginning US engagement in a war that would last for nearly a decade and continuously grow in unpopularity. The resolution, "authorizing President Johnson to take any measures he believed were necessary to retaliate and to promote the maintenance of international peace and security in southeast Asia" ("U.S. Involvement") became the legal basis for Johnson and Nixon to defend America's involvement in Vietnam.

By 1973, Congress had become frustrated with the way many of the war powers the Constitution had given to Congress had been moved to the president. The War Powers Act was a direct response to the Korean and Vietnam Wars, reclaiming Congress' authority in war-making by requiring the president to send notification of a use of force within 48 hours to be approved by Congress. Nixon vetoed the Act, claiming it to be unconstitutional, a position every successive president has held, but was overruled by Congress (Milkis and Nelson 437). Around this same time, Congress also moved to restrict the president's unilateral power of controlling the impoundment of funds in the Congressional Budget and Impoundment Control Act, requiring Congressional approval to impound funds, while also establishing Congressional budget committees (Milkis and Nelson 436-437). While these laws did little to fully restrict the presidency, they symbolized Congress's will to make themselves the dominant branch of government.

Outside of Congress, the modern presidency faced challenges to its increased powers. With the Supreme Court ruling in *United States v. Nixon* against Nixon's claim to absolute executive privilege to avoid the Watergate investigation, the president lost some stature in favor of holding leaders accountable (Milkis and Nelson 435). Even more crucial to the diminishment of presidential power, however, was the decrease in public approval of a president centered government, as no longer could a president claim that presidential supremacy was the mandate of the people. Surveys in the late 1950s found that most Americans favored the president as the leading branch of government; however, within twenty years that number had dropped to only a quarter of Americans, the majority favoring Congress as the primary branch (Milkis and Nelson 436). Pushed by the revelations of Watergate and influenced by the accountability the press held for the president in their writing, many Americans came to distrust centralizing national power into one person, favoring instead Congress's rule as the primary branch.

Watergate was an unprecedented scandal, followed by the first and only resignation in American history of a president who understood he could not withstand the will of Congress and pressure of the public and press. In the years leading up to Nixon's time in office, the executive powers had grown unchecked, reallocating several of Congress's Constitutional powers to the president. Congress and the courts had justifiably become frustrated by the blatant overreach of recent presidents and reclaimed those powers through new laws and court decisions that restrained the president to a more limited scope. Without these checks, a dangerous precedent of ambivalence of the other branches to allow the presidency to become the sole powerful and acting branch of government could have been set by Nixon and his Watergate scandal.

While the checks and balances of government must exist to prevent too much power from falling to one branch, it is also necessary that the government evolve, and the various powers be reassigned as the nation evolves. If the American government were to stay exactly as written in the Constitution, little action would be accomplished in government today. With a deeply polarized government, many issues, executive power included, have become partisan issues. It is often seen in Washington that executive power will grow in times of national crisis, such as the Great Depression or WWII under FDR, and decrease when the public is shown the abuses presidents can take with broader, unchecked power, such as following the Watergate scandal under Nixon. Under more recent presidents, similar displays of fluctuating executive power can be seen, such as the post-9/11 fears that allowed for the Patriot Act under President Bush, and the impeachment of President Trump. Executive power under President Biden will be interesting to see develop as his time in office progresses. With the period of national crisis the Covid-19 pandemic has posed throughout his tenure thus far, the nation has seen Biden act unilaterally to help the nation while also being blocked in certain actions on the issues of Covid, the economy, and more, threatening his ability to turn the nation around from its low points.

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