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CHAPTER 1

On Being President

What do we expect of our president? The answer is at once obvious and unbelievable: everything.

We want our president to stimulate our national economy while protecting our local ones—and we roundly condemn him when either shows signs of weakness. We call on the president to simultaneously liberate the creative imaginations of private industry and regulate corruption within. We call on the president, as the main steward of the nation's welfare, to resuscitate our housing and car industries while reducing the national debt. We bank on the president, as commander in chief, to wage our wars abroad while remaining attentive to all emergent foreign policy challenges beyond today's battlefields. We look to the president, as the nation's figurehead, to be among the first on the scene at disasters, to offer solace to the grieving, to assign meaning to lives lost and ruined. All this we expect presidents can do. All this we insist they must do.

From the very beginning, the nation's presidents have fielded a long litany of policy challenges. In his brief "First Annual Message to Congress" (now more popularly called the State of the Union address), George Washington talked about security, foreign affairs, immigration, innovation, infrastructure, education, and the standardization of weights, measures, and currency. With the possible exception of the last item, all the issues that Washington prioritized have remained on the president's agenda.

In the modern era, however, the items on this list of issue areas have proliferated; hence, it is the modern American presidency to which the arguments of this book speak most directly. Today, presidents must offer policy solutions on trade, health care, the environment, research and development, government transparency and efficiency, energy, and taxation. They must clean our air and water, protect our borders, build our infrastructure, promote the health of our elderly, improve the literacy

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rates of our children, guard against everything from the effects of Midwestern droughts to the spread of nuclear weapons—all this and more. Fundamentally, presidents are charged with striking a balance between the nation's competing, often contradictory priorities: intervening abroad versus spending at home; cutting taxes versus protecting social programs; keeping Americans secure versus keeping Americans free.

There is hardly any domain of public life, and only a few of private life, where the president can comfortably defer to the judgments of others, where he (before long, she) can respond to some plea for assistance with something akin to "I hear you, but I can't help you," where he can insist that action on the matter is above his pay grade. It is difficult even to conceive of an aspect of public life wherein the president is given a pass—where he can either hesitate before acting or forego action altogether without incurring the media and public's wrath. Harry Truman's desk placard that read "the buck stops here" was not a point of vanity. It was a gross understatement. All bucks circulating in politics stop with the president. And they do so whether the president likes it or not.

Just ask Mike Kelleher, President Obama's director of presidential correspondence, about how much Americans expect from the president. One hundred thousand e-mails, ten thousand paper letters, three thousand phone calls, and one thousand faxes arrive at his office every day. And nearly all of these communiqués include pleas for presidential leadership of one form or another. The president receives petitions from the elderly to deliver their retirement benefits, appeals from business owners to stem their operating costs, and requests from activists of all stripes to attend to the environment, nuclear proliferation, and foreign affairs. Though more mundane, other requests reveal the extent to which American citizens feel perfectly entitled to burden the president with personal tasks and obligations. They offer recommendations on which books he ought to read; their children pepper him with questions and advice of their own; distressed Americans seek solutions to their emotional, psychological, and medical issues; and the moral police deliver benedictions to ban certain video games.

The list of obligations put before the president continually evolves, and nearly always in expansionary ways. Presidents now offer leadership in policy domains for which the federal government lacks any constitutional

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responsibility. Consider, by way of example, recent presidential efforts to reform public education. The 2002 No Child Left Behind (NCLB) Act is widely touted as George W. Bush's signature domestic policy achievement. And with good reason. NCLB is credited (or blamed, depending on one's view of the matter) with introducing and fortifying accountability provisions in all public schools, which universally include rigorous standardized testing provisions. Not to be outdone, Barack Obama devoted considerable efforts through his "Race to the Top" initiative to reform school governance. Through competitive grants, the president cooked up yet another mechanism by which the federal government might further intrude into state and local education policy—in this instance, by advancing merit pay for teachers, charter schools, the development of data systems capable of tracking student performance over time, and the establishment of clear standards for progress. Moreover, in the last year Obama has unilaterally offered waivers for the most onerous provisions of NCLB to those states who adopt the president's preferred education policies. That public education formally falls within the province of state (and by extension local) governments did not dissuade either Bush or Obama from taking up the mantle of education reform, searching for (and often inventing) new ways to make their mark.

Yet no matter how much the president says about any particular policy issue, it is never enough to satiate the public's thirst for presidential leadership. Recall, by way of example, President Obama's 2011 State of the Union address. Even before the big day, the requests poured in from all corners of political life. As the *New York Times* chronicled, "Interest groups have buried the White House with a barrage of unsolicited advice about what they want him to say." The wish list included stricter gun control laws, curbs on the bullying of gay American children, protections for existing welfare programs, and cuts to those very same programs.

Eventually, of course, the president had to decide for himself what to say. And though his speech ran the better part of an hour, the chattering classes still saw fit to castigate the president for neglecting their pet causes. Many criticized Obama for not focusing enough attention on the deficit. Though Obama did propose measures to tackle the problem, he supposedly neither offered an adequate number of solutions nor displayed sufficient leadership to ensure their passage. Other observers, meanwhile,

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criticized the president's lack of specificity, while still others charged that the president devoted *too much* time to the deficit, and not nearly enough to the related issue of jobs. Some pundits even lamented the president's oversight of certain aspects of education, a topic that he indisputably discussed at length.

With all the demands competing for his attention, it is no surprise that the president cannot hope to get by with a light, easy work schedule. Every minute of a president's day is scheduled, usually months and sometimes even years in advance. On July 1, 1955, to select an entirely arbitrary day, President Eisenhower went home to his farm in Gettysburg, PA. His time at home included two and a half hours set aside for entertaining colleagues from the White House and the cabinet and their spouses. Earlier that morning, the president's day began in Washington with breakfast with a senator, followed by ten other appointments that included discussions on world disarmament and minimum wages, a cabinet meeting, and a meet-and-greet with forty-three boy scouts. Reflecting on this mad-dash daily schedule, Eisenhower wrote to a confidant, "These days go by at their accustomed pace, leaving little time for the more pleasurable pursuits of life . . . by the time I get to the office I am in the midst of politics, economics, education, foreign trade, and cotton and tobacco surpluses."

Fast-forward fifty years, and we discover a president's official schedule that is even more serried. On July 1, 2005, to pick yet another date at random, President George W. Bush held his customary intelligence briefing, received an award from the National Society of the Sons of the American Revolution, oversaw a bilateral meeting with the prime minister of Kuwait, spoke at length with Supreme Court Justice Sandra Day O'Connor and two senators, publicly announced O'Connor's resignation, visited with and subsequently presented Purple Hearts to some soldiers injured in Iraq and Afghanistan, and finally retreated to Camp David.

Presidents must attend not merely to the multitude of issues waiting on their desks, but those popping up around the country and world. Hence, in 2010 alone, President Obama took 65 domestic trips out of Washington. His predecessors also showed the same zeal for domestic travel, holding an average of 649 public events outside the DC area per presidential term between 1989 and 2005. Internationally, Obama took 16 trips to 25 countries in his first two years as president, while previous presidents between

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1989 and 2005 made dozens of trips abroad each term. Both Clinton and George W. Bush tallied an impressive 75 international trips in their respective presidencies.

When presidents travel domestically, they do not just attend town hall meetings or give policy speeches; when overseas, they do not merely attend diplomatic meetings. Presidents also make commencement speeches, attend ceremonies to commemorate the birthdays of prominent historical figures, and appear at disaster sites. They visit American troops, offer remarks at nongovernmental conferences, and commemorate historical events like the D-Day invasion.

How much of the president's travel is attributable to expectations? Just contrast the political fallout from George W. Bush's Hurricane Katrina flyover in 2005 (a political catastrophe that we discuss at length in chapter 6) with the warm reception of his Thanksgiving visit to American troops in Afghanistan in 2003. Perennially, the president is expected to be at the right place at the right time, no matter the distance required for travel or the competing obligations vying for his attention.

So great are the public's expectations of the president, in fact, that most Americans see their entire government in the presidency. They invest in the president their highest aspirations not just for the federal government, but for the general polity, for their communities and families, and for their own private lives. Constantly, Americans berate their presidents to say more, to do more, to be more. While occasionally paying homage to limited government and constitutionalism (topics that we discuss in greater length in chapter 5), Americans, in general—and especially when it matters most—beseech their presidents to take charge and lead.

The extraordinary demands placed on presidents have not eluded scholars. Richard Neustadt identifies no less than five sources of demands for presidential aid and service: executive officialdom, Congress, his partisans, citizens at large, and from abroad. To succeed, presidents must find ways of placating all of these interested parties, no matter how unreasonable their individual demands, or how inconsistent their collective claims.

By Clinton Rossiter's account, presidents are men of many "hats," a familiar but strained metaphor given that presidents cannot ever return any of their responsibilities to the rack. By constitutional mandate, Rossiter recognizes, presidents serve as chief of state, chief executive, commander

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in chief, chief diplomat, and chief legislator. But their responsibilities do not end there. Presidents also serve as chief of party, voice of the people, protector of the peace, manager of prosperity, and world leader. The burden of these ten functions, Rossiter insists, is nothing short of "staggering," even "monstrous."

Neustadt and Rossiter offered these reflections in the mid-twentieth century, decades before Arthur Schlesinger decried the emergence of an "imperial presidency"; before George W. Bush initiated and then Barack Obama continued a largely clandestine war on terror; and before Charlie Savage sounded the alarm bells over the president's presumptive "takeover" of the national security apparatus. If the scope of presidential functions was monstrous before, in the last half-century it has grown exponentially more fearsome.

Because of the tremendous growth in responsibilities and expectations put before them, contemporary presidents must demonstrate fluency in policy domains that utterly eluded the attention of presidents who held office just a generation or two ago. Today, if any branch of government is involved in a policy domain, then so is the president.

An Imperative to Act

In every policy domain, presidents must not only demonstrate involvement, they must act—and they must do so for all to see, visibly, forthrightly, and expediently. Deliberation must not substitute for action. Presidents are free to think and talk, but they absolutely must do.

To reap the praise of today's public and tomorrow's historians, the two audiences who matter most to presidents, executive actions must have three qualities. First, they must be open for all to see. The public naturally distrusts the president who works behind the scenes, who recoils from public view in order to cavort with advisors and plot a way forward. The public demands a commander in chief, not a manager in chief. And those presidents who are perceived, fairly or not, to assume the latter mantle—think Jimmy Carter or Dwight Eisenhower—cannot expect to keep company with the greats.

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The president's actions also must be decisive and, whenever possible, swift. The less light that shines between an observed challenge and the president's response, the better. Equivocation, particularly in the face of crisis, will never do. Even when justified, delay reliably invites criticisms (recall the browbeating Barack Obama received in the summer and early fall of 2009, when he and his advisors contemplated the merits of expanding the U.S. military presence in Afghanistan). And nothing more reliably induces snickering from the opposing camp than appearing caught off guard (recall the mockery to which George W. Bush was subject when, on September 11, 2001, he did not spring to his feet and start issuing orders after an aide whispered in his ear that the nation was under attack). While they need not meet challenges instantaneously, presidents must convey to the public from the get-go that they have a plan ready to be set into motion.

Finally, presidential actions must be demonstrative. Facing extraordinary problems, presidents must gather their resolve and press onward. The words "but for" must not enter their vocabulary, as the excuses that follow, no matter how authentic, almost never resonate. Presidents must eschew a defensive posture. They must never concede the peoples' fate to anything except their own making. Even amidst military catastrophe and economic ruin, presidents must insist that the nation's brightest days lie ahead, that the industry and imagination of the American people shall not be squandered, that the shining city upon a hill, as Ronald Reagan put it, awaits us still. Hence, in their finest moments, presidents stand tall and issue calls to arms (as George W. Bush did, through a megaphone no less, atop the rubble of twin towers), defy international convention in the service of some larger good (as Barack Obama did when ordering a surgical strike to take out Osama bin Laden without informing the Pakistani government), and insist the federal government can act, must act, in the face of utter calamity (as Franklin Roosevelt did twice, first in the aftermath of the Great Depression and then in response to the imperialistic designs of totalitarian regimes in Europe). Such presidents in such moments appear—how else to put this?—distinctly presidential.

Through their actions, in short, presidents must appear nothing less than masters of their environments. They must orchestrate not only the

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political universe, but the material world that surrounds them. They must appear in command. They must lean forward into the headwinds. And they must appear utterly unflappable: George Patton, John Wayne, and Tiger Woods (circa 2001!) all rolled into one.

Constitutional Limitations

Such is what we expect of our presidents. How, then, are they to meet such extraordinary demands? What formal powers do they have at their disposal? The answer, especially in the modern era, has been "not enough." To make good on the avalanche of expectations laid before them, particularly since the early twentieth century, presidents must grapple with a Constitution that does not grant them nearly enough explicit powers. As Clinton Rossiter puts it, the president's "authority over the administration is in no way equal to his responsibility for its performance."

The presidency created by the Constitution, to be sure, was a significant improvement on its predecessor under the Articles of Confederation. Between 1781 and 1789, presidents under the Articles served for just one year, were chosen by Congress, and acted as nothing more than presiding officers. The office of president of the Continental Congress was most analogous to the modern-day Speaker of the House: like the Speaker, the president of the Continental Congress refrained from participating in debate and voted last; and only then if his vote would be decisive. But unlike the Speaker, the president of the Continental Congress had no power to assign delegates to committees, to wield any kind of agenda control, or to lean on members to vote one way or another.

Under the Constitution born of the Philadelphia Convention of 1787, the president experienced a form of liberation. Formally, executive independence was secured through elections: the president was to be elected by the people (if indirectly), not by the Congress, as occurred in the First Republic. Moreover, rather than vesting veto powers in a council that was selected by the Congress as some would have preferred, veto authority rested solely with the chief executive. In addition, and not trivially for the times, Congress could not change a standing president's salary, nor could any individual serve simultaneously as president and as member of the

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House or Senate. With the Constitution's ratification, the presidency had its own base of authority. At last, the American presidency had become, if not a coequal branch of government, then at least an independent one.

Additionally, and crucially, the Framers created a unitary presidency. Unlike the deliberative bodies inhabiting the legislative and judicial branches of government, the president, by design, sits alone atop his governing institution. This is not to say that he wields complete control over all goings-on within the executive branch. Far from it. Over the course of the nation's history, the president has struggled mightily to control the burgeoning administrative state, nearly always with mixed results. But a more basic point warrants recognition: the fact that the Framers created a singular presidency—rather than a plural one as some, such as James Wilson, would have preferred; and as others, such as David Orentlicher, argue for today—proved to be a great boon to those who occupied the office.

Independent and singular, what enumerated powers does the president formally wield? In comparison to the ten presidents of the First Republic, the forty-three presidents of the Second have enjoyed a veritable bounty of constitutional authority. Unilaterally, the president can issue pardons and vetoes, convene and adjourn Congress "under extraordinary circumstances," and exercise all of the attendant powers of commander in chief. Subject to congressional approval, the president can also make treaties with foreign nations and appoint federal judges and government officials. Under the Articles of Confederation, prior presidents could only dream of wielding such influence over the content of public policy and the makeup of government.

To say that the president's enumerated powers exceeded what came before, however, is not to claim that they were (or are) nearly sufficient for the challenges at hand. Several of these constitutionally acquired powers, for starters, amount to very little at all. Though presidential pardons are not subject to either congressional or judicial review, presidents historically have used them sparingly, and rarely in ways that have significant policy consequences. Meanwhile, in the contemporary era, when Congress is nearly always in session, the power to convene its members "under extraordinary circumstances" hardly exalts the president's bargaining stature. This provision may have offered meaningful leverage when

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Congress met for just half of each year, as it did during the eighteenth and nineteenth centuries—when traveling from one's home district or state to the nation's capital was a treacherous affair. Today, the provision offers little.

The remaining powers explicitly conferred under the Constitution are either reactive to or shared with an adjoining branch of government. Although he is free to veto legislation, the president cannot propose it. Nor can the president directly engage in any of the daily negotiations and horse trades (offering amendments, issuing holds, and the like) occurring on Capitol Hill. Constitutionally, the president must rely on sympathetic legislators to do his bidding within the two chambers of Congress. The president, as such, resides at the tail end of the legislative process, capable of rejecting those bills he does not like (though subject to a congressional override) but lacking constitutional authority to work positively on behalf of his preferred policy agenda.

In negotiating treaties and appointing judges and bureaucrats, of course, presidents can move their preferred policy agenda forward. In both instances, though, the president's actions are formally subject to Senate approval. And if the Senate refuses to give as much—either because its members dislike his actions or they simply cannot be bothered to affirm the president's treaty or nominee—then the president must either concede defeat or, as we shall soon see, employ alternative tactics for negotiating with other states or controlling the bureaucracy.

None of this is to say that the president's veto, treaty, or appointment powers are inconsequential. On the contrary, they matter a great deal. A substantial body of scholarship convincingly documents, both empirically and theoretically, how presidents can wield these powers in order to materially affect the composition of legislation, the terms of foreign agreements, and the makeup of government. The claim here is more modest. Whatever influence the president's formal powers do confer, it is not nearly sufficient for the job at hand. Equipping a president with just his enumerated powers to meet the onslaught of public expectations is akin to sending a soldier into urban warfare with just a straw and some wadded up tissue paper. He may get by for a while. But as soon as his enemies gather and mount an offensive, his only real option is to flee or play dead.

On this point, even the Founders would have agreed. The Founders certainly did not think that they were creating a presidency capable of offering the kind of leadership demanded today. Quite the contrary, in

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fact. When constructing a new presidency at the Philadelphia Convention, individual delegates expressed genuine worries about the threat of executive tyranny. Antifederalists, meanwhile, remained quite convinced that the fragile system of separated powers erected by the Constitution's Framers would inevitably collapse, and from the rubble would return the very monarchy against which a revolution had just been waged. Hence, a good portion of the *Federalist Papers*, and particularly those parts authored by Alexander Hamilton, the great champion of a strong executive, was devoted to assuaging concerns that the presidency under the proposed constitution would not lapse into a monarchy. Again and again, Hamilton intoned, the Constitution delivered a president who could help overcome the deficiencies of the Article of Confederation, but decidedly not one who would assume all the powers of a despot. Indeed, his entire discussion of the executive branch in Papers No. 67 through No. 77 was framed as an effort to dispense with the "jealousies and apprehensions," which falsely imbued the presidency with "royal prerogatives" that would make even the king of Britain blush.

The Framers' predominant concerns lay in the possibility of legislative, not executive, overreach. While there was a consensus that the presidency would inject much needed "energy" into the federal government, nearly all of the delegates at Philadelphia, as well all three authors of the *Federalist Papers*—Hamilton, James Madison, and John Jay—assumed that Congress would remain the primary branch of government. Madison referred to the "general supremacy" of legislatures in Federalist No. 43 and their "impetuous vortex" of power in Federalist No. 48; Governor Edmund Randolph of Virginia insisted that it was nothing less than a "maxim" that the powers of government exercised in legislatures threaten to "swallow up the other branches"; and even John Locke, who assembled the philosophical underpinnings for much of the American system of government, called the establishment of legislative power "the first and fundamental positive law of all commonwealths." The fate of the Union crucially hinged, the Founders assumed, on goings-on within Congress. Whether the federal government would meet the first-order challenges of the day—raising taxes to pay down the debt, assembling troops needed to protect the nation's borders, and the like—would crucially depend on decisions made within the House and Senate.

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But with great responsibilities, the Framers also recognized, come great risks. Indeed, it is precisely because they worried about legislative encroachments on the weaker executive branch that the Founders gave the president the veto power. And it is in no small part because they wanted to temper the influence of demagogic majorities—to "destroy the evil effects of sudden and strong excitement," as James Kent put it in his *Commentaries*—that they divided the people's branch into two chambers whose members served different, though overlapping, political jurisdictions for variable amounts of time. In this sense, the very design of the first branch of government originated in the Framers' efforts to ensure that it would not run roughshod over the other two.

What are we to make of these constitutional ruminations? One thing is plain: the disjuncture between the public's appetite for leadership and the president's constitutional capacity to deliver virtually guarantees the onset of disaffection. Swept into office on a wave of great promise and hope, the president predictably disappoints. Congresspersons, judges, and bureaucrats deliberately undercut him or simply ignore him altogether. Unforeseen events overwhelm him. And thus far we have said nothing about the many interest groups and media outlets laying still more claims on, and traps for, him. It is an impossible job, one that is sure to age, and sometimes even destroy, the hardiest of souls.

The Primacy of Power

If the most explicit powers enumerated in Article II of the Constitution do not confer what presidents need, then presidents must look elsewhere: in vaguer provisions of the Constitution; in still vaguer notions of the public good; in statutes enacted by current and past congresses; and, perhaps most strikingly, in aspects of policymaking entirely of their own making. In the chapters that follow, we bear witness to this undertaking. For now, though, a more basic point needs to be established. No matter their ideological commitments or partisan affiliations, regardless of their personal backgrounds or philosophies of governing, all presidents nearly all of the time seek to guard and expand their base of power.

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Though perhaps not a single-minded pursuit, power—both its attainment and maintenance—infuses all presidential actions, whether these efforts involve bargaining with others or the acquisition of altogether new sources of influence. They are a staple of the modern American presidency and are built right into the fabric of our system of government. This is not to say, of course, that presidents only care about power. Concerns about power are not (or at least they need not be) enthralling to individual presidents, a source of intrinsic, personal gratification. Rather, concerns about power logically precede presidents' many other ulterior motivations: enacting good public policy, undoing the work of their predecessors, responding to a perceived public mandate, and securing their place in history. For in order to accomplish any of these things, presidents need power. And so it is power they seek.

A Working Definition of Presidential Power

In previous work, we, like many other scholars, have taken a rather narrow conceptual view of presidential power, one that focused exclusively on presidential efforts to alter the content of public policy. Other scholars of the presidency—such as Robert Dahl, who wrote about the capacity of one political actor to convince another to do something he otherwise would not do—have assumed a largely procedural notion of power. In this volume, we mean to invoke a much more expansive view of power than either of these formulations.

We offer here a conception of power that encompasses influence over all of the various doings of government: writing policy, designing the administrative state, interpreting and then implementing the law, or any combination thereof. By focusing on outcomes as the key determinant of power, our definition is more consonant with Richard Neustadt's view toward presidential "influence on government action." But even Neustadt's definition is too narrow for our purposes. Whereas Neustadt hones in on each president's "personal capacity to influence the conduct of men who make up the government," we allow for the possibility that presidents wield influence no matter how deficient their "personal capacity" might be; and that often, rather than relying on others to do their bidding, presidents strike out entirely on their own.

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Power, thus conceived, may be in the service of any number of objectives; sometimes altering existing government practices, other times thwarting efforts by the adjoining branches of government to do so. It is most easily recognized when employed to materially alter the doings of government. And as we shall see, presidential power is nearly always harnessed in the service of changing the status quo, of reshaping and redirecting the government, and of assigning altogether new imperatives as subjects of legitimate public authority. But power matters just as much when it is deployed to protect an existing state of affairs. For reasons we discuss at greater length in the next chapter, the task of detecting and then measuring power in these two scenarios requires reference to different counterfactuals. In the former case, the relevant point of comparison is the status quo; in the latter, it is a new policy advanced by the president's political opponents. In both instances, though, the possibilities of power remain vital.

Power, too, may assume a variety of different forms. Under some circumstances, power may involve impelling—either by glint of persuasion or coercion—other political actors to do things that they otherwise would not be inclined to. Alternatively, power may involve convincing other political actors to do nothing at all, when they otherwise are predisposed to action. Once again, the relevant counterfactuals for measuring power in these two scenarios differ, but power itself is conceptually the same.

Presidential power need not involve efforts to manipulate the actions of other political actors. Instead, presidential power may involve, and frequently does involve, the exercise of direct unilateral action. Sometimes this consists of firing bureaucrats or dismantling administrative agencies with whom or which the president disagrees. Other times it involves intervening in policy domains directly; setting public policy, and then placing on others the onus of revising the new political landscape. The definition of presidential power we offer here also accommodates these types of actions, as power is to be gauged by reference to the variable outcomes it produces rather than the particular channels through which it is directed.

All of these potential sources and characterizations of presidential power, you will notice, have a common reference point: namely, government outcomes. By wielding power, presidents ensure that the federal government's behavior, and by extension the life of ordinary Americans, looks materially different than it would if only Congress and the courts were in

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charge. As we monitor presidents' efforts to claim and assert power, then, we must train our attention on the outcomes they produce—the ways in which government policies are written, interpreted, and implemented.

In a system of government as decentralized as our own, assessing any politician's power, including the president's, is no easy matter. Given the sheer number of actors involved in the policymaking process, it is often nearly impossible to parse the various contributions of each. Moreover, when assessing presidential power, a host of secondary considerations that too often preoccupy pundits and social scientists alike—lamentations, for instance, about the near inevitability of policy compromises, the fickleness of public opinion, and the inscrutability of government processes—easily distracts. In the next chapter, we will address the challenges of discerning power in greater detail. For now, we merely want to settle a conceptual matter: power is as power does; and presidential power, in particular, is to be measured against the outcomes it produces.

Power Considerations across the Various Branches of Government

Other political actors, to be sure, also care about power, and on occasion we see these political actors grasping for more of it. How else can we understand Chief Justice John Marshall's masterful assumption of the power of judicial review in the landmark 1803 Supreme Court case, *Marbury v. Madison*? What, if not an interest in power, explains the assembly of laws enacted in the early 1970s—which altered the budget process, prohibited the impoundment of appropriated funds, intensified oversight of the executive, and expanded the array of executive activities that would be subject to a legislative veto—that are collectively known as the "congressional resurgence"?

Similarly, we occasionally find the adjoining branches of government attempting to curb not just the policy actions of individual presidents, but the president's very claims to power. Prominent examples here include the 1973 War Powers Resolution, which sought to limit the president's military authority; *Clinton v. City of New York*, which stripped the president of his newly acquired (and congressionally delegated) line-item veto power; and the 1954 Bricker Amendment, which would have dramatically curtailed the president's ability to independently forge agreements with other nations.

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Such efforts to curb presidents, it bears recalling, have generated mixed results. Though majorities, and even supermajorities, occasionally rally in order to clip the wings of a president in midflight, the sense of outrage that spurs these actions eventually, and often rather abruptly, dissipates. Since 1974, members of Congress have done precious little to ensure that presidents abide by the strict requirements of the War Powers Resolution. In the half-century since Congress failed by a single vote to pass the Bricker Amendment, presidents have relied on executive agreements with rising frequency. And though they can no longer formally strike elements of laws with which they disagree, presidents nonetheless have developed other means—for instance, signing statements, discussed at length in the subsequent chapter—by which to communicate their views about specific aspects of legislation to the bureaucrats charged with implementing them and to the judges who stand in their judgment.

Congress and the courts have the wherewithal to stall, even halt, the president's quest for power. But as soon as the attentions of these adversaries drift to other matters, and they invariably do, presidents reliably resume—if not right where they left off, then wherever their detractors put them. More to the point, we just as often witness legislators and judges disavowing what power they have, either by refusing to exercise their discretionary authority over a particular domain or by explicitly transferring it to the president. Over the years, Congress has delegated extraordinary powers over the domestic economy, the exercise of military force, the budget, state emergencies, foreign trade, and on and on. Sometimes, such delegations of power are narrowly defined and laden with various reporting requirements and the like. Just as often, though, Congress confers broad authority for the president to define and resolve some policy challenge almost entirely as he sees fit. It is unfathomable that a president would do the same.

Once such powers are granted, they are rarely retracted. Sitting on the books at any time are sweeping delegations of authority, many of which were enacted decades prior, which presidents can use to justify their policy initiatives. Consider, by way of example, the literally hundreds of emergency powers expressly granted to the president over the course of the twentieth century. These powers enabled presidents to take such extraordinary measures as enacting wage and price controls, intervening unilaterally

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into labor-management disputes, establishing limits on housing rents, impounding funds formally appropriated by Congress, and many, many more. Though quick to delegate these emergency powers, Congress has proved incredibly lackadaisical in formally declaring an emergency's passage. As a consequence, delegations of power during crises that had long since passed remained on the books for presidents to make of them what they willed. Indeed, it was not until the 1976 National Emergency Act that Congress got around to imposing much discipline on this state of affairs.

Just as crucially, members of Congress and the courts regularly turn a blind eye to the power-grabs of sitting presidents. Whereas power considerations only weakly motivate congressional representatives, as Terry Moe has pointed out, they utterly preoccupy presidents. It is no accident, then, that presidential power has not merely been granted. It has been taken. Successive presidents with radically different policy agendas have acted entrepreneurially to expand their influence over foreign and domestic affairs; and once acquired, these same presidents have fiercely guarded their influence against perceived judicial and legislative encroachments.

While they certainly monitor power dynamics, members of Congress and judges cannot be said to hoard their own power or throw fits any time an adjoining branch claims new power. For presidents, meanwhile, the search for power is primal. It is inconceivable that a president would delegate his own constitutional authority to execute the law to others, much as members of Congress have freely handed over extraordinary lawmaking powers to the president. And it is equally inconceivable that presidents would stand quietly by as either the judicial or legislative branches encroached on their own authority, as both have so often done when presidents have encroached on theirs.

Power and Its Constraints

Neither today's public nor tomorrow's historians—the two audiences, you will recall, that matter most to presidents—show much regard for presidents who cloak themselves in the Constitution and invite deliberation. Rather, both audiences reward the president who refuses to let the Constitution, the corpus of statutory law, or anything else disrupt the possibilities

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for action, for bold leadership, for a rousing insistence that he will provide the guidance and energy needed to steer the nation through its moments of peril.

Evidence abounds of presidents seeking power. Witness them relying on executive orders, executive agreements, proclamations, and national security directives in lieu of legislation and treaties; see them building and rebuilding an administrative apparatus around them; listen to them emphasizing the importance of loyalty when appointing individuals to the more distant reaches of the federal bureaucracy; look on them issuing signing statements, which allow them further opportunities to reinterpret the meaning of laws; observe them directly engaging the public; and hear them, more recently, invoking the unitary theory of the executive to justify their actions. While different presidents from different parties may advance different policy agendas, all, in one way or another, seize on opportunities to fortify their influence over the writing, interpretation, and implementation of public policy.

Logically, however, none of this implies that presidents exercise all the power that they would like. Presidents are seekers of power, not paragons of power. Ample scholarship emphasizes the historical contingencies and institutional constraints that limit a president's ability to exercise his unilateral powers, centralize authority, politicize the appointments process, issue public appeals, or refashion the political universe. Some basic facts about lawmaking further limit the president's ability to have his way: executive orders and executive agreements are not perfect substitutes for laws and treaties; signing statements do not have any legal enforceability; and the formal powers that presidents retain are entirely insufficient to meet the extraordinary expectations deposited at the White House's doorstep. Even in the policy domain where all observers concede that presidential power reaches its apex—that is, in war—presidents often must confront mobilized opposition within Congress and the courts. Presidential power is still contested, and it always shall be. Indeed, when presidential power becomes absolute, then we must stop calling it "presidential."

We will have more to say about the very real limits of presidential power in this book's final chapter, for they go some distance toward explaining why individual presidents, in their rhetoric, may preach prudence and humility; and why, in their actions, they may not lay claim to anywhere

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near the power that they would like. But make no mistake: such incantations and temperance are largely the product of political strategy. They are not disavowals of power. Given the opportunity, presidents nearly always lay claim to new powers, just as they resist the sporadic efforts of others to limit existing ones. Power consolidation is the presidential modus operandi.