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**Presidential Power Reconsidered:
A Contemporary Look at Neustadtian Bargaining**

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Abstract:

What is the nature of presidential power? What are its limits, and what recognizable forms does it take? These were the questions the late Richard Neustadt attempted to answer in his seminal work *Presidential Power and the Modern American Presidents*. Neustadt's prescience and the eloquence he brought to discussions of the presidency inform much of the contemporary literature on the subject.

That said, his book was published at a decidedly different moment in American politics, necessitating a reevaluation of many of his core arguments. This paper explores the modern presidential-congressional dynamic, focusing on the development of the legislative presidency and how presidents attempt to push forward their legislative agenda. Neustadt's insights will be applied to two recent case studies to shed light on the extent to which his model of presidential power is still applicable in the modern age.

The Presidency and Congress in Context: A History, the Role of Political Science, and Richard Neustadt

On the 35th day of the partial government shutdown, President Donald Trump finally relented. The weeks preceding the President's signing of a measure to reopen the government on January 25, 2019, were marred by the sort of caustic interbranch conflict that has become symptomatic of our current body politic. While the President railed against the newly minted Democratic House majority in his efforts to secure funds for his coveted border wall, Speaker Nancy Pelosi held firm, jealously guarding the legislative branch's power of the purse. In the end, the President's hand was forced in part by anxious members of his own party, in addition to a united opposition. The partial shutdown had manifested in numerous furloughs for those working at the nation's airports, national parks, FBI and IRS offices, as well as over 1 million federal employees and contractors.¹ President Trump's approval numbers suffered as the shutdown continued, and it became increasingly clear to Trump's aides that the White House could no longer afford to keep the standoff going.²

The President cut a disconsolate figure as he stood alone in his Rose Garden address to the press the morning of January 25th. The deal struck with Congressional leadership contained no new funding for a border wall, but it marked the conclusion of a policy debate that had burgeoned into the longest government shutdown in United States' history.³ President Trump had unequivocally

¹ Russell Berman, "The Shutdown Deal Is the Same One Trump Previously Rejected," *The Atlantic*, January 25 2019, <https://www.theatlantic.com/politics/archive/2019/01/shutdown-over-trump-relents/581323/>.

² Jill Colvin, Lisa Mascaro & Zeke Miller, "Longest shutdown over: Trump signs bill to reopen government," The Associated Press, January 25 2019, <https://apnews.com/30769167ab7a4ef9adf880d020b775dd>.

³ Jill Colvin, Lisa Mascaro & Zeke Miller, "Longest shutdown over: Trump signs bill to reopen government," The Associated Press, January 25 2019, <https://apnews.com/30769167ab7a4ef9adf880d020b775dd>.

failed in his attempts to direct the nation's agenda through traditional channels, to convince his fellow lawmakers on Capitol Hill that it was in their best interests to address the alleged crisis on the Southern border in the manner he favored. Congress remained unmoved, and the final agreement was nearly identical to the deal Congressional Republicans initially endorsed—and Trump rebuffed—only five weeks earlier.⁴

This episode is but a flashpoint in one of the most enduring rivalries in American government: that between the presidency and Congress. Their combative relationship is tradition, rooted in the theoretical underpinnings of our nation's founding documents. The Constitution provides for three separate branches of government, yet intrinsically links their responsibilities in an effort to induce conflict and the sharing of authority.⁵ James Madison famously suggested that the combination of powers in any one institution would be “the very definition of tyranny,” and so mutual checking and monitoring among the branches of government was encouraged to suppress the accumulation of influence.⁶ Take for instance the federal budgeting process. As president, Donald Trump is empowered by expectation and custom to deliver a draft budget to Congress, and it is his prerogative whether to sign or veto the appropriations legislation presented to him. The power to actually authorize and appropriate the necessary funds for the president's initiatives ultimately lies with Congress.⁷

⁴ Russell Berman, “The Shutdown Deal Is the Same One Trump Previously Rejected,” *The Atlantic*, January 25 2019, <https://www.theatlantic.com/politics/archive/2019/01/shutdown-over-trump-relents/581323/>.

⁵ James Thurber, “An Introduction to Presidential-Congressional Rivalry,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 4.

⁶ Eric Posner & Adrian Vermeule, *The Executive Unbound* (New York: Oxford University Press, 2010), 18.

⁷ James Thurber, “An Introduction to Presidential-Congressional Rivalry,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 5.

Little at the Constitutional Convention of 1787 provoked more debate than the shape and scope of executive authority vis-à-vis the legislative branch.⁸ How can a government effectively distribute power among independent institutions so as to protect against self-interested behavior, while simultaneously providing for energetic, centralized leadership? The president was originally tasked with performing only a handful of legislative duties within the separation-of-powers system. In authorizing the chief executive to report on the State of the Union, recommend necessary and expedient legislation, convene the legislature in extraordinary circumstances, and exercise a qualified veto over bills and joint resolutions passed by Congress, the framers sought to create an office that would prod and check legislative power rather than usurp it.⁹

The structure of presidential authority devised by the Founding Fathers in Article II amounted to little more than an imprecise blueprint, intended to be expounded on and codified through practice.¹⁰ Indeed, evidence suggests that James Madison intended *Congress* to be first among equals in the legislative-executive relationship, rather than the president. Whereas Article I of the Constitution enumerates the purview of the legislative branch in great detail, Article II is comparatively brief and indeterminate. This disparity is indicative of prevailing American sentiment at the time of ratification; the country was still recuperating from a revolution sparked by deep-seated resentment of strong executive power. In the words of then-Virginia Governor Edmund Randolph, a lone executive was feared to be “the foetus of monarchy.”¹¹ Consequently, the

⁸ Andrew Rudalevige, “The Contemporary Presidency: The Decline and Resurgence and Decline (and Resurgence?) of Congress: Charting a New Imperial Presidency,” *Presidential Studies Quarterly* 36, no. 3 (September 2006), 507.

⁹ Stephen Wayne, *The Legislative Presidency* (New York: Harper and Row, 1978), 3.

¹⁰ Andrew Rudalevige, “The Contemporary Presidency: The Decline and Resurgence and Decline (and Resurgence?) of Congress: Charting a New Imperial Presidency,” *Presidential Studies Quarterly* 36, no. 3 (September 2006), 507.

¹¹ Andrew Rudalevige, “The Contemporary Presidency: The Decline and Resurgence and Decline (and Resurgence?) of Congress: Charting a New Imperial Presidency,” *Presidential Studies Quarterly* 36, no. 3 (September 2006), 507.

framers sought to create a nebulous institution with inherent weaknesses to mitigate the potential for tyrannical governance.

How might Donald Trump have increased the chances of Congress adopting a budget that reflected his administration's values and policy goals, given the weaknesses inherent in his office, and the perennial conflict between the presidency and the legislative branch? It is by no means an easy task. Save for the broad delegations of authority granted to the executive branch in the realm of foreign affairs, every president is fundamentally constrained by the Constitutional framework under which they operate. The prominence of the office compounds the issues presidents face in exercising their influence—as our national spokesperson, the personification of our nation, and the closest thing we have to a royal sovereign, the public expects and the president must deliver.¹² It falls to political scientists to identify the necessary conditions and variables that allow presidents to overcome the barriers implicit in our separation of powers system.

The American Presidency represents one of the most enigmatic subfields of political science, in part due to the limitations of quantitative analysis that a study of the presidency entails. Beyond the realm of public opinion and strategic use of the veto, institutional theorists studying the presidency have a relatively modest sample size from which conclusions may be drawn. There have been only 45 presidents, which precludes the sort of longitudinal, quantitative analytical studies that typify work on Congress and the federal judiciary. As a consequence, the literature is vague when it comes to conceptualizing presidential power and its associated variables.¹³

Not until Richard Neustadt did a scholar effectively articulate the essence of presidential power. His research set the paradigm, and now represents the North Star against which all

¹² George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 192.

¹³ Matthew Kerbel, *Beyond Persuasion* (New York: State University of New York Press, 1991), 2.

subsequent works on the presidency are judged. Neustadt's insights were shaped through decades of experience in and around the White House. As special adviser to Presidents Truman, Kennedy, and Johnson, he was well-placed to take stock of the specific practices of different administrations, to look lucidly on what bolstered and what reduced presidential influence. From this vantage point, Neustadt formulated a well-defined hypothesis. He concluded that presidential power is the power to persuade, and a president's stakes in persuading are conditioned by his vantage point in government, his professional reputation, and public prestige.¹⁴ These ideas constitute the lens through which Neustadt views various historical examples in his book *Presidential Power*.

In many respects, Neustadt was ahead of his time in understanding the chief executive in particular and the processes of American government more broadly. He judged that rather than our government being based in the separation of powers, ours can be characterized as a system of "separated institutions *sharing* power."¹⁵ With respect to the legislative branch, the formal powers of Congress and the President are so intertwined, neither will accomplish very much, for very long, without the acquiescence of the other. The essence of a President's task thus becomes to "convince [other government actors] that what the White House wants of them is what they ought to do for their sake and on their authority."¹⁶ In other words, presidents call on their powers of persuasion to effectuate change, by inducing an alignment of White House policy goals with those of other government officials.

Though Neustadt's work encompassed far more than the interbranch dynamic between Congress and the chief executive, his model of presidential power can be best understood in the context of the legislative presidency, and how presidents relate to their counterparts on Capitol Hill.

¹⁴ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 150.

¹⁵ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 29.

¹⁶ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 30.

It is beyond doubt that the president has always had a legislative role, but the advancement of the legislative presidency itself is a far more recent development. The term “legislative presidency” here refers to the general growth of the chief executive’s capacity to influence public policy, and the means by which presidents have inserted themselves into the legislative process in profound and lasting ways.¹⁷ This is no trivial development: American government is purported to be composed of three coequal branches, yet it is beyond dispute that the modern president has emerged as the de facto first among equals. Presidential activism has become the norm over the past 90 years, in spite of institutions built for the express purpose of protecting against the concentration of power.

Indeed, much has changed since Neustadt’s seminal work was published in 1960. The current thrust of American politics and the hyper-partisan tide that has engulfed Washington necessitate a reevaluation of many of his core arguments. Though Neustadt may very well have touched on some immutable truths every president must contend with, the political climate that colored his conception of presidential power more than half a century ago was markedly different from that under which presidents must currently operate. Were he alive today, Neustadt would likely cede this point; he is explicit in characterizing the “mid-century period” in which his reflections took place as being marked by the weakening of party ties, an emphasis on personality, the existential and unifying threat of the Soviet Union, the changeability of public moods, and ticket splitting.¹⁸ Only some of these qualities endure.

The dual concerns of cultivating professional reputation and public prestige certainly seem to be non-factors for President Donald Trump, an individual with a known penchant for going his own way and employing unorthodox methods. Indeed, in the absence of a cooperative legislature,

¹⁷ Stephen Wayne, *The Legislative Presidency* (New York: Harper and Row, 1978), 2.

¹⁸ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 6.

the past couple administrations would appear to have spurned Neustadtian bargaining in favor of unilateral action or public appeals. This raises pertinent questions about the nature of the legislative presidency in the modern era. Likewise, this paper seeks to answer the following questions: does Neustadt's model of presidential power still hold up today? Do presidents stand any chance of accomplishing their legislative aims through the means Neustadt and his contemporaries identified, and if not, how can we reconceptualize the true nature of presidential power?

Presidential Power Reconsidered: Methods and the Literature

Limitations in the study of the presidency dictate the structure this paper will follow. As previously noted, there is a dearth of quantitative presidential studies, in large part because there have been so few presidents. Ultimately, political science is a numbers game, and many scholars have tried to mathematize studies of the presidency. The drawback to this approach is that the resulting models often depict a world where there are no transaction costs, where the institutions of government are monoliths devoid of collective action problems, and where the preferences and moves of all players are common knowledge. These quantitative models focus on the strategic environment in which the president governs, but not the man himself.

The qualitative approach is useful in that it fills in these sorts of gaps. The emphasis on personality and background tells us a lot about an individual president's capacity to effectuate change, and so our exploration of presidential power will not attempt to quantify what is by nature ephemeral. This paper will consider via case study analysis the efforts of Presidents Obama and

Trump in pushing through the Patient Protection and Affordable Care Act, and the American Health Care Act, respectively.

These bills were enacted at similar points in each president's first term, both under conditions of unified partisan government. Both pieces of legislation dealt with the same, contentious domestic policy issue as well. The case study section of this paper will function primarily as a means of applying a contemporary critique to Neustadt's work. Analyzing the strategies these recent presidents employed in forcing the hand of Congress, and what each got for their efforts, will go a long way toward elucidating the precise nature of presidential power in the modern age.

Power vs. Powers

In order to narrow the scope of our discussion, the first distinction that must be drawn from the relevant literature is the difference between *power* and *powers*. Pursuant to the paradigm set by Neustadt, much of the recent presidential literature's analytic focus centers on the persuasive, mostly personal powers of the presidency—the ability of presidents to bargain with members of Congress and solicit compliance from other governmental actors.¹⁹ *Power* in this sense refers to the individual's influence: what a president can do to get his way within a pluralistic system populated by others equally anxious to exercise their own influence.²⁰ Conversely, *powers* are those designations of authority to the president by the Constitution, federal statute, or custom.²¹ The two are inextricably linked, as a president's *powers* prescribe the terms under which they can exercise *power*.

¹⁹ William Howell, *Power without Persuasion* (Princeton, New Jersey: Princeton University Press, 2003), XIII.

²⁰ Charles Jones, *The Presidency in a Separated System* (Washington, DC: Brookings Institution Press, 2005), 24.

²¹ Charles Jones, *The Presidency in a Separated System* (Washington, DC: Brookings Institution Press, 2005), 24.

Academics from an array of disciplines have attempted to describe the current state of presidential influence with regards to Congress, many conflating power with powers. Though legal scholars and political scientists may stand apart, the research of each often informs the work of the other. Law and politics are hard to separate and lie on a continuum, but the poles are clear enough that an understanding of the *de facto* and *de jure* aspects of presidential power can be neatly drawn up.

²² Neustadt initially wrote *Presidential Power* in response to what he viewed as a discrepancy between the overwhelming legalistic literature on the subject and his experience working in the White House.

²³ Most subsequent works on the presidency do not suffer from this discrepancy, in large part because of the clear distinctions identified by Neustadt.

Presidential involvement in the legislative process is a natural consequence of the chief executive's constitutionally enshrined lawmaking authority. The presidency was granted the capacity to stimulate the exercise of Congress' legislative prerogatives through recommendations, and to constrain or even negate it by his veto, but not to assume it by virtue of any inherent or implied executive or legislative power.²⁴ This interpretation has evolved as recent presidents have taken a more expansive view of Article II to issue Executive Orders, but the fact remains that the president's Constitutional lawmaking powers are mostly negative—designed to counteract but not to preempt the actions of the legislature. Indeed, reliance on formal powers signals weakness according to Neustadt and many of his contemporaries. These scholars profess that what distinguishes great presidents is not a willingness to exercise their formal powers, but the ability to gather support precisely when such powers are lacking.²⁵

²² Eric Posner & Adrian Vermeule, *The Executive Unbound* (New York: Oxford University Press, 2010), 4.

²³ Charles Jones, *The Presidency in a Separated System* (Washington, DC: Brookings Institution Press, 2005), 23.

²⁴ Stephen Wayne, *The Legislative Presidency* (New York: Harper and Row, 1978), 7.

²⁵ William Howell, *Power without Persuasion* (Princeton, New Jersey: Princeton University Press, 2003), 9.

Neustadt believed that *powers* are no guarantee of *power*; that despite the president's status in government, he cannot secure acquiescence without argument.²⁶ Engaging with Congress to push through legislation is an uncertain course of action, because the institution is notoriously unwieldy and rife with collective action problems. Yet the prospect of achieving a lasting policy outcome provides incentives to which presidents invariably respond. *Power* thus defined is not a formal, Constitutional position, but rather an informal lobbying role, one that Theodore Roosevelt and Woodrow Wilson pioneered, and all presidents since Franklin Roosevelt have implemented.²⁷ It can be understood as “influence of an effective sort on the behavior of men actually involved in making public policy and carrying it out.”²⁸ This paper will consider power through this lens, rather than focusing on the trappings of Constitutional and statutory jurisprudence as it pertains to the chief executive.

Bargaining vs. Other Means of Influence

There appears to be a broad consensus amongst those who study the presidency on the basic reason presidents exercise power in the first place. To the extent a president is “powerful,” he is better able to dictate the content of public policy. This form of influence is the end goal of power, but the means remain a source of contention. What recognizable shape does presidential power take in practice? On this point Neustadt was explicit: the power to persuade is the power to bargain, and the president's status and authority yield bargaining advantages.²⁹ The president's services are in

²⁶ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 11.

²⁷ Matthew Beckmann & Vimal Kumar, “How presidents push, when presidents win: A model of positive presidential power in US lawmaking,” *Journal of Theoretical Politics* 23, no. 1 (2011), 5.

²⁸ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 150.

²⁹ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 32.

demand all over Washington; with respect to the legislative branch, members of Congress need an agenda from outside, a plan with visibility and status to rage against or defend.³⁰ A president wishing to succeed should therefore tread carefully, as his choices of what he should say and do, and how and when, are his means to enhance his bargaining stakes.³¹ What a president does today shapes assessments of capacity going forward.

Others concur with Neustadt, though they differ in their appraisals of which factor most augments a president's advantages in bargaining. George Edwards initially pointed to public prestige as the greatest source of presidential influence.³² Broad public support for the chief executive's policy initiatives is thought to be the first step in presidential attempts to influence Congressional deliberation, because the higher the public's level of approval, the more support the president's programs will receive from members of Congress.³³ Nevertheless, Edwards' later reflections make clear that although presidents sometimes are able to maintain public support for themselves and their policies, they typically do not succeed in efforts to fundamentally alter public opinion.³⁴

More contemporary scholars have emphasized the role that partisan division plays in presidential bargaining, viewing divided government as either promoting or precluding negotiation entirely. As Congress has coalesced into two warring camps over recent decades, the White House has responded by supporting its own side more aggressively and by methodically attempting to make the opposition look bad.³⁵ Which party holds the majority in Congress may very well define the limits of bargaining in the modern age. By becoming vocal cheerleaders for their side at the expense

³⁰ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 8.

³¹ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 150.

³² George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 1.

³³ George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 211.

³⁴ George Edwards, *On Deaf Ears* (New Haven, Connecticut: Yale University Press, 2003): 241.

³⁵ Gary Andres & Patrick Griffin, "White House-Congressional Relations in a Polarized Age," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 43.

of bipartisan cooperation, presidents risk chipping away at the professional reputation that Neustadt viewed as imperative for success. Bargaining still takes place, but members of Congress have less of an incentive to cross party lines when they doubt a president of the opposition party will operate in good faith.³⁶

Even where powers spill over into power, there is evidence to suggest that bargaining is predominant. This may not immediately seem self-evident; in the realm of unilateral executive action, presidents are believed to use unilateral power to avoid bargaining so that they do not need to wait for Congress to approve their recommendations.³⁷ As Neustadt suggested, however, the president's *powers* are far from absolute. The capacity of the chief executive to affect the course and contours of public policy unilaterally is conditioned on the willingness of Congress and the courts to check unilateral measures.³⁸ Were a president to issue an executive order that requires funding for instance, the president would need sufficient support in Congress and the courts to ensure that his actions are backed by the power of the purse, and favorable interpretations by the judiciary. How else can this continued support be secured but through persuasion and bargaining?

Only one scholar outright rejects bargaining as the means of power. Samuel Kernell wrote his treatise *Going Public* in an effort to reconcile the unorthodox practices of the Reagan administration with the conventional Neustadtian paradigm. As president, Ronald Reagan was tremendously successful in forcing the hand of Congress through public appeals. “Going public” refers to the strategy whereby presidents promote their policies by reaching beyond the Beltway to

³⁶ Barbara Sinclair, “The President and the Congressional Party Leadership in a Hyperpartisan Era,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 115.

³⁷ Brandon Rottinghaus, “Exercising Unilateral Discretion: Presidential Justifications of Unilateral Powers in a Shared Powers System,” *American Politics Research* 47, no. 1 (January 2019), 4.

³⁸ Dino Christenson & Douglas Kriner, “Political Constraints on Unilateral Executive Action.” *Case Western Law Review* 65, no. 4 (Summer 2015), 901.

enlist constituent pressure directly.³⁹ Neustadt argues that a president's efforts to cultivate public support is a factor operating mostly in the background as a conditioner, not a determinant of what members of Congress will do about the White House's requests.⁴⁰ Conversely, Kernell suggests that this approach has actually usurped traditional forms of bargaining as Washington has come to look less like an environment of institutionalized pluralism—one conducive to bargaining—and more like individualized pluralism—one conducive to going public.⁴¹

Kernell's assertions are well taken; modern communications technology has assuredly brought the details of interbranch politics into the lives of Americans, and expanded the president's capacity to reach voters directly. Nevertheless, Kernell's work overstates the impact that going public might have, and mistakes the methods employed by Ronald Reagan as a paradigm shift in the nature of presidential power. The Reagan presidency is an anomaly in that he was the first and only president to be trained as an actor; the skills he acquired in this profession allowed him to expertly exploit the changing mass media environment.⁴² Subsequent media fragmentation and party polarization have fundamentally changed the environment a contemporary president works in. Indeed, George Edwards finds that most public appeals fall on deaf ears, as the public is overwhelmingly inattentive and prone to seeking out information that conforms to their preconceived notions when it comes to political issues.⁴³

Is the Presidency Weak or Strong?

³⁹ Samuel Kernell, *Going Public* (Washington, DC: CQ Press, 2007), 2.

⁴⁰ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 74.

⁴¹ Samuel Kernell, *Going Public* (Washington, DC: CQ Press, 2007), XI.

⁴² Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 273.

⁴³ Charles Jones, *The Presidency in a Separated System* (Washington, DC: Brookings Institution Press, 2005), 142.

Neustadt's body of work runs counter to many popular conceptions of the presidency, because it places the president closer to the periphery, rather than the center of the lawmaking process. In his view, the pursuit of a policy agenda is marked more by compromise than conviction, and the chief executive's eventual success or failure ultimately rests with other governmental actors and their willingness to extend a helping hand. In a general sense, and certainly with respect to the president's ability to direct public policy, "weak remains the word with which to start" any discussion of presidential authority.⁴⁴

A multitude of scholars agree with Neustadt's perspective. The president is certainly afforded a special role in American politics and is the focus of the public's hopes, yet his power to make and implement policy is limited by the decentralized nature of government.⁴⁵ The outcome of this incongruity is incessant scrutiny. All presidents must operate under the prodigious shadows of their predecessors, and their action or inaction will invariably be measured against the initiative shown by the likes of Abraham Lincoln and Franklin Roosevelt. Presidential leadership is viewed as a necessity. But as presidents over the past century have drawn more power to themselves, the level of critical observation has risen in tandem.⁴⁶ Accordingly, presidents are granted too much credit when things go well, and are assigned far too much blame when things go poorly.⁴⁷

Even so, there exist myriad advantages to the president's position in government that are impossible to ignore. The chief executive's iron grip on the flow of information is but one example. The president can choose to withhold information from the public and Congress with near

⁴⁴ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), XIX.

⁴⁵ George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 207.

⁴⁶ Eric Posner, "Presidential Leadership & the Separation of Powers." *Daedalus* 145, no. 3 (Summer 2016), 42.

⁴⁷ Thomas Cronin & Michael Genovese, *The Paradoxes of the American Presidency* (New York: Oxford University Press, 2013), 2.

impunity, often under the rubric of “national security.”⁴⁸ The resultant informational asymmetry makes it difficult for members of Congress to challenge official statements about events overseas, heightening presidential power in the foreign policy arena.⁴⁹ What is more, individual members of Congress will find it difficult to compete with the president in shaping public opinion. As a single entity the president demands attention from the press, and often drowns out opposition voices.⁵⁰ The presidency is certainly a position of strength when it comes to attracting media attention and directing national discourse.

Though Congress retains the formal power to make laws, and subjects the executive branch to frequent oversight and complex procedure, the abundance of collective action problems often makes it difficult for Congress to defend its institutional prerogatives.⁵¹ To constrain executive overreach requires the establishment and maintenance of large coalitions throughout a legislative process that is riddled with transaction costs.⁵² Indeed, Congressional dysfunction can be seen as emboldening recent presidents to take unilateral action to implement their policy goals, rather than pursuing them through legislation.⁵³

Is Power Personal or Circumstantial

⁴⁸ George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 52.

⁴⁹ George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 53.

⁵⁰ George Edwards, *The Public Presidency* (New York: St. Martins Press, 1979), 79.

⁵¹ Eric Posner & Adrian Vermeule, *The Executive Unbound* (New York: Oxford University Press, 2010), 206.

⁵² Dino Christenson & Douglas Kriner, “Political Constraints on Unilateral Executive Action.” *Case Western Law Review* 65, no. 4 (Summer 2015), 906.

⁵³ Edward Carmines & Matthew Fowler, “The Temptation of Executive Authority: How Increased Polarization and the Decline in Legislative Capacity Have Contributed to the Expansion of Presidential Power.” *Indiana Journal of Global Legal Studies* 24, no. 2 (Summer 2017), 370.

Another principal split in literature on the presidency is whether power is more personal or circumstantial in nature. Neustadt firmly believed that who the president is—his background and his sense of power—would serve to impel or hinder efforts at self help. For Neustadt, a president’s character represents the key determinant in their effectiveness at influencing the direction of public policy, so he stressed that the presidency “is no place for amateurs.”⁵⁴ There are certainly observable differences in the operating styles of different presidents, thought to directly contribute to presidential popularity in Congress and indirectly to the man's ability to achieve his legislative objectives.⁵⁵ This makes perfect sense if we accept power to be contingent on a president’s professional reputation and public prestige.

More recent literature counters that contextual factors are what determine the fate of a president’s agenda on Capitol Hill. From the prevailing political climate in which the president operates, to the state of the budget and the preferences of certain pivotal voters, current research suggests that a president’s fortunes in dealing with Congress are heavily skewed by context.⁵⁶ Presidents with similar leadership qualities can see their power enhanced or diminished depending on the environment in which they operate; for instance, Congress and the general public will be more unified with a president when facing a foreign threat.⁵⁷ Furthermore, the propensity of modern presidents to exert power by setting public policy on their own and preventing Congress and the courts from doing much about it speaks to an aggrandizement of influence regardless of personal qualities.⁵⁸

⁵⁴ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 51.

⁵⁵ Stephen Wayne, *The Legislative Presidency* (New York: Harper and Row, 1978), 166.

⁵⁶ Matthew Beckmann & Vimal Kumar, “How presidents push, when presidents win: A model of positive presidential power in US lawmaking,” *Journal of Theoretical Politics* 23, no. 1 (2011), 4.

⁵⁷ Eric Posner, “Presidential Leadership & the Separation of Powers.” *Daedalus* 145, no. 3 (Summer 2016), 40.

⁵⁸ William Howell, *Power without Persuasion* (Princeton, New Jersey: Princeton University Press, 2003), 14.

Beyond the resources available to the president, be it experience, geniality, or some other source of power as Neustadt defines it, factors such as the state of the economy and the partisan makeup of Congress have indelible impacts on what a president can achieve.⁵⁹ To be sure, recent conditions of divided party government and relatively narrow partisan majorities in Congress have provided a context within which infighting has strong negative effects on the quality and the number of new initiatives that can be enacted.⁶⁰ Bipartisan compromise is the exception rather than the norm. Though it is not the sole determinant, we can expect unified versus divided control to be an important factor in a president's ability to exercise power.⁶¹ Still, Neustadt and other proponents of the personal presidency make a compelling case that exceptionally skilled men in office can overcome the disadvantages of the conditions they face.⁶²

Barack Obama and the Patient Protection and Affordable Care Act

The Political Context and the Issues at Hand:

The headlines all but wrote themselves when Barack Obama was elected president on November 4, 2008. It was a victory beyond superlative, viewed globally as a seismic shift in the greater American political and cultural landscape. For National Public Radio, the headline "Obama

⁵⁹ Matthew Kerbel, *Beyond Persuasion* (New York: State University of New York Press, 1991), 130.

⁶⁰ Edward Carmines & Matthew Fowler, "The Temptation of Executive Authority: How Increased Polarization and the Decline in Legislative Capacity Have Contributed to the Expansion of Presidential Power." *Indiana Journal of Global Legal Studies* 24, no. 2 (Summer 2017), 379.

⁶¹ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 117

⁶² Jon Bond, "Contemporary Presidency: Which Presidents Are Uncommonly Successful in Congress? A Trump Update." *Presidential Studies Quarterly* 49, no. 4 (December 2019), 899.

Pushes Past Race Barriers, Wins White House” was emblazoned in bold on its website.⁶³ The President-elect’s victory was widely seen as validating the struggle of generations of civil rights activists who came before, and emphatic declarations such as “Obama Victory Caps Struggles of Previous Generations” greeted Americans the morning of November 5, 2008.⁶⁴ At least for that moment in time, print media was once again in vogue, as millions hoped to secure a souvenir from this seminal moment.⁶⁵

To be sure, a sense of history in the making hung over the 2008 election. The son of a white mother from the Midwest and a black father from Kenya had just become the first African American to win the presidency in a nation with enduring legacies of racism and prejudice.⁶⁶ Beyond the historic implications, the election of Barack Obama was heralded for other reasons as well. His bold vision of a body politic above partisan division, and his enticing refrains of “hope and change” drew the support of 53 percent of the electorate, a higher share of the popular vote than any other Democratic nominee in history except Andrew Jackson, Franklin Roosevelt, and Lyndon Johnson.⁶⁷ Beyond their eight point victory over the Republican challenger John McCain, the Democrats picked up 21 seats in the House of Representatives in 2008, bolstering their majority in the chamber to 257 seats.⁶⁸ The party also gained eight seats in the Senate, later securing a 60 seat supermajority after

⁶³ “Obama Pushes Past Race Barriers, Wins White House,” *NPR* online, November 5, 2008, <https://www.npr.org/templates/story/story.php?storyId=96663807>.

⁶⁴ John Blakel, “Obama’s victory caps struggles of previous generations,” *CNN*, November 5, 2008, <https://www.cnn.com/2008/POLITICS/11/04/obama.history/index.html>.

⁶⁵ Richard Pérez-Peña, “Newspapers a Hot Commodity After Obama’s Win,” *The New York Times*, November 5, 2008, <https://www.nytimes.com/2008/11/06/business/media/06paper.html>.

⁶⁶ Paul Abramson, John Aldrich & David Rohde, *Change and Continuity in the 2008 and 2010 Elections* (Washington D.C.: CQ Press, 2012), 1.

⁶⁷ Mark & Walter Oleszek, “Congress and President Obama: A Perspective,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 261.

⁶⁸ Barbara Sinclair, “Congressional Leadership in Obama’s First Two Years,” in *Obama in Office*, ed. James Thurber (London: Routledge, 2016), 89.

Senator Arlen Specter switched partisan allegiances and Al Franken won a protracted campaign in Minnesota.⁶⁹

Opportunity was at hand. Save for the presidencies of Franklin Roosevelt and Lyndon Johnson, circumstances favoring the expansion and implementation of the progressive agenda had long evaded Democrats.⁷⁰ The impending period of unified Democratic government—the first instance since Bill Clinton’s first term—represented a tremendous opportunity to realize pent-up demand for policy change. Liberal voters and activists expected the President-elect to be swift and uncompromising in delivering on the initiatives he had championed on the campaign trail.⁷¹ Members of the establishment had more subdued reactions however, as many recognized Obama and the party had benefited tremendously from an unpopular predecessor. George W. Bush left office with a meager 22 percent approval rating—roughly the level Nixon endured when he resigned during the Watergate era—and this at a period in his presidency when public sympathy for outgoing incumbents often kicks in.⁷² Large majorities vilified Bush the younger for his handling of the economy, foreign policy, and the escalation of the war in Iraq.⁷³

Although the Democrats recognized the political climate greatly contributed to their success, they were also well aware that Obama’s message of “hope and change” genuinely inspired people. The incoming President appeared to demonstrate through his resounding victory that the possibility of positive and sweeping reform was imminent. Even in the midst of a global financial crisis and

⁶⁹ Paul Abramson, John Aldrich & David Rohde, *Change and Continuity in the 2008 and 2010 Elections* (Washington D.C.: CQ Press, 2012), 3.

⁷⁰ Julian Zelizer, *The Presidency of Barack Obama* (Princeton, New Jersey: Princeton University Press, 2018), 2.

⁷¹ Barbara Sinclair, “Congressional Leadership in Obama’s First Two Years,” in *Obama in Office*, ed. James Thurber (London: Routledge, 2016), 89.

⁷² Andrew Rudalevige & Bert Rockman, “Introduction: A Counterfactual Presidency,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 3.

⁷³ “Bush’s Final Approval Rating: 22 Percent.” *CBS News*, January 16, 2009, <https://www.cbsnews.com/news/bushs-final-approval-rating-22-percent/>.

fraying relations overseas, Obama sought to remold the social contract within the bounds of what was politically possible.⁷⁴ His efforts would be aided in no small part by the high degree of issue homogeneity between himself and Democrats in Congress.⁷⁵ With considerable agreement on a policy agenda broadly defined, the majority party could set about confronting the era's most intractable problems, from addressing the financial crisis to revolutionizing the nation's healthcare system.

Our first case study will examine the Obama administration's efforts to bring about comprehensive healthcare reform by working with the 111th Congress. The process by which the Patient Protection and Affordable Care Act became law has been widely described as a marathon. Details of the former President's involvement in guiding the bill through the legislative branch paint a somewhat different picture of presidential power than what Neustadt originally described, yet this episode is very instructive in delineating the limits of power. Though President Obama was ultimately successful, his struggles also lend credence to Neustadt's interpretation of the office as fundamentally weak when it comes to legislating.

Improving healthcare in the United States has long been a policy priority for Democratic administrations, with debate over the best means of reform dating back to the presidency of Franklin Roosevelt.⁷⁶ The Obama administration would be remiss to pass up this opportunity at finally realizing the priorities of the Democratic party. After expending political capital in the form of the American Recovery and Reinvestment Act, the President moved aggressively to turn the attention of Congress to transforming the American healthcare system. Obama knew he must tread

⁷⁴ Julian Zelizer, *The Presidency of Barack Obama* (Princeton, New Jersey: Princeton University Press, 2018), 2.

⁷⁵ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 117.

⁷⁶ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 112.

carefully: the sepector of the Clinton administration’s bungled healthcare reform efforts 15 years previously still loomed large. Like the new President, Clinton came into office with bold visions of expanding access to insurance.⁷⁷ The eventual failure of the Clinton plan was due to many oversights the Obama administration would take note of, but it was such a traumatizing affair that healthcare reform was subsequently viewed as a policy issue to be avoided.⁷⁸ Still, President Obama argued that efforts to expand access to healthcare and lower costs, though ambitious and politically volatile, were necessary to address before there could be real economic recovery.⁷⁹

Charting a Course Through a Polarized Congress:

The United States was quickly spiraling into economic collapse on the eve of President Obama’s first term. With an economy shedding jobs at a rate not seen since the Great Depression, and investment indices rapidly plummeting, the President assumed office at a moment of heightened pressure and uncertainty.⁸⁰ This inheritance from the previous administration—sardonically referred to by Chief of Staff Rahm Emmanuel as the George W. Bush “gift bag”—placed the Obama presidency in a particularly delicate position, both in terms of the potential for substantive progress and the acute consequences of failure.⁸¹ New presidents traditionally claim a mandate to implement

⁷⁷ Carrie Budoff Brown, “Daschle: Anything but Clinton,” *Politico*, January 8, 2009, <https://www.politico.com/story/2009/01/daschle-anything-but-clinton-017206>.

⁷⁸ Carrie Budoff Brown, “Daschle: Anything but Clinton,” *Politico*, January 8, 2009, <https://www.politico.com/story/2009/01/daschle-anything-but-clinton-017206>.

⁷⁹ George Edwards, “Strategic Assessments: Evaluating Opportunities and Strategies in the Obama Presidency,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 42.

⁸⁰ Bert Rockman & Andrew Rudalevige, “Introduction: A Counterfactual Presidency,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 3.

⁸¹ Bert Rockman & Andrew Rudalevige, “Introduction: A Counterfactual Presidency,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 4.

their agendas, and the Obama campaign message of wholesale change had clearly struck a chord with the American public. It was in the best interests of the new administration to take advantage of these circumstances by rapidly pursuing healthcare reform when the President's mandate, and resultant legislative clout, was at its peak. Conversely, the public's high expectations and the harrowing state of the economy would make the repercussions of defeat all the more intense.⁸²

The reforms proposed by the Obama campaign would shape the political agenda during the President's first two years in office. It was ultimately Democratic partisanship that would carry the day however.⁸³ Obama and most Congressional Democrats ran on similar platforms, as to be expected when political parties are somewhat ideologically homogeneous.⁸⁴ Thus, the greater political context encouraged cooperation between the President and the majority party in Congress. Drawing lessons from the failures of the Clinton administration, Obama did not submit a comprehensive healthcare plan to Congress, instead laying out general principles and trusting leadership to fill in the details.⁸⁵ Those close to the President, many of whom were veterans of Capitol Hill, counseled that members who participate directly in crafting legislation have a greater stake in and thus will push harder for its success.⁸⁶ Delegating authority to members would empower them to craft a bill that would ostensibly pass, and the President could then step in toward the end of the legislative process to shape the final product, while maintaining flexibility in what was sure to be a messy affair.

⁸² Barbara Sinclair, "Doing Big Things: Obama and the 111th Congress," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 202.

⁸³ Stephen Wayne, "Obama's First-Term Legislative Presidency: Partisan, Not Personal," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 36.

⁸⁴ Barbara Sinclair, "Doing Big Things: Obama and the 111th Congress," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 201.

⁸⁵ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Maryland: Rowman & Littlefield, 2013), 121.

⁸⁶ Barbara Sinclair, "Congressional Leadership in Obama's First Two Years," in *Obama in Office*, ed. James Thurber (London: Routledge, 2016), 97.

If strong partisanship was to lay the groundwork for success, so too would it set the terms of debate and define the limits of what could be achieved. Rapid party polarization, with roots in the preceding decades, had burgeoned as a consequence of a shrinking Republican conference. Losses in the 2006 and 2008 elections meant that the GOP's ideological center of gravity both coalesced and moved even further right.⁸⁷ This gulf between Democrats and Republicans at the outset of the 111th Congress was only exacerbated by differing expectations of what an Obama presidency would mean for the United States. Republican and Republican leaning independents were vehement in their opposition to the new Chief Executive, many viewing President Obama as an untrustworthy, radical leftist with a socialist agenda.⁸⁸ Their consternation heralded the arrival of a new conservative bloc, concerned with all manner of issues from government overreach to federal deficits, with one key issue on which they were all in agreement: President Obama and the Democratic Congress had to be stopped.⁸⁹ Despite repeated calls for bipartisan cooperation on the campaign trail, Obama and Democratic Congressional leadership knew they could expect little help on healthcare reform from Republicans in Congress.

President Obama and his counterparts on Capitol Hill duly moved ahead with the knowledge their initiatives would pass so long as the Democratic caucus remained united. From the earliest stages of the healthcare debate, the White House trod carefully, negotiating with those in the healthcare industry to craft a plan acceptable to corporate interests.⁹⁰ This was to the new President's

⁸⁷ Barbara Sinclair, "Doing Big Things: Obama and the 111th Congress," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 203.

⁸⁸ George Edwards, "Strategic Assessments: Evaluating Opportunities and Strategies in the Obama Presidency," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 48.

⁸⁹ Julian Zelizer, *The Presidency of Barack Obama* (Princeton, New Jersey: Princeton University Press, 2018), 16.

⁹⁰ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 113.

credit. Obama may have looked down on the ponderous, give-and-take nature of the legislative process, but his prior experiences in the Senate gave him insight into how the institutions of government function and the ways his team could design a proposal that would withstand scrutiny.⁹¹

In *Presidential Power*, Richard Neustadt posits that influence in government adheres to those with a keen sense of its composition and shape.⁹² Given that choices are the means by which a president guards power as influence, Neustadt professes that the president unacquainted with government is less likely to make decisions conducive to retaining prospective power.⁹³ Had President Obama railed against the pharmaceutical and insurance industries, as a more impulsive president might have done, the resultant mobilized opposition might well have doomed the administration's healthcare plans from the beginning.⁹⁴ As it was, Obama's Office of Health Care Reform and Congressional leadership worked to construct policies that preempted attack and created incentives to win over the support of powerful stakeholders.⁹⁵

Meanwhile on Capitol Hill, Speaker Nancy Pelosi took charge of shepherding healthcare reform through the House of Representatives. The process was relatively smooth during the early stages of debate. In order to increase the chances of a bill passing and to avoid turf battles, Pelosi tasked the chairmen of the three committees with jurisdiction to negotiate a single bill.⁹⁶ H.R. 3962 would be introduced in all three committees. Together with her leadership team and a number of

⁹¹ Julian Zelizer, *The Presidency of Barack Obama* (Princeton, New Jersey: Princeton University Press, 2018), 4.

⁹² Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 126.

⁹³ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 126.

⁹⁴ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 113.

⁹⁵ Julian Zelizer, *The Presidency of Barack Obama* (Princeton, New Jersey: Princeton University Press, 2018), 4.

⁹⁶ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 122.

liaisons from the West Wing, Speaker Pelosi undertook a months long campaign to consult, educate, and negotiate with members of the House.⁹⁷

The bill hit an early roadblock in the Energy and Commerce Committee, when a conservative Democratic contingent—the so-called “Bluedog Democrats”—decried the inclusion of a public option, and what they believed would be insufficient cost controls.⁹⁸ This flashpoint laid bare an unfortunate reality for Democratic leadership: while their party was by and large ideologically homogeneous, it was far from monolithic. The House majority in the 111th Congress included 49 members from districts that John McCain won in the 2008 election.⁹⁹ Indeed, the Democrats' gains in Congress may have overstated the country's push toward liberal ideals, as many Congressional Democrats still identified as conservative.¹⁰⁰

With no Republican support for the bill, the requests of those in the Democratic Party who were willing to voice their opposition were taken very seriously.¹⁰¹ The challenge for the White House and Congressional leadership was to produce legislation that corralled these necessary holdouts, while also delivering on the promises made to the liberal mainstream of their membership. In a pattern that would repeat itself throughout the healthcare debate, party leadership stepped in to devise a compromise, and on July 29, 2009, a deal was finally reached.¹⁰² Contrary to the Neustadtian

⁹⁷ Barbara Sinclair, “The President and the Congressional Party Leadership in a Hyperpartisan Era,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 122.

⁹⁸ Barbara Sinclair, “Doing Big Things: Obama and the 111th Congress,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 208.

⁹⁹ Barbara Sinclair, “Doing Big Things: Obama and the 111th Congress,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 208.

¹⁰⁰ George Edwards, “Strategic Assessments: Evaluating Opportunities and Strategies in the Obama Presidency,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 45.

¹⁰¹ Steven Schier, *Transforming America: Barack Obama in the White House* (Lanham, Maryland: Rowman & Littlefield, 2011), 156.

¹⁰² Barbara Sinclair, “Doing Big Things: Obama and the 111th Congress,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 208.

ideal of a Chief Executive dynamically leaning on his persuasive power to lobby members of Congress, President Obama retained his distance from the Hill during this time, though his aides were heavily involved. The position of deference to party leaders may well have enhanced the bill's chances of success, but it limited the ability of the President to referee the ensuing conflict, while also opening up the process to greater scrutiny from the press.¹⁰³

H.R. 3962 passed the House on November 7, 2009. The final vote was 220 to 215, with 39 Democrats voting against the bill, 31 of whom represented districts carried by John McCain in 2008.

¹⁰⁴ One Republican voted for the bill—Representative Joseph Cao of Louisiana—but only after passage was assured. In the end, Speaker Pelosi was forced to pull the robust public option, while also allowing a stringent antiabortion amendment to be offered on the floor—both decisions liberals opposed, but both essential to securing the bill's passage.¹⁰⁵

A Marathon in the Senate:

Healthcare reform faced an uncertain future in the Senate, where Democratic leadership oversaw a chamber largely devoid of the same institutional prerogatives and procedures designed to facilitate majority rule in the House. Majority Leader Harry Reid's caucus, though 60 members strong, could not afford any defections, as Senate rules at the time allowed for any senator to

¹⁰³ Stephen Wayne, "Obama's First-Term, Legislative Presidency: Partisan, Not Personal," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 29.

¹⁰⁴ Barbara Sinclair, "Doing Big Things: Obama and the 111th Congress," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 211.

¹⁰⁵ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 122.

“filibuster” a bill they opposed.¹⁰⁶ Only by reaching the requisite 60 vote threshold could the Democrats invoke cloture and end debate. Moreover, both Majority Leader Reid and President Obama hoped to gain some Republican support for any potential legislation, so as to bolster its legitimacy.¹⁰⁷ Senate Finance Committee Chairman Max Baucus had for months attempted to forge a bipartisan deal, and finally reported a bill out of committee in September of 2009 after numerous delays.

During this time, fine electoral margins would once again enhance the bargaining power of a small but critical group of moderate holdouts. President Obama and Democratic leadership would thus be required to compromise on a number of provisions unpalatable to the more liberal members of Congress.¹⁰⁸ Senator Joe Lieberman demanded any form of the public option be dropped from the bill, while provisions that would result in more medicaid funds for Louisiana and Nebraska were included to sway Senators Mary Landrieu and Ben Nelson, respectively.¹⁰⁹ The Senate bill also relied on state-based insurance exchanges, rather than a single national exchange, where the self-employed, small businesses, and others without insurance could go to purchase plans.¹¹⁰ It was assumed any discrepancies with the House version could be reconciled once the Senate passed their bill and moved to the conference committee stage.

The process of forging a single bill from the two chambers was almost derailed in January of 2010. Republican Scott Brown, running on an anti-healthcare reform and anti-Washington platform,

¹⁰⁶ Steven Schier, *Transforming America: Barack Obama in the White House* (Lanham, Maryland: Rowman & Littlefield, 2011), 157.

¹⁰⁷ Barbara Sinclair, “The President and the Congressional Party leadership in a Hyperpartisan Era,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 122.

¹⁰⁸ Barbara Sinclair, “Congressional Leadership in Obama’s First Two Years,” in *Obama in Office*, ed. James Thurber (London: Routledge, 2016), 102.

¹⁰⁹ Barbara Sinclair, “Doing Big Things: Obama and the 111th Congress,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 212.

¹¹⁰ Vincent Frakes, “Partisanship and (Un)compromise: A Study of the Patient Protection and Affordable Care Act” *The Harvard Journal on Legislation* 49, no. 1 (2012), 138.

won the Senate seat left vacant by the death of Ted Kennedy in liberal Massachusetts.¹¹¹ The loss deprived the Democrats of their filibuster-proof supermajority in the Senate, and the uncertain future of healthcare reform came close to provoking panic among Democratic members in both chambers.¹¹² Many began to chastise President Obama; the Democrats had lost control of the debate and the media was whipped into a veritable frenzy, with cross-aisle pundits declaring healthcare reform on life support.¹¹³ There was a consensus amongst D.C. insiders that the President had failed to convey a clear and coherent message that would help healthcare reform pass, instead attempting to thread the needle between bipartisanship and the principled idealism demanded by the progressive core of the Democratic party.

President Obama moved swiftly to contain the fallout. First, the Obama White House attempted to use a public forum to reiterate their case for healthcare reform, organizing a policy summit in late February 2010.¹¹⁴ Faith in the power of the presidential pulpit was strong amongst those close to the President, but perhaps misguided when viewed in light of Richard Neustadt's teachings. President Obama, though polished and professorial, was ill-equipped to explain the complexities of the healthcare system and the proposed reforms to a largely inattentive audience. Healthcare policy is such a complex issue in the United States that even the most articulate orator would struggle to be persuasive. Furthermore, a president's standing outside the beltway is little more than a jumble of imprecise impressions, held by a fickle public with apathetic tendencies.¹¹⁵

¹¹¹ Steven Schier, *Transforming America: Barack Obama in the White House* (Lanham, Maryland: Rowman & Littlefield, 2011), 156.

¹¹² Barbara Sinclair, "Doing Big Things: Obama and the 111th Congress," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 214.

¹¹³ Barbara Sinclair, "Doing Big Things: Obama and the 111th Congress," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 214.

¹¹⁴ Vincent Frakes, "Partisanship and (Un)compromise: A Study of the Patient Protection and Affordable Care Act" *The Harvard Journal on Legislation* 49, no. 1 (2012), 140.

¹¹⁵ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 73.

Presidential teaching as a means of expediting the legislative process is thought to be of limited effectiveness, in part because it solidifies policy positions, heightens rhetoric, and personalizes issues.

¹¹⁶ The Obama PR offensive was useful however in that it placed focus back on the substance of the issues at hand, rather than on Congressional maneuvering, while also providing time and cover for Democratic leadership to strategize.¹¹⁷

Many Democratic members of Congress initially disheartened by the Massachusetts special election were encouraged by the administration's stronger public posture.¹¹⁸ An unorthodox path forward, already bruited about, was to be employed in order to secure passage of healthcare reform. The House planned to pass the Senate version of the healthcare bill, which would go directly to the President's desk and become law. Speaker Pelosi would then pass an additional bill with addendums to the Senate proposal, to ensure the most important adjustments demanded by the House were adopted. These revisions would only deal with financing and not policy change, and could thus be taken up under the budget reconciliation process and pass the Senate with a simple majority vote. On March 21 2009, the House passed the Senate bill on a 219 to 212 vote, with 34 Democrats joining all Republican members in opposition. Obama signed the bill into the law on March 23, and the Senate then passed the reconciliation bill on March 25, by a vote of 56 to 43. The Patient Protection and Affordable Care Act was now the law of the land.

Outcome and Aftermath:

¹¹⁶ Stephen Wayne, "Obama's First-Term, Legislative Presidency: Partisan, Not Personal," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 35.

¹¹⁷ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 123.

¹¹⁸ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 123.

After the passage of the initial House bill, President Obama boldly proclaimed that “at a time when the pundits said it was no longer possible, we rose above the weight of our politics... we proved we are still a people capable of doing big things and tackling our biggest challenges.”¹¹⁹ The Patient Protection and Affordable Care Act, colloquially known henceforth as “Obamacare” was certainly big, both in the terms of the bill’s scope and its political significance. The legislation constitutes the most comprehensive change to health policy since the passage of Medicare in 1965.

¹²⁰ Among other provisions, the Affordable Care Act prohibits private insurers from denying coverage due to preexisting conditions, subsidizes insurance premiums, supports medical research, and expands eligibility for federal healthcare for low-income individuals through the Medicaid program. It also instituted a widely unpopular “individual mandate,” an additional tax on individuals able to afford health insurance but unwilling to buy it.

Barack Obama assumed office intent on transforming American politics. Instead of transforming politics however, politics transformed Obama, with political circumstances forcing the President to adopt a more overtly partisan approach to healthcare reform.¹²¹ The debate highlighted a fundamental difference between liberals and their sense that the government has a responsibility to protect and provide for its citizens, and conservatives who believed the government should have a limited role in regulating the healthcare industry.¹²² There was to be no bipartisan compromise, and the Affordable Care Act was a presidential failure in this sense. Obama was unable to secure any

¹¹⁹ Robert Kaiser, *Act of Congress* (New York: Random House, 2013), 260.

¹²⁰ Steven Schier, *Transforming America: Barack Obama in the White House* (Lanham, Maryland: Rowman & Littlefield, 2011), 8.

¹²¹ Stephen Wayne, “Obama’s First Term, Legislative Presidency: Partisan, Not Personal,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 30.

¹²² Vincent Frakes, “Partisanship and (Un)compromise: A Study of the Patient Protection and Affordable Care Act” *The Harvard Journal on Legislation* 49, no. 1 (2012), 141.

GOP votes for the initiative, unlike Franklin Roosevelt for Social Security and Lyndon Johnson for Medicare.¹²³

The content of the more than 2,700 page bill, as well as the laborious process by which it became law, is illustrative of a shift in our political processes from the Neustadtian vision of a bargaining president. Neustadt characterized the mid-century period in which he wrote as a moment of weakened party ties, where debate was rarely stymied by partisan bickering. In describing the contemporary struggle for power between Congress and the chief executive however, polarization is the word with which to start. Congressional Republicans were diametrically opposed to the majority party's initiatives from the beginning. Opposition turned to abject hatred, as an anti-big-government movement dubbing itself the Tea Party gained traction after the fallout from the healthcare debate.

¹²⁴ Coupled with increased number of ideologically-driven cable news shows and a slow economic recovery, the political right uniformly refused to associate with the new President.

Debate over the Affordable Care Act signaled a transition to a modern political reality of heightened partisan bickering and an unwillingness to compromise.¹²⁵ This so-called affective partisanship sets the terms of bargaining in the modern era. As the modern president can only rely on support from his own party, persuasion becomes less about corralling 535 individual members and more about enticing those few holdouts to tow the party line. President Obama ostensibly won the battle for healthcare reform, not because of his own political dynamism, but because of partisan cleavages and the resulting Democratic unity. Speaker Pelosi and Majority Leader Reid willingly

¹²³ Mark & Walter Oleszek, "Congress and President Obama: A Perspective," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 263.

¹²⁴ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 113.

¹²⁵ Vincent Frakes, "Partisanship and (Un)compromise: A Study of the Patient Protection and Affordable Care Act" *The Harvard Journal on Legislation* 49, no. 1 (2012), 136.

made passing the President's agenda their first priority, because they saw his success as essential to their own.¹²⁶ Coupled with an increasingly ideologically homogeneous membership, the majority party had amassed formidable power to enact policy change without input from the minority party. Indeed, the necessity to cultivate a favorable professional reputation in the modern day seems limited only to members of the president's own party.

The character Obama brought to the office certainly had a part to play as well, for better or for worse. The President's operating style, as well as his political predictions and his policy preferences were subject to frequent criticism from both sides of the aisle.¹²⁷ His detached involvement in the process, though expedient in terms of allowing Pelosi and Reid to take the lead, runs contrary to the Neustadtian vision of a president intimately involved in the details that will help or hurt his power stakes. Obama did not enjoy routinely meeting or socializing with lawmakers, and this professional reputation in effect precluded the President's ability to woo those he needed to persuade.¹²⁸

The Affordable Care Act was to be implemented over the coming years in a decidedly incremental fashion. Obama initially counseled patience, but patience is not counted as one of the strong points of American politics.¹²⁹ By the eve of the 2010 midterm elections, Democratic prospects were dim. A slow economic recovery and a landmark healthcare initiative with delayed benefits earned the Democrats a veritable "shellacking." The party wound up losing 63 seats in the

¹²⁶ Barbara Sinclair, "The President and the Congressional Party Leadership in a Hyperpartisan Era," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 124.

¹²⁷ Stephen Wayne, "Obama's First-Term, Legislative Presidency: Partisan, Not Personal," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 27.

¹²⁸ Mark & Walter Oleszek, "Congress and President Obama: A Perspective," in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 263.

¹²⁹ Bert Rockman & Andrew Rudalevige, "Introduction: A Counterfactual Presidency," in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 4.

House of Representatives, as well as a net loss of six seats in the Senate; one must go back to 1938 for an election when a party suffered losses of this magnitude.”¹³⁰ For all the early achievements of the Obama administration, the midterm results revealed the 111th Congress to be “both historically busy and epically unpopular.”¹³¹ Court challenges to the Affordable Care Act also limited its impact, and continued throughout Obama’s second term and into the Trump presidency.

Donald Trump and the American Health Care Act

The Political Context and the Issues at Hand:

In his February 2017 address to Congress after an unanticipated triumph in the 2016 election, President Donald Trump called on the legislative branch “to repeal and replace Obamacare with reforms that expand choice, increase access, lower costs, and at the same time, provide better healthcare.”¹³² His remarks were greeted with thunderous applause, though only from the President’s own party. Republicans were understandably buoyant; after seven years of merciless hostility toward President Obama’s marquee legislative achievement, the GOP assumed unified control of Washington in 2017 for just the second time in sixty years.¹³³ As president, Barack Obama had time and again rebuffed attempts to abrogate his administration’s work on healthcare reform.¹³⁴

¹³⁰ Paul Abramson, John Aldrich & David Rohde, *Change and Continuity in the 2008 and 2010 Elections* (Washington D.C.: CQ Press, 2012), 332.

¹³¹ Bert Rockman & Andrew Rudalevige, “Introduction: A Counterfactual Presidency,” in *The Obama Presidency: Appraisals and Prospects*, ed. Colin Campbell, Bert Rockman & Andrew Rudalevige (Washington D.C.: CQ Press, 2012), 4.

¹³² “Remarks by President Trump in Joint Address to Congress,” The White House, February 28, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-address-congress/>

¹³³ Jacob Hacker & Paul Pierson, “The Dog That Almost Barked: What the ACA Repeal Fight Says about the Resilience of the American Welfare State,” *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 565.

¹³⁴ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017): 432.

Channeling their frustration, conservatives mobilized a loose coalition with ambitions to slash government spending and roll back the American welfare state.¹³⁵ Their relentless efforts in fundraising and organizing had pushed GOP candidates to victory. With a Republican now in the White House, party leaders were keen to forge a new governing contract. A Trump presidency was finally a chance to deliver.

Donald Trump's victory in the 2016 election meant that the most important policy changes of the Barack Obama presidency were under serious threat. Not only was Trump empowered to follow through on his campaign promises, the Republican sweep could reasonably be seen as a mandate to reverse course from the previous eight years.¹³⁶ Trump successfully campaigned on vows to undo the actions of the previous administration, and reveled in his role as the antithesis of his prudent, restrained, and cerebral predecessor.¹³⁷ Certainly, Trump the candidate made repeated and impassioned pledges to dismantle the Affordable Care Act.¹³⁸ Also on the chopping block was a series of divisive executive actions taken by the Obama administration, as well as a slew of tax and regulatory policies designed to emphasize redistribution over efficiency and uninhibited growth.¹³⁹ Even so, the repeal and replacement of Obamacare was slated to be the signature accomplishment of the Trump administration's first year, with the Republican party keen to take advantage of a policy window left tantalizingly ajar.¹⁴⁰

¹³⁵ Jacob Hacker & Paul Pierson, "The Dog That Almost Barked: What the ACA Repeal Fight Says about the Resilience of the American Welfare State," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 566.

¹³⁶ James Ceasar, Andrew Busch & John Pitney, *Defying the Odds: The 2016 Election and American Politics* (Lanham, Maryland: Rowman & Littlefield, 2017), 176.

¹³⁷ Gary Jacobson, "Donald Trump, the Public, and Congress: The First 7 Months," *Forum* 15, no. 3 (October 2017): 526.

¹³⁸ Sallie Sanford, "Nobody Knew How Complicated: Constraining The President's Power to (Re)Shape Health Reform," *American Journal of Law and Medicine* 45, no. 2/3 (2019), 115.

¹³⁹ James Ceasar, Andrew Busch & John Pitney, *Defying the Odds: The 2016 Election and American Politics* (Lanham, Maryland: Rowman & Littlefield, 2017), 176.

¹⁴⁰ Daniel Béland, Phillip Rocco & Alex Waddan, "Obamacare in the Trump Era: Where are we Now, and Where are we Going?" *Political Quarterly* 89, no. 4 (October 2018), 687.

Our second case study will examine the Trump administration's efforts to repeal and replace the Affordable Care Act through legislation. These actions provide agreeable symmetry with our look at the Obama administration's earlier success in passing the initial law, in terms of the partisan makeup of government, the timing, and the policy area in question. Moreover, the failures of the Trump administration detailed in this case study can be understood best through a Neustadtian lens.

The task before Donald Trump seemed deceptively straightforward to the outside observer. Democrats constructed a law replete with procedural complexities and obscured benefits, as well as an easily targeted "individual mandate" that penalized those who did not purchase insurance.¹⁴¹ Given the widespread rejection of the ACA's Medicaid expansion provisions by red states across the country, many low income, Medicaid-eligible individuals were forced to turn to the private ACA insurance markets, increasing premiums across the board and providing Republicans with plentiful ammunition.¹⁴² But Republican's faced united opposition from Democrats and a consortium of liberal interest groups.¹⁴³ What is more, Republican divisions had been on display as recently as a few weeks before the election, when many GOP leaders deserted Trump in the wake of the Access Hollywood tapes.¹⁴⁴ President Trump took office as a divisive figure, and a slim majority in the Senate, as well as a Republican Conference rife with internal divisions, would ultimately spell doom for his administration's efforts to repeal Obamacare. The President's failure to cultivate sufficient

¹⁴¹ Daniel Béland, Phillip Rocco & Alex Waddan, "Obamacare in the Trump Era: Where are we Now, and Where are we Going?" *Political Quarterly* 89, no. 4 (October 2018), 688.

¹⁴² Thomas Edsall, "Killing Obamacare Softly," *The New York Times*, July 27, 2017, <https://www.nytimes.com/2017/07/27/opinion/health-care-obamacare.html>

¹⁴³ Jacob Hacker & Paul Pierson, "The Dog That Almost Barked: What the ACA Repeal Fight Says about the Resilience of the American Welfare State," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 570.

¹⁴⁴ James Ceasar, Andrew Busch & John Pitney, *Defying the Odds: The 2016 Election and American Politics* (Maryland: Rowman & Littlefield, 2017), 176.

professional reputation and public prestige may well have precluded the use of his presidential power in this instance.

Uncertainty in the House:

Republicans in the House of Representatives, led by Speaker Paul Ryan, assumed control of translating the President's promises on healthcare reform into concrete legislative achievement. The plan they finally presented to the Senate was an amalgamation of disparate proposals advanced by the GOP during the preceding administration, a package of reforms that would become the American Health Care Act.¹⁴⁵ The bill eliminated many of the more controversial and visible provisions of Obamacare. It was also a manifesto of conservative views on the welfare state decades in the making. Buried in the myriad sections of the AHCA was the elimination of the ACA's unpopular individual mandate, a move widely expected to subvert and ultimately implode the ACA insurance exchanges.¹⁴⁶ Perhaps more significantly, the plan not only halted Obamacare's Medicaid expansion, but phased out Medicaid's entitlement status for individuals, converting it into a per capita allotment or a fixed-dollar block grant to individual states.¹⁴⁷ The AHCA would also authorize states to opt out of insurance regulations, such as those that constrain policies with pre-existing conditions, and slash federal funding for Planned Parenthood.¹⁴⁸ All told, the Congressional Budget Office estimated that while the law would drastically cut federal spending, it would also result in 24

¹⁴⁵ Daniel Béland, Phillip Rocco & Alex Waddan, "Obamacare in the Trump Era: Where are we Now, and Where are we Going?" *Political Quarterly* 89, no. 4 (October 2018), 691.

¹⁴⁶ James Morone, "Health Policy and White Nationalism: Historical Lessons, Disruptive Populism, and Two Parties at a Crossroads," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 685.

¹⁴⁷ Daniel Béland, Phillip Rocco & Alex Waddan, "Obamacare in the Trump Era: Where are we Now, and Where are we Going?" *Political Quarterly* 89, no. 4 (October 2018), 691.

¹⁴⁸ James Morone, "Health Policy and White Nationalism: Historical Lessons, Disruptive Populism, and Two Parties at a Crossroads," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 685.

million fewer individuals with insurance coverage within a decade.¹⁴⁹ The President and Congressional Republicans were poised for a fight, as much of the AHCA was bound to be an exceedingly tough sell.

The initial signs were cause for optimism from Speaker Ryan and the new president. In early spring, two prominent committees in the House of Representatives—Energy and Commerce and Ways and Means—approved a draft version of the AHCA on party line votes.¹⁵⁰ Problems first arose when the bill went to the Budget committee and three members of the House Freedom Caucus voted against leadership, scuttling the bill on a narrow 19 to 17 margin.¹⁵¹ However drastic the proposed changes to existing healthcare policy, they did not satisfy conservative organizations like Americans for Prosperity and the Heritage Foundation, who argued that the AHCA was “Obamacare Lite.”¹⁵² At the other end of the Republican Conference, moderates opposed the AHCA’s cuts to Medicaid expansion, particularly after the CBO’s prognosis on the number of potential new uninsured individuals should the bill become law.¹⁵³

President Trump adopted a largely hands-off approach as Speaker Ryan and other House leaders struggled to fashion a bill that would be acceptable to both moderates and conservatives during this phase in the healthcare debate. That his stance was markedly similar to the one adopted by President Obama during the passage of the Affordable Care Act should come as little surprise. In an age where party polarization defines the limits of interbranch relations, leaders from a president’s

¹⁴⁹ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 444.

¹⁵⁰ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 444.

¹⁵¹ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 444.

¹⁵² Daniel Béland, Phillip Rocco & Alex Waddan, “Obamacare in the Trump Era: Where are we Now, and Where are we Going?” *Political Quarterly* 89, no. 4 (October 2018), 691.

¹⁵³ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 444.

own party will be inclined to cooperate with the White House so long as the electoral and policy goals of members align with those of the president.¹⁵⁴ Most Republicans were vehement in their desire for an alternative to Obamacare, just as Democrats in 2009 were keen to reform the status quo. Trump was wise to cede control to House leadership, just as Obama had done during the crafting of his healthcare bill years earlier.

Trump initially acted mostly as “cheerleader-in-chief,” rather than a hands-on negotiator: he publicly praised the AHCA as a “great bill,” fielded the concerns of individual legislators, and urged them to come together in private meetings. In true Neustadtian fashion, Trump utilized the full panoply of advantages inherent in the presidency, including hosting private lunches and dinner at the White House, sharing rides on Air Force One, and even scheduling a bowling event for lawmakers.¹⁵⁵ Neustadt was clear enough that a president looking to persuade may be far more effective than his logic or charm could make him by leaning on the status and authority of his office.¹⁵⁶ That said, President Trump found it exceedingly difficult to garner sufficient professional reputation when he had already cultivated the impression that he was not a negotiator operating in good faith. The best form of self-help, Neustadt argued, is to think of power prospectively and jealously guard one’s prospective power through matters of choice.¹⁵⁷ Though D.C. insiders cannot afford to ground their expectations of how the president will act with erroneous slippages, these accumulate, and a president’s influence can wane with repeated displays of incapacity.¹⁵⁸

¹⁵⁴ Barbara Sinclair, “The President and Congressional Party Leadership in a Hyperpartisan Era,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 115.

¹⁵⁵ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 444.

¹⁵⁶ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 32.

¹⁵⁷ Steven Schier & Todd Eberly, *The Trump Presidency: Outsider in the Oval Office* (Lanham, Maryland: Rowman & Littlefield, 2017), 46.

¹⁵⁸ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 52.

President Trump vacillated wildly on what exactly he expected of Republicans in Congress, at times endorsing the House bill and hedging his support when a solution seemed out of reach.¹⁵⁹ Frustrated by the defections from both the conservative and moderate wings of his party, the White House pushed for a vote of the full House, hoping the prospect of legislative defeat would force the hands of the Republicans who were still withholding support.¹⁶⁰ On the day of the vote, Speaker Ryan pulled the legislation when it became clear it would not pass. Trump initially responded by blaming Democrats, but in what would prove to be a pattern throughout the healthcare debate, he later shifted blame to Republicans by tweeting that his followers should watch a Jeanine Pirro segment on Fox News in which she demanded Paul Ryan's resignation as Speaker.¹⁶¹

This underhanded treatment of the man charged with delivering healthcare reform legislation in the House was no anomaly. President Trump regularly admonished members of his own cabinet, including then Attorney General Jefferson Sessions, an early and staunch supporter of the Trump agenda.¹⁶² Republicans in Congress would likely have observed these episodes wondering why they should risk covering the President's back when he could not be counted on to take care of his own. With his general reputation shaped by an observable pattern of indecisiveness and renegeing, Trump had established himself as a backstabber.

Roughly a month after the failed vote in the House of Representatives, negotiations among Congressional leadership, members of the Freedom Caucus, and the Tuesday Group finally brought

¹⁵⁹ Gary Jacobson, "Donald Trump, the Public, and Congress: The First 7 Months," *Forum* 15, no. 3 (October 2017), 534.

¹⁶⁰ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 445.

¹⁶¹ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 445.

¹⁶² Gary Jacobson, "Donald Trump, the Public, and Congress: The First 7 Months," *Forum* 15, no. 3 (October 2017), 540.

about the passage of the AHCA in the House.¹⁶³ In its final form, the legislation squeaked through by a margin of two votes, with every Democrat and 20 Republicans dissenting.¹⁶⁴ Trump was nonetheless pleased, and summoned members of the majority party to the White House for a photo opportunity. He praised the work of Speaker Ryan, and exalted the AHCA as “a great plan,” adding, “I actually think it will get even better [as this process] has brought the Republican party together.”¹⁶⁵ His optimism was short lived. The House process revealed a Republican Conference divided on how to go about repealing and replacing the Affordable Care Act, and despite a 47-vote majority in that chamber, House GOP leadership had struggled to pass the bill. Given members’ wariness of Trump’s character and involvement, the AHCA faced an uncertain future in the Senate, with its two-vote Republican majority.

Troubles in the Senate:

Senate Majority Leader Mitch McConnell was initially hesitant to introduce draft legislation, for fear of members of his own party publicly criticizing the plan.¹⁶⁶ The House Freedom Caucus had extracted key concessions, such as the provision that allowed states to opt out of consumer protections under the ACA.¹⁶⁷ Senator McConnell was wary of modifying the House bill in a way that would attract the support of moderates, as there was no guarantee an amended bill would pass

¹⁶³ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 445.

¹⁶⁴ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 445.

¹⁶⁵ Matthew Dickinson & Kate Reinmuth, “Trump, Congress, and Health Care: All Politics Is National,” *Forum* 15, no. 3 (October 2017), 445.

¹⁶⁶ Russell Berman, “What’s in the Senate Republican Health-Care Bill,” *The Atlantic*, June 22 2017, <https://www.theatlantic.com/politics/archive/2017/06/whats-in-the-senate-republican-health-care-bill/531258/>

¹⁶⁷ Daniel Béland, Phillip Rocco & Alex Waddan, “Obamacare in the Trump Era: Where are we Now, and Where are we Going?” *Political Quarterly* 89, no. 4 (October 2018), 691.

the House a second time.¹⁶⁸ Conservatives, including Rand Paul, Mike Lee, Ron Johnson, and Ted Cruz, sought amendments to further weaken provisions of the Affordable Care Act, while moderates such as Susan Collins opposed efforts to defund Planned Parenthood.¹⁶⁹ A president hoping to successfully navigate this perilous track through America's upper chamber would have been wise to heed Neustadt's lessons on reputation as a source of presidential power. Instead, President Trump doubled down on his choice to diminish his reputation through indecision and unreliability he adopted during debate in the House of Representatives.

Donald Trump appeared largely to recuse himself from substantive debate in the Senate.¹⁷⁰ Matters of detail were left to party leaders to hash out in relative privacy, while the President alternatively promoted Republican efforts and warned about the consequences of failure at regular intervals. These actions often proved to be counterproductive. Even after praising Republican members of the House for their vote on the AHCA, Trump later described their legislation as "mean" when it became clear many of the more contentious provisions would not play well in the Senate.¹⁷¹ He declined to provide much guidance to Republicans during this time on what he would sign, with the overriding objective seeming to be legislative victory at all costs.¹⁷² This ambiguity did

¹⁶⁸ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 445.

¹⁶⁹ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 446.

¹⁷⁰ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 156.

¹⁷¹ Philip Bump, "Trump insists that senators (who won without him) owe him loyalty (that isn't returned)," *The Washington Post*, July 24 2017, <https://www.washingtonpost.com/news/politics/wp/2017/07/24/trump-insists-that-senators-who-won-without-him-owe-him-loyalty-that-isnt-returned/>

¹⁷² Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 447.

little to inspire loyalty and compliance on the part of Republican holdouts, as they could not be sure the President would support them should things go awry.¹⁷³

The members of Congress who a president persuades must be convinced that the chief executive has the skill and will to call on his available wells of power; their judgement in this respect determines the president's capacity for influence.¹⁷⁴ That Trump waited for the Senate to act, rather than working with individual Republican Senators to develop a solution during this time, left the Senate with no clear direction.¹⁷⁵ Being president is not like being CEO: the pluralistic nature of American government means that Congress does not work for the president and cannot be ordered to act on his behalf.¹⁷⁶ As Neustadt observed, a president has considerable access to power that is bolstered by reputation, but President Trump's enduring reputation as an unreliable negotiator and a man prone to petty insults and renegeing severely constrained his ability to influence Republican holdouts. On the campaign trail, Trump had volleyed insults at Senator John McCain, ridiculing the Senator's military service and insinuating that McCain could not be considered a proper war hero.¹⁷⁷ Senator Lisa Murkowski of Alaska also bore the President's ire, receiving a call from the President's interior secretary, Ryan Zinke, warning of repercussions for the Senator's home state after her initial

¹⁷³ Philip Bump, "Trump insists that senators (who won without him) owe him loyalty (that isn't returned)," *The Washington Post*, July 24 2017, <https://www.washingtonpost.com/news/politics/wp/2017/07/24/trump-insists-that-senators-who-won-without-him-owe-him-loyalty-that-isnt-returned/>

¹⁷⁴ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 50.

¹⁷⁵ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 156.

¹⁷⁶ Philip Bump, "Trump insists that senators (who won without him) owe him loyalty (that isn't returned)," *The Washington Post*, July 24 2017, <https://www.washingtonpost.com/news/politics/wp/2017/07/24/trump-insists-that-senators-who-won-without-him-owe-him-loyalty-that-isnt-returned/>

¹⁷⁷ Derek Hawkins, "McCain: Trump has never apologized for saying he was 'not a war hero,'" *The Washington Post*, September 25 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/09/25/mccain-trump-has-never-apologized-for-saying-g-he-was-not-a-war-hero/>

vote against proceeding with the healthcare debate.¹⁷⁸ The experiences of many previous presidents demonstrated that senators are unlikely to respond well to strong arm tactics.¹⁷⁹ It should come as no surprise that the president's choices lost him the votes of these senators, votes that led to the defeat of the bill.

Though Neustadt de-emphasizes the role that public prestige plays in persuasion, it is important to note many of the key public opinion trends that colored debate over the AHCA. President Trump entered office as one of the more polarizing presidents in recent memory; Democrats and many left-leaning voters were universally appalled by the President's character and policy objectives during the 2016 campaign, with his early conduct in office doing little to change their appraisals.¹⁸⁰ This relatively low standing with the public served to blunt the President's influence in Congress as Democrats had every reason to oppose him.

In looking at Trump's failures through a Neustadian lens, it is also compelling to look at the healthcare debate's impact on public assessments of the Affordable Care Act. The passage of the AHCA in the House riled nearly every major organization with a stake in healthcare, from the American Medical Association to the AARP.¹⁸¹ The Republican bill polled terribly—whether viewed in isolation or in comparison with the ACA. In a survey taken on the eve of the House vote, just 17 percent of Americans said they supported the reforms proposed by House Republicans.¹⁸² Public

¹⁷⁸ Peter Baker, "Trump Tries to Regroup as the West Wing Battles Itself," *The New York Times*, July 29, 2017, https://www.nytimes.com/2017/07/29/us/politics/trump-presidency-setbacks.html?smid=tw-share&_r=0

¹⁷⁹ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 156.

¹⁸⁰ Gary Jacobson, "Donald Trump, the Public, and Congress: The First 7 Months," *Forum* 15, no. 3 (October 2017): 529.

¹⁸¹ Jacob Hacker & Paul Pierson, "The Dog That Almost Barked: What the ACA Repeal Fight Says about the Resilience of the American Welfare State," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 570.

¹⁸² Jacob Hacker & Paul Pierson, "The Dog That Almost Barked: What the ACA Repeal Fight Says about the Resilience of the American Welfare State," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 557.

attitudes toward the ACA had markedly improved by the time debate shifted to the Senate; a Kaiser Family Foundation found the ACA breaking 50 percent favorability for the first time since its adoption in 2010.¹⁸³ With the status quo under threat, Republican efforts to dismantle the Affordable Care Act accomplished what President Obama could not in his time in office: sell the ACA to the American public.

The Outcome and the Aftermath:

On July 28, 2017, a pensive John McCain approached Majority Leader McConnell in the well of the Senate. After a number of failed partial repeals, Senate leadership had put forward their own version of the AHCA for a final vote. Senator McConnell employed the budget reconciliation process to ensure that only a simple majority was needed to pass the legislation.¹⁸⁴ Senator McCain's vote was so crucial to Republican efforts, he had flown in from his home state after being diagnosed with terminal brain cancer. The bill would fail if McCain were to vote no.

In one of the more dramatic moments in recent Senate history, and with the eyes of a nation upon him, McCain turned down his thumb, eliciting audible gasps and a smattering of applause from the chamber. McCain's vote effectively ended the Republicans' best chance to repeal the Affordable Care Act.¹⁸⁵ Two other Republicans—Senators Murkowski and Collins—joined McCain, as well as all 46 Senate Democrats and two independents in rejecting Republican efforts. For four

¹⁸³ Daniel Béland, Phillip Rocco & Alex Waddan, "Obamacare in the Trump Era: Where are we Now, and Where are we Going?" *Political Quarterly* 89, no. 4 (October 2018), 691.

¹⁸⁴ Jacob Hacker & Paul Pierson, "The Dog That Almost Barked: What the ACA Repeal Fight Says about the Resilience of the American Welfare State," *Journal of Health Politics, Policy & Law* 43, no. 4 (August 2018), 552.

¹⁸⁵ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 431.

election cycles, the GOP had railed against the Obama administration's signature legislative achievement. They controlled both houses of Congress and the White House, yet failed in their attempt to repeal the ACA. The recriminations would be immediate and severe. The defeat was a cutting blow to President Donald Trump and Republican leadership in Congress, as the party had framed repealing and replacing Obamacare as a test of their ability to implement the Republican agenda.¹⁸⁶

How might Donald Trump have increased his chances of legislative success in this instance? Not insulting his fellow party members would have been a good start. Richard Neustadt would suggest that Trump's failures are due in large part to the poor professional reputation he cultivated on Capitol Hill. Indeed, members of his own party have argued that the intermittent strong-arm tactics employed by the administration made it more difficult to secure a winning coalition for repeal and replace.¹⁸⁷ John McCain was certainly disinclined to fall in line behind Trump's initiatives after being on the receiving end of the President's vitriol. Though the President regularly invoked loyalty during the healthcare debate, it was rarely reciprocated. He repeatedly demonstrated that his understanding of the term implied unconditional backing and not that he'd do his part in bargaining.¹⁸⁸ Trump reportedly called Majority Leader McConnell to berate him for "bungling" the healthcare vote, in addition to issuing a steady drumbeat of public condemnations for Republicans in Congress after the failed vote.¹⁸⁹

¹⁸⁶ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 431.

¹⁸⁷ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 432.

¹⁸⁸ Philip Bump, "Trump insists that senators (who won without him) owe him loyalty (that isn't returned)," *The Washington Post*, July 24 2017, <https://www.washingtonpost.com/news/politics/wp/2017/07/24/trump-insists-that-senators-who-won-without-him-owe-him-loyalty-that-isnt-returned/>

¹⁸⁹ Matthew Dickinson & Kate Reinmuth, "Trump, Congress, and Health Care: All Politics Is National," *Forum* 15, no. 3 (October 2017), 432.

Trump would also have been better served focusing his initial attention on legislation that would have attracted more Democratic support. For instance, a major investment in infrastructure projects—favored by more than 80 percent of voters—would have been far less divisive than repealing the ACA.¹⁹⁰ Such an agenda would have forced Democrats to engage with a president their constituents detested, if they actually sought to accomplish something during their time in the minority. From the perspective of Neustadt, pursuing infrastructure would have been wise in that it would have enhanced the President’s prospective power. Impressions of a new President are formed early and last a long time, meaning a willingness to reach across the aisle and pursue bipartisan compromise might have improved Trump’s professional reputation and his standing with the public. A bipartisan approach in true Neustadtian fashion would have faced its own difficulties, however. Our current climate of intense partisanship means that presidents are encouraged to take positions that bolster their own party, while becoming “critic in chief” of the opposition.¹⁹¹ Displaying a willingness to work with Democrats might well have alienated Trump within his own party.

Subsequent action on healthcare by the current administration has taken two principal forms. The first and most enduring was the elimination of the individual mandate in Congressional Republican’s subsequent work on the Tax Cuts and Jobs Act of 2017. This is no trivial development, as the ACA was largely dependent on the individual mandate to arrest rising premium costs. The Trump administration also has sought to undermine the law through a series of administrative actions. These include shortening the ACA enrollment period, reducing the availability of trained staffers at call-in centers to assist enrollees, discouraging insurance company participation by

¹⁹⁰ Gary Jacobson, “Donald Trump, the Public, and Congress: The First 7 Months,” *Forum* 15, no. 3 (October 2017), 538.

¹⁹¹ Gary Andres & Patrick Griffin, “White House-Congressional Relations in a Polarized Age,” in *Rivals for Power*, ed. James Thurber (Lanham, Maryland: Rowman & Littlefield, 2013), 43.

increasing the uncertainty over the future availability of subsidies, and even using Obamacare budget funds dedicated to expanding healthcare to launch a public relations campaign against the law.¹⁹²

The healthcare industry is one of the most heavily regulated in the United States, and existing statute contains many discretionary provisions allowing federal departments and agencies to undermine or support the Affordable Care Act as they see fit.¹⁹³ Donald Trump's uncompromising search for loyalty is useful in this respect, because his charges in the executive branch will have an easier time reshuffling the federal bureaucracy than the President did in grappling with Congress. It could indeed be argued that this unilateral approach may yet end up being more successful in weakening the ACA than the legislative route.¹⁹⁴ That said, unilateral executive actions are temporary measures that have no sticking power beyond the tenure of the president who issues them. It is telling that Richard Neustadt suggests the unilateral powers of the presidency are fundamentally limited, costly, and above all an indication of failure rather than mastery.¹⁹⁵

Conclusion

In life, the affable, chain-smoking Richard Neustadt revolutionized study of the presidency through the use of applied theory.¹⁹⁶ His work was an attempt to reconcile the conjectural with the practical, to bridge the gap between the detached work of his predecessors and his first-hand

¹⁹² Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 157.

¹⁹³ Sallie Sanford, "Nobody Knew How Complicated: Constraining The President's Power to (Re)Shape Health Reform," *American Journal of Law and Medicine* 45, no. 2/3 (2019), 116.

¹⁹⁴ Stephen Farnsworth, *Presidential Communication and Character: White House news management from Clinton and cable to Twitter and Trump* (New York: Routledge, 2018), 158.

¹⁹⁵ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 28.

¹⁹⁶ Stephen Wayne, "Richard E. Neustadt as Teacher and Mentor: A Personal Reflection," *Presidential Studies Quarterly* 34, no. 1 (March 2004), 19.

experiences in the White House. Neustadt perceived an institution ill-equipped to respond to demand for presidential action in the ways it would like; despite the president's rarified position in the American political system, weakness was the underlying theme of *Presidential Power*.¹⁹⁷ Especially when grappling with an adversarial Congress, the president wishing to make his influence felt must recognize his position as both independent and at the same time intertwined with disparate sources of power in a pluralistic system. Our constitutional republic is composed of separate institutions sharing power: to share is to limit, and this is the heart of Neustadt's conception of presidential power.¹⁹⁸

Nearly every subsequent work of scholarship on the presidency pays homage to Neustadt's seminal view of presidential power as influence or persuasion in this separated system.¹⁹⁹ Yet there remains debate over the direction of presidential studies, rooted in criticism of Neustadt's work. Detractors bemoan the subfield's dominant methodology: the focus on individual presidents, the reliance on thick description rather than systematic data analysis, and the general failure to craft testable hypotheses.²⁰⁰ All are valid criticisms, broadly seen to have precluded the elevation of presidential studies to the forefront of political science research. Yet the efforts of scholars to grapple with Neustadt's teachings have still inspired some of the subfield's most enduring discoveries.²⁰¹ Above all else, the presidency is understood to be a position rife with paradox. The

¹⁹⁷ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), XI.

¹⁹⁸ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), X.

¹⁹⁹ Mitchel Sollenberger, "Presidential Studies, Behavioralism, and Public Law," *Presidential Studies Quarterly* 44, no. 4 (December 2014), 762.

²⁰⁰ Matthew Dickinson, "We All Want a Revolution: Neustadt, New Institutionalism, and the Future of Presidency Research," *Presidential Studies Quarterly* 39, no. 4 (December 2009), 736.

²⁰¹ Matthew Dickinson, "We All Want a Revolution: Neustadt, New Institutionalism, and the Future of Presidency Research," *Presidential Studies Quarterly* 39, no. 4 (December 2009), 738.

president is at once expected to provide decisive leadership to solve the nation's problems, while at the same time fundamentally constrained by the constitutional system in which he operates.²⁰²

The distinct political climate that influenced Neustadt's understanding of the nature of presidential power also calls into question his theory's applicability in the modern age. The environments faced by Presidents Obama and Trump are certainly different from those of Truman and Eisenhower. To test the longevity of Neustadt's arguments, we took a thorough look at our two most recent presidents and their attempts to persuade Congress to join them in their favored legislation regarding healthcare reform, one of the most controversial policy issues of recent decades.

How applicable are Neustadt's insights to the modern presidential-Congressional dynamic? Given the deficiencies that arise when applying the lessons of a dated piece of scholarly literature to a changing political context, is presidential power still the power to persuade?

The experiences of President's Obama and Trump suggest the answer is yes, with some caveats. At the most rudimentary level, the framework Neustadt identifies is still in place. These case studies depicted presidents operating as strategic power optimizers in an environment colored by the give-and-take nature of every interaction. As Neustadt suggested, the president cannot expect action without argument.²⁰³ Both Presidents Obama and Trump were driven to deliver a lasting legacy by developing an impactful domestic policy agenda that could only be implemented by working with Congress. Both Presidents also found themselves without many tools to accomplish their aims except for maximizing professional reputation and public prestige.

²⁰² Thomas Cronin & Michael Genovese, *The Paradoxes of the American Presidency* (New York: Oxford University Press, 2013), 4.

²⁰³ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 11.

This is where the nature of presidential power differs somewhat from the traditional Neustadtian conception. The rapid advancement of party polarization precludes a cooperative Presidential-Congressional relationship in all but the most extraordinary circumstances. Policy differences between Democrats and Republicans in Washington have increased over the past several decades to a degree unfathomable to Richard Neustadt.²⁰⁴ The concerted movement of both parties to the ideological extremes has fostered Congressional dysfunction, familiar to the modern audience but not to the mid-century modern period analyzed by Neustadt. Conservative Democrats and liberal Republicans who once occupied key leadership positions in the House and Senate have almost disappeared, and there are far fewer moderates in both parties.²⁰⁵ As a result, partisan compromise is the exception rather than the norm, and divided party control is more likely to result in gridlock on major domestic issues.²⁰⁶ Comprehensive healthcare reform became the top domestic priority for Presidents Obama and Trump largely because they enjoyed unified party government; had the opposition party controlled even one chamber in Congress, healthcare might have taken a back seat to more easily achievable policy goals.

Political circumstance can be understood to impede or enhance a president's persuasive capacity. Having control of a unified government changes the calculation. Because members of the opposition party cannot be relied on to aid the president, a chief executive looking to succeed under this condition need only reach out to likeminded Congressional leadership and holdouts in his own party. Literature on the subject suggests that the more uniform the preferences of the majority party,

²⁰⁴ Alan Abramowitz, *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy* (New Haven, Connecticut: Yale University Press, 2010), 2.

²⁰⁵ Alan Abramowitz, *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy* (New Haven, Connecticut: Yale University Press, 2010), 2.

²⁰⁶ Alan Abramowitz, *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy* (New Haven, Connecticut: Yale University Press, 2010), 161.

and the more distinct they are from the policy views of the minority, the more they should have an observable influence on party leadership. When the majority party coheres around a certain policy, its members are more willing to delegate agenda-setting authority and other powers and resources to their party leaders.²⁰⁷ Thus, Presidents Obama and Trump were able to reach out to majority party leadership, as these individuals accurately spoke for their respective caucuses and could guide the President's policy goals to fruition. There was little need to cultivate relationships with individual members.

The broader political circumstance—favorable majorities in Congress and strong partisanship—would ultimately play a critical role in the cases of Obama and Trump. Many of the finer points of Neustadt's *Presidential Power* were borne out as well. President Obama was certainly aided in his efforts to pass the Affordable Care Act by his prior experiences in government, however brief they may have been. Neustadt posits that a president's professional reputation and public prestige turn on what his constituents think they want and what they think they will receive from the chief executive.²⁰⁸ Presidents protect their stakes of influence by the choices they make, and the president with a sense of where power comes from is better positioned to make choices that lead to further influence. As president, Barack Obama was quick to surround himself with counsel that would allow him to consider problems from the perspective of his counterparts on Capitol Hill. Consequently, the choices he made in pursuing healthcare reform were more conducive to further influence. He recognized that reluctant members of Congress would consider his reputation and public prestige when making decisions, and so Obama made choices to maximize good will. To ask how a president can guard his persuasive capacity in choices he makes is

²⁰⁷ Andrew Hall & Kenneth Shepsle, "The Changing Value of Seniority in the U.S. House: Conditional Party Government Revised," *Journal of Politics* 76, no. 1 (2014), 98.

²⁰⁸ Richard Neustadt, *Presidential Power and the Modern American Presidents* (New York: The Free Press, 1990), 90.

to inquire how clearly he perceives, and Obama perceived that Congress would be more responsive to his demands if he allowed leadership to take the reins. He also enhanced his reputation by bringing the healthcare industry into the fold, involving them in debate so as to construct legislation acceptable to corporate interests.

While President Obama adhered to Neustadt's advice to good effect, President Trump spurned the same advice and suffered for it. Trump's penchant for attacking those from whom he demanded loyalty earned him a professional reputation that would doom his efforts to sway the few holdouts he needed to persuade. Whereas Obama was an accommodating and reliable ally to the leadership team tasked with delivering on his initiatives, Trump was stubborn and capricious. Both presidents took a back seat in allowing majority party leadership to craft proposals that would pass, but Trump frequently wavered in his support of his counterparts on the Hill. Coupled with his attacks on Senator John McCain, the vote that would sink the American Health Care Act in the Senate, it is easy to see how Trump's inexperience and acts of choice hurt his persuasive capacity. In order to emulate the success of his predecessor, President Trump would have done well to foster a more positive professional reputation.

Richard Neustadt's work is not the final word on the nature of presidential power. It is best understood as a proto-theory to be tested and refined, a framework for understanding the qualia of a president's influence in government.²⁰⁹ Subsequent political development will invariably change the ways in which the president and Congress interact, but the experiences of the Obama and Trump administrations affirm the lasting validity of Neustadt's arguments.

²⁰⁹ Matthew Dickinson, "We All Want a Revolution: Neustadt, New Institutionalism, and the Future of Presidency Research," *Presidential Studies Quarterly* 39, no. 4 (December 2009), 739.

The grandiosity of the presidential stage certainly invites the chief executive to seek political power and authority so as to wield it over the other institutions of government.²¹⁰ Expectation that a president insert himself in the legislative process provides the sort of presidential energy Alexander Hamilton so eloquently termed the “leading character in the definition of good government.”²¹¹ Yet for all the benefits of a president acting in the dynamic, entrepreneurial fashion encouraged by Neustadt, his approach does not distinguish between the use and abuse of presidential power.²¹² Looking at specific instances of presidents leaning on their persuasive capabilities is to lose sight of the forest for the trees: modern presidents have steadily drawn power to themselves by virtue of their enhanced visibility and through the use of unilateral executive action, regardless of the presence or absence of Neustadtian characteristics conducive to presidential influence. Congress has delegated extensive authority to the executive both explicitly through statute and implicitly by way of inaction. For most new initiatives, the president leads and Congress follows.²¹³ The modern legislative presidency, though weak in some aspects, is augmented by a Congress unwilling and unable to reclaim the authority vested in them by the Constitution. The growth of partisan rancor and the deference granted to a president of one’s own party means that the interests of the men and women in Congress are no longer connected with the constitutional rights of the place.²¹⁴

²¹⁰ Benjamin Kleinerman, “The Constitutional Ambitions of James Madison’s Presidency,” *Presidential Studies Quarterly* 44, no. 1 (March 2014), 7.

²¹¹ Alexander Hamilton, *Federalist 70*, ed. Terence Ball (Cambridge: Cambridge University Press, 2003), 341.

²¹² Mitchel Sollenberger, “Presidential Studies, Behavioralism, and Public Law,” *Presidential Studies Quarterly* 44, no. 4 (December 2014), 762.

²¹³ Eric Posner & Adrian Vermeule, *The Executive Unbound* (New York: Oxford University Press, 2010), 206.

²¹⁴ James Madison, *Federalist 51*, ed. Terence Ball (Cambridge: Cambridge University Press, 2003), 252.

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