Recapturing the 'Aggressive Spirit': Legislative Reassertion Efforts, 1947-2002

Justin Peck
Washington, D.C.

M.A., University of Virginia, 2010
B.A. Brandeis University, 2005

A Dissertation presented to the Graduate Faculty of the University of Virginia in Candidacy for the Degree of Doctor of Philosophy

Woodrow Wilson Department of Politics
University of Virginia
August 2014

CONTENTS

CHAPTER 1
LEGISLATIVE REASSERTION

The American Constitution is not simply a blueprint for government. Its words are "performative" – they instantiate discrete *acts* (Austin 1975, 6). Justice Oliver Wendall Holmes describes the performative nature of the Constitution's words in this way:

> "[W]hen we are dealing with *words* that are also a constituent *act,* like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters" (*Missouri v. Holland* 1920; Italics in original).

As a "being," the Constitution pursues multiple aims: to provide for consensual self-government and political equality, to ensure free and fair elections, to protect civil and minority rights and to create a balanced system that mitigates the threat of despotic rule. Of the items on this list, the last was of central importance for the Founders of our system. The War of Independence freed Americans from the British Monarchy as well as from the influence of "royal governors." Appointed by the king, these governors wielded executive, legislative and judicial authority throughout the Colonies (Wood 1998, 156-157). Through their experience with the King and the system of royal governors, the Founders came to understand tyranny as a "form of government in which the ruler […] monopolized for himself the right of action" (Arendt 1963, 130). This fact, combined with a keen understanding of the history of Rome and the writings of Enlightenment philosophers, led the Founders to view the "accumulation of all powers, legislative, executive, and judiciary, in the same hands" as the "very definition of tyranny" (*Federalist 47*).

In keeping with this view, the constitution they designed separates and distributes power among different sources, each of which has enough autonomy to defend itself against intrusions from the others.[1] Together, separation, division and checking provide for a "government of laws and

[1] James Madison considered the separation of powers to be "the first principle of free government" (Quoted in Wood 1998, 152).

not of men" (John Adams quoted in Peek 2003, 98). By warning against the threat that centralization of power poses to free government, *Federalist 47* echoes Montesquieu's claim that tyranny arises when "the same man or the same body of principal men" make the laws, execute the laws, and judge violations of the laws. In such a system, "all power is one; and, although there is none of the external pomp that reveals a despotic prince, it is felt at every moment" (Montesquieu 1989, 156). Similarly, when John Adams described good government as an "empire of laws," he called attention to its foil: government in which power is exercised arbitrarily and without limitation (Quoted in Peek 2003). The looming specter of tyranny never ceased to concern the Founders because they believed that one potent source of this threat was part of the constitutional system itself: Congress.

The Founders viewed Congress as most likely to erode institutional defenses against the centralization of power, because "in republican government the legislative authority necessarily predominates" (*Federalist 51*). Congress has the power to write law, and members of Congress (MCs) are largely beholden to public opinion. Consequently, if the public demands action that would result in the unconstitutional aggregation of power by the legislature, members of Congress are unlikely to resist.[2] For much of American history, the presidency mitigated this threat. Through indirect presidential elections, the veto power, the president's charge to "preserve, protect, and defend the constitution," and by "vesting" all executive power within the office of the president, the Founders provided the executive branch with institutional tools to check threats emanating from Congress. Also, because early presidents lacked the resources and theoretical justification for exercising positive powers—directing, devising and/or implementing policy—they acted as "clerks" presiding over the system. Early presidents minded the constitutional store but they did not run it.

[2] According to Carey (1978), Madison feared that "Congress, using its enormous powers and prestige, acting as a force independent of society and imposing its will—much in the fashion of elected despots who presume to articulate the 'general will'—on the whole society" (163).

Reform legislation implemented during the New Deal altered the distribution of powers between Congress and the executive branch. In order to confront the dual crises brought on by depression and war, President Franklin Roosevelt argued that the executive branch must be enhanced so that the president could play a far more active role in governance. Accordingly, from 1932 to 1952, Presidents Roosevelt and Truman oversaw construction of an "institutionalized" executive branch and a sprawling administrative apparatus that was largely subsumed within it. As the head of an administrative apparatus rather than a single office, presidents who took office after FDR inherited positive governing powers not held by their predecessors. As presidents put these powers to use, the executive branch displaced Congress' predominance in the American constitutional order.

The presidency now represents the most potent threat to the system of checked, balanced and distributed powers pursued by the Framers. Indeed, Congress must now actively prevent its positive authority from being arrogated by the executive. MCs did not face the perpetual threat of institutional diminution prior to the emergence of the modern presidency. For this reason, the New Deal years represent an historical breakpoint between two eras: an early era in which the president managed the threat of legislative aggrandizement, and the modern era in which Congress performs this task.

One direct consequence of the president's rise to predominance is the fact that MCs today must take direct action to shore up the legislature's traditional policymaking and policy implementation responsibilities. They can no longer assume that governmental action is contingent upon enactment of legislation, because the president has the tools and incentives to act even if MCs do not. I will argue that direct action of this kind demonstrates Congress reasserting itself vis-à-vis the executive branch. Reassertion serves a "constitutional" purpose by formally delineating and regulating executive branch power. When reassertion is successful, MCs subvert the president's

ability to "claim the silences of the constitution" (Corwin 1984, 171). Successful reassertion also serves a "democratic" purpose by pulling questions about the scope and aims of governmental power from the executive branch into the legislative sphere. Policy developed and implemented within the executive branch reflects the president's political commitments and/or the technical judgments of bureaucrats. The policies that emerge from Congress, on the other hand, reflect the decisions of MCs who are ultimately responsible to constituents with a wide range of values and priorities. Reassertion affirms the American commitment to self-government by undermining modern "administrative" techniques. This is a distinction that I will expand upon below.

For these reasons, reassertion is a particularly important legislative activity. It is also an activity that political scientists have largely left unstudied. Instead, as the presidency and the administrative state have risen in status and power, political scientists have turned their attention to the exercise of unilateral executive power(s), the conditions under which Congress delegates power to the president and the way(s) in which Congress leverages oversight and investigations to monitor executive branch behavior. They have not undertaken systematic analyses of reassertion even though efforts to pass reassertion bills have generated some of the most contentious constitutional conflicts between Congress and the president during the last 60 years. In "Recapturing the 'Aggressive Spirit,'" I correct for this neglect by setting out to demonstrate the conditions under which Congress pursues reassertion legislation and the conditions under which bills of this type pass. I will also provide detailed studies of two meaningful periods of reassertion in order to illustrate how the battles over reassertion legislation play out in "real-time."

I. Defining and Describing Reassertion

In this analysis, reassertion is defined as a final vote on any *bill with the specific intent of bolstering Congress' positive, autonomous policymaking authority*. The outcome of interest upon which this study will focus is a *particular kind of bill*. When successfully passed, a reassertion bill allows Congress to claim policy formation and implementation responsibilities previously held by the executive branch. Reassertion bills strengthen Congress' institutional capacities to take the lead in designing and implementing policy. My primary aim is, therefore, to make clear how the substance of reassertion legislation affects the conditions under which bills of this type are pursued or passed.

Reassertion allows Congress to bring its particular institutional strengths—representation, openness and deliberation—to bear on policy. When Congress takes the lead in designing and implementing policy, members who represent marginal positions are afforded a platform and an opportunity to influence legislative outcomes. Additionally, policy outcomes reflect a consensus reached by lawmakers with a number of different interests at stake. The same cannot be said for policy made within the executive branch or by executive branch agencies. When the executive branch takes the lead, obedience is more important than consensus, secrecy is more important than openness, and universality is more important than specificity. Policies constructed and implemented by subject area experts working within the executive branch are insulated from the interests and priorities of parochial legislators. Policy outcomes are presented as the "embodiment of disinterested rationality" rather than solutions that reflect the input of a diverse and complex set of interests (Wolin 1989, 118). Reassertion is therefore democratic because it provides an opportunity for the people's representatives to deliberate and to craft policy that accommodates a wide range of views and desires.

Reassertion is pursued in two ways. First, Congress can "delimit" the executive branch by explicitly stripping it of formal policymaking or implementation powers. Reassertion through delimiting legislation thereby bolsters the legislative branch's role in governance by imposing new

constraints on executive branch authority. Delimiting legislation also articulates and regulates powers that were once left open to executive branch discretion. Finally, it establishes new confirmation or reporting requirements for executive branch administrators. When Congress reasserts in this way it gains access to and influence over areas of policy over which the president previously held sole or discretionary authority.

Congress also reasserts when it reforms internal structures and processes in ways that afford the legislative branch enhanced policymaking capacity, or that allow it to better contest the president's first-mover and information advantages. Reassertion through internal reform includes the creation of new oversight committees and new institutions for the production of policy-relevant information, increased committee staff that allows for the development of policy expertise, and efficiency enhancements that allow Congress to act more quickly on member preferences. By reasserting, Congress enhances its capacity for policy leadership by ensuring its independence from, and co-equal status with, the executive branch.

More concretely, if Congress were to enact a constitutional amendment prohibiting the president from entering into executive agreements without congressional authorization—as it attempted to do with the Bricker amendment in the early 1950s—then it has reasserted. In passing this amendment, Congress would have delimited the president's powers as "chief diplomat" while simultaneously bolstering its own position in the development and implementation of foreign policy. In 1973, Congress passed legislation regulating the president's power to deploy American troops abroad. In this way it reasserted by delimiting the president's powers as commander-in-chief while simultaneously positioning itself to play a positive role in the development and implementation of military policy. When Congress created the Congressional Budget Office and the Congressional Research Service—institutions aiming to provide MCs with policy expertise—it also reasserted. In

this case, Congress has bolstered its capacity for policymaking while simultaneously mitigating the president's first-mover and information advantages.

These examples of reassertion should distinguish it from the use of obstructive tactics aimed at preventing the president from single-handedly turning his political goals into policy outcomes. Reassertion is different and distinguishable from blocking strategies. For reassertion may block implementation of a particular policy or set of policies, but it does so in a way that has institutional implications for future presidents.

Those who examine the confirmation process, for example, make clear that MCs utilize dilatory tactics to stall the confirmation of judges and executive branch appointees. More specifically, this form of obstruction occurs when inter-branch conflicts motivated by divided government lead MCs to prevent administrators from implementing the White House's policy agenda. Delayed or blocked confirmations allow MCs to prevent those charged with carrying out the president's agenda from doing their jobs (McCarty and Razaghian 1999; Binder and Maltzmann 2009). We can also apply this distinction to recent examinations of the filibuster (Koger 2010; Lee 2009). Here again, blocking specific legislative proposals sought by the president will prevent implementation of his agenda, yet the filibuster does not bolster Congress' positive, autonomous role in the policy-making and implementation process. While blocking may prove to be a useful tool for opposing a *particular president*, it is much different from reassertion. A successful reassertion effort can, but need not, challenge the particular policy goals of a sitting president. It will, however, redistribute power from the White House to Congress in a way that applies to the sitting president as much as to those who follow him in office.

For a more concrete example of the difference between reassertion and obstruction, consider the Foreign Intelligence Surveillance Act (FISA) passed by Congress on October 12, 1978. FISA emerged as a legislative response to revelations published in a report from the Senate Select

Committee to Study Government Operations with Respect to Intelligence Activities (the Church Committee). Led by Idaho's Democratic Senator Frank Church, this committee spent 15 months investigating activity undertaken by America's intelligence agencies. Its final report documented widespread abuse of the president's unilateral authority to electronically wiretap American citizens. After demonstrating that "warrantless electronic surveillance in the name of national security has been seriously abused," the report argues for new constraints on this form of executive branch power (Senate Report 95-604 1977, 7; Scott 2013; Banks and Bowman 2001; Yoo 2010; Rudalevige 2006). On October 12, 1978, Congress responded to these revelations by passing FISA. In so doing, MCs deliberately "curb[ed] the practice by which the executive branch may conduct warrantless surveillance on its own unilateral determination that national security justifies it" (Senate Report 95-604 1977, 8). Through FISA, MCs also designed and implemented new national security policy.

FISA also imposed internal and external checks on the president's surveillance powers by requiring the president—under threat of criminal sanction—to "secure a warrant before engaging in electronic surveillance for purpose of obtaining foreign intelligence information." It specified that such warrants would be granted only after Department of Justice officials appear before a special FISA court—legislated into existence by the bill—to certify "that the information sought to be obtained is 'foreign intelligence information' […] and that the purpose of the surveillance is to obtain such information." FISA also obligated the Attorney General to "make a finding that the requirements for a warrant application have been met before he authorizes the application," while limiting the targets of such surveillance to "foreign powers" or "agents of foreign powers." Finally, FISA required the Attorney General to provide semi-annual reports to the House and Senate Intelligence and Judiciary Committees documenting the number of applications for orders approving FISA searches, as well as the number of those searches "granted, modified, or denied" (CRS Report RL30465 2007; Banks and Bowman 2001; Banks 2007; Scott 2013). Once enacted,

FISA constituted "the exclusive means by which electronic surveillance […] and the interception of domestic wire and oral communications may be conducted" (Senate Report 95-604 1977, 6).

When they passed FISA, MCs did not simply seek to inflict political punishment on President Ford—in office during debate over the law—or President Carter—who signed the law. They aimed to delimit the general authority available to *all* future presidents by identifying and regulating what had been a discretionary presidential power. They also affirmed the legislative branch's ability to competently design, develop and implement national security policy. FISA represents legislative opposition to executive branch authority writ large. It is certainly true that not all reassertion efforts are as important or high profile as those resulting from the Church Committee Report, they do all result in reforms that outlast the tenure of a single president.

Reassertion is also distinguishable from legislative oversight. An important line of research demonstrates that Congress' oversight and investigatory authority allow it to monitor and potentially correct or reverse executive branch decisions. Kriner and Schwartz (2008) also provide evidence suggesting that investigations can be used to inflict political punishment upon a sitting president. Even if they are correct, their findings to not address whether the oversight process leads to actual policy change. Hearings may bring to light evidence of executive branch incompetence and abuse, and in the process they *may* generate a congressional reassertion effort. Then again, widely publicized hearings may simply serve as a publicity opportunity for media-hungry MCs. Accordingly, oversight hearings and investigations do not necessarily represent a legislative challenge to the president's institutional status within the larger constitutional order. These types of actions may precede or motivate reassertion, but like the blocking strategies highlighted above, they might also simply be a mechanism for damaging the political standing of an individual president. In short, opposition to a particular president is not synonymous with opposition to the presidency-centered order. We should not conflate these two different forms of legislative behavior.

By formally redistributing and constraining the executive branch and bolstering Congress' own positive, autonomous policymaking powers, reassertion subverts the presidency-centered order brought into existence by the New Deal. Legislative behavior of this kind also highlights how MCs work together on behalf of shared "institutional" interests, and how they challenge the president's status as America's "Chief Legislator." In the pages to follow, I argue that a particular combination of political conditions predicts when MCs will pursue and successfully pass reassertion legislation. I also show how these conditions manifest during specific reassertion efforts. My central argument stipulates that reassertion is systematically more likely when the following conditions are met:

(1) the president is politically and/or institutionally weak;
(2) the majority party in Congress is large and cohesive
(3) the bill wins bipartisan support

I present results demonstrating that reassertion is possible. The incentives for MCs to pursue reassertion and the capacity for them to enact bills of this type are constrained by presidential predominance, but both incentives and capacities can and do align at particular moments.

I will discuss the theoretical justification for these empirical expectations below, as well as my strategy for testing them in the pages to come. Before doing so, however, I will explain how the argument that I make, and the findings that I present, add to what we currently know about legislative-executive relations in the modern era. In the course of this discussion, I will also make clear how my argument addresses untested theoretical assumptions made by two important streams of extant research.

II. A (BRIEF) CONSIDERATION OF EXISTING LITERATURE

In each of the empirical chapters to follow, I make explicit where I draw on and depart from arguments that precede my own. In this section, therefore, I aim to provide a broad overview of the existing work that is most relevant to my analysis. To complete this overview I group and categorize studies in order to provide a general description of the academic debate to which I will contribute. I

also identify why I am examining reassertion, and why my claim that reassertion is conditional on the factors stipulated above is relevant to our understanding of congressional-executive interactions in the modern era.

At different points in American history, political actors have analogized the operation of the constitutional system to scientific theories with no necessary relationship to politics. The Founders, for example, had Isaac Newton in mind when they went about drafting the Constitution. The system they envisioned drew on Newton's Third Law of Motion which states: "when one body exerts force on a second body, the second body simultaneously exerts a force equal in magnitude and opposite in direction as the first body." The Founders believed that constitutional government would survive as long as power was distributed to each of the three branches such that they would exist in a rough balance. The Constitution pursues balance by setting the branches into competition with one another so that if one branch exerted too much force, it would face immediate pushback from one or both of the other two. In this way, the Founders proposed a constitutional system resembling a "machine that would go of itself" (Kammen 1986). Stated in the language of the time, "the operations of a government are in no small degree mechanical; and the adjustment and balance of its powers are as much mechanical as the adjustment of the principles and power of a machine (Morse 1824, 400). Any effort to arrogate power undertaken by one of the three branches would be met with a near mechanical, equal and opposite response from the others.

From the vantage point of today, the Founders' trust in Newtonian balancing may seem anachronistic. Contemporary political scientists and legal scholars document a litany of ways in which Founding-era assumptions about inter-branch competition have broken down (Posner and Vermeule 2010). At the same time, however, some important analyses of Congress adopt a Newtonian position in the course of examining the links between inter-branch conflict and partisan conflict. The "ally principle" posited by Epstein and O'Halloran (1999), for example, assumes that

MCs afford the executive branch more discretion under unified government and less under divided government. In this case, the level of party conflict "mechanically" determines the level of inter-branch conflict. In addition, the analyses focusing on obstruction that I discuss above begin with the assumption that divided government leads MCs to rely on blocking tactics. The force-counterforce dynamic described here leads to gridlock as the president advocates for policy and his opponents work to stymie new enactments. In these studies, partisan conflict and inter-branch conflict operate in a fashion similar to the self-perpetuating machine described above.

Reassertion is one product of our separated system not explicitly discussed by today's Newtonians. Yet, by extending the logic of this argument to the behavior I describe, we reach a similar conclusion. Reassertion explicitly bolsters Congress' institutional status vis-à-vis the executive branch and delimiting legislation formally constrains executive branch authority. This form of lawmaking represents yet another potential strategy to employ for MCs who seek to handicap the president. The Newtonian position leads us to the conclusion that MCs will avail themselves of this strategy in order to gain partisan advantage. This line of argumentation gives us reason to believe that reassertion *should* happen more frequently under divided government. MCs may not always choose to pursue reassertion when they face an opposition party president. But if partisan conflict is the oil that makes today's constitutional machine "go of itself," and if MCs choose to employ this legislative strategy, then it should be a product of inter-party conflict.

I depart from the Newtonian position by claiming that reassertion is conditional on bipartisan cooperation. The kind of inter-branch conflict identified and analyzed below runs contrary to the commonly invoked assumption that a president's co-partisans in Congress "stand little to gain from attacking […] their partisan ally in the White House and instead risk electoral consequences from a tarnished party label" (Kriner 2009, 784). I demonstrate that when the president is weak, reassertion is an appealing strategy for those in the president's party. If the party-

based, inter-branch conflicts discussed by Newtonians represent Congress' only strategy for contesting executive branch power, then we have little reason to believe that those in the president's party will support reassertion. If, however, we see that MCs will work together across party lines to contest presidential power, then we have some reason to doubt the universal applicability of the Newtonian position.

The Founding-era commitment to Newtonianism fell out of favor with political actors themselves at the outset of the 20th century. Those affiliated with the Progressive Movement called on the citizenry to forego its commitment to constitutional balance because it was ill adapted to address the political, social, and economic dilemmas of an industrializing country. Progressives instead posited the constitution as more like a species fighting for survival in a hostile environment than a self-perpetuating machine. Accordingly, they analogized constitutional politics to Darwin's theory of natural selection. In the words of Woodrow Wilson (1908), "the government of the United States was constructed on a […] sort of unconscious copy of the Newtonian theory of the Universe. In our own day […] we consciously or unconsciously follow Mr. Darwin" (54-55).

On the Darwinian view, constitutional forms mattered less than government's ability to respond to what Wilson called the "the sheer pressure[s] of life" (1908, 53). If the constitution prevented government from meeting social and political challenges—as Wilson and other Progressives claimed that it did—then it would not long survive. As I describe in more detail below, the Progressives believed that the president alone had the power and potential to meet these challenges. For right now, it is simply important to understand that Darwinians called on the president to push the boundaries of the constitutionally acceptable, and to prioritize action over fealty to traditional constitutional constraints.

An important line of contemporary research on the presidency offers us a Darwinian perspective on the modern executive (Moe 1999; Howell 2003; Posner and Vermeule 2010). This

scholarship treats the president as the central political actor in our constitutional system. Contemporary presidents are "held responsible by the public for virtually every aspect of national performance," so they must "think in grander terms about social problems and the public interest" (Moe 1993, 363). To meet public expectations, presidents pursue power, use the institutional tools at their disposal to maximum effect, and develop new strategies for promoting and protecting their influence over policy development and implementation. The modern president is well suited for these tasks because he retains first-mover and informational advantages over Congress. In addition, the veto power allows him to significantly minimize Congress' opportunity to reverse or contest executive branch authority even as the collective action costs plaguing Congress render it particularly ill-suited for contending with a president who has both the incentives and ability to act unilaterally (Moe 1999; Howell 2003; Posner and Vermeule 2010).

The Darwinians present us with an argument that rules out reassertion almost entirely. In the words of Howell (2003), MCs may "regularly lament the abuses of an imperial presidency," but they are unlikely to do much to reverse them (111). This claim is echoed in a variety of recent studies. Yet, reassertion is one mechanism for counteracting the exercise of presidential power, and Congress *does* reassert. The Darwinian perspective affords us no way of understanding when or why it happens. My claim that reassertion is conditional on the three factors outlined above offers a more nuanced account of legislative-executive interaction in the modern era. Moreover, the fact that Congress does reassert suggests that MCs are not as unconcerned with Congress' institutional standing as the Darwinians would have us believe.

While they disagree on the issue of when and if Congress will formally challenge the president's institutional status, both the Newtonians and the Darwinians agree that the presidency is predominant today. The president's co-partisans are discouraged from challenging his status because he provides them with political benefits. As a consequence, the president has direct influence what

happens in Congress. MCs do not have an equal amount of influence over the president's decisions. The contemporary president can also act unilaterally in pursuit of preferred policies. In this way, he has taken on "legislative" powers. Congress, on the other hand, does not threaten to assume responsibility for executive branch functions. In short, we have entered a presidency-centered order in which the preferences and behaviors of those in the legislative branch are, at least in part, shaped by the president himself. This fact helps to explain both why reassertion is necessary and why it is conditional.

III. Recapturing the Aggressive Spirit in a Presidency-Centered Order

Political orders play an important role in historical approaches to the study of conflict and change in American politics. While there exists no single, agreed upon definition of a political order, those who invoke the concept describe an institutional arrangement generating (a) behavior that is patterned or regularized; and (b) stable, coherent purposes and incentives for those acting within it. According to Orren and Skowronek (2004), a political order is a "constellation of rules, institutions, practices, and ideas that hang together over time" (15). Lieberman (2002) defines a political order as a "regular, predictable, and interconnected pattern of institutional and ideological arrangements that structures political life in a given place at a given time" (702). Similarly, Plotke (1996) describes a political order as a "durable mode of organizing and exercising political power at the national level" (1). Finally, Griffin (2014) treats it as a "relatively stable patter[n] of institutional interaction with respect to basic aspects of the Constitution" (15). "[E]ach element of our constitutional order stands in a reciprocal relationship to the others," he goes on to say, and "a change in any one can cause a change in the others" (Griffin 2014, 15).[3] The institutional changes that ushered in the modern presidency-

[3] Also see King and Smith (2005). They define an order as a coalition of "state institutions and other political actors and organizations that seek to secure and exercise governing power in demographically, economically, and ideologically structured contexts that define the range of opportunities open to political actors" (75)

centered order altered the range of action available to the president and Congress, thereby altering their relationship to one another.

The Congress-centered political order generated a particular set of governing practices adhered to by both MCs and the president. In this case, agenda setting and policymaking occurred within the halls of the legislative branch alone. Once a bill became a law, the tasks required for implementation fell to individuals within the states. The party system played a crucial linking function between those in the states and those in Congress as party-based patronage positions enabled MCs to empower officials at the local and state level to put federal policy into practice. In the Congress-centered order, MCs and the president both operated in a decentralized, non-administrative system. Neither lawmakers nor the president could turn to a technocratic policymaking elite for help at either the development or the implementation stage of the policy process.[4] Nor could they expect a centralized administrative apparatus to coordinate federal policy implementation. Under these circumstances, the president lacked the resources and institutional capacity to take positive action on is own. Instead, he either followed Congress' lead or stood in Congress' way. MCs chose the policy agenda, designed policies and then relied upon local officials to enact them. The party-dominated presidential nomination system reinforced this system by forcing presidential candidates to forge and maintain relationships with MCs (See: Ceaser 1979).

The rise of a presidency-centered order has altered expectations and behaviors among the public, MCs, and the president. The public now holds modern presidents responsible for "virtually every aspect of national performance" (Moe 1993, 363). Presidents, unlike MCs, are held responsible for the state of the nation, and judgments about their "leadership" inform this kind of assessment (Moe 1993, 363; Skowronek 1997). Recognizing these facts, presidents seek maximum control over the policy outcomes that will come to determine their political fates. Public expectations, in turn,

[4] In the words of Epstein and O'Halloran (1999, 5), "what divides the modern administrative state from its predecessors is the delegation of broad decision-making authority to a professional civil service."

lead modern presidents pursue an institutional structure that is autonomous, centralized and hierarchical. These features of institutional design afford a president the maximum control over the issue agenda, policy formation, and policy implementation. The modern president is hesitant to cede institutional power because as it disappears, so does a president's control over his own fate. Modern presidents may disagree on particular policies but they share a common set of institutional preferences (Howell 2013).

Unlike in the Congress-centered order, MCs today cannot treat the president as Congress' agent. The president is no longer wholly dependent on Congress for enactment of his policy goals. In fact, MCs themselves see the executive branch as the positive force in our system and their decisions are often driven by action that the president has already taken. The president's co-partisans in Congress find this arrangement acceptable because they believe that their own political fates are tied to successful presidential administration (Gronke, Koch, and Wilson 2003; Lebo and O'Geen 2011; Levinson and Pildes 2006). In the words of Lebo and O'Geen (2011), "the victories/losses that members of Congress expect voters to reward/punish are those of the central political actor in American politics, the president" (5). As a consequence, a presidents' co-partisans in Congress are unlikely to challenge his leadership if doing so will damage the party label each relies upon for political survival (Kriner 2009).

In addition, members of both parties have come to accept that in the modern era, the president "proposes" and Congress "disposes." Neustadt (1955), for example, reports how one member of the House of Representatives admonished the Eisenhower Administration in the following way: "[d]on't expect us to start from scratch on what you people want. That's not the way we do things here—*you* draft the bills and *we* work them over" (1015; [italics in original]). The president's co-partisans in Congress look to him to set a policy agenda and to advocate for its enactment. Those in the opposition party, meanwhile, are forced to consider how best to block

implementation of this agenda. Under these circumstances, argues Huntington (1965), "Congress can defend its autonomy only by refusing to legislate, and it can legislate only by surrendering its autonomy" (7). Reassertion therefore subverts the "reciprocal" relationship between Congress and the president generated by the presidency-centered order. Reassertion enhances Congress' positive authority at the expense of the president while delineating and regulating his authority.

When they reassert, MCs may not be acting predictably but that does not mean that they are acting altruistically. MCs seek reelection above all other goals (Mayhew 1974). Indeed, Mayhew (1974) persuasively demonstrates that we can understand the daily activities of individual MCs, the emergence of intra-congressional institutions, and the policy outcomes emerging from Congress if we simply begin by assuming that they all derive from the reelection imperative. Only once the reelection imperative is met, do they have room to pursue other goals (Weingast and Marshall 1988; Krehbiel 1992; Adler 2002; Fenno 1973; Arnold 1990; Schickler 2001). We should not expect MCs to pursue reassertion at the expense of their own political livelihoods. With this claim in mind, my first aim is to consider when reassertion and individual self-interest converge. In other words, if MCs in a presidency-centered order believe that their own fates are determined (at least in part) by supporting/obstructing the *president's* policy agenda, when will they be most likely to pursue reassertion?

The political benefits that may redound to MCs by pursuing reassertion are most likely to be accrued when the president is politically/institutionally weakened. Over the course of a president's term, members of the opposition party in Congress must decide whether to obstruct or reassert. Obstruction allows a president's opponents to block implementation of his agenda, but it leaves untouched the president's institutional authority. Reassertion, on the other hand, can serve to proscribe and regulate this authority. The opposition party is more likely to choose reassertion over obstruction when public doubts about presidential leadership undermine any justifications that the

president may offer for retaining institutional predominance. For example, opposition party Democrats supported the War Powers Resolution (WPR) instead of just an effort to block implementation of President Nixon's military policy *because Nixon's weakness called into question his institutional status*. I cannot predict when, precisely, MCs will pursue legislation similar to the WPR. But I but I do claim that legislation like this it is more likely to succeed at moments of presidential weakness.

Weakness also incentivizes support for reassertion among members of president's party. When the president is politically unpopular, reassertion offers his co-partisans in Congress an opportunity to distance themselves from his administration. In addition, reassertion is one way those in the president's party can signal that they intend to take ownership over a particular area of policy rather than simply acting on the president's agenda. Meaningful opposition to the president through reassertion is one way in which a president's co-partisans in Congress can distinguish themselves from the party brand he is responsible for creating. Taken together, these claims suggest that presidential weakness negates any benefit that MCs may win from deferring to his leadership. In the absence of these benefits, MCs are less likely to adhere to the predictable modes of behavior generated by Congress' relationship to the executive branch in the presidency-centered order.

While the political motivations for reassertion generated by presidential weakness are important, they are not the only explanatory factors I will explore. MCs today expect the president to take a lead role in policy design and implementation. Legislators benefit from such an arrangement because if executive branch administrators are responsible for dealing with technical policy details, they will have more time to spend on activities more relevant to their own reelections. It also allows them to play the "blame game" if policy outcomes prove to be unpopular (Griffin 1991, 688). Successful reassertion obligates MCs to assume policy development and implementation responsibilities that were once the president's alone. For this reason, we must also consider when

MCs are more likely, on average, to pursue a more active leadership role in policy formulation and implementation. Stated differently, I claim that because "substantive issues and questions of institutional roles are continually entangled," we cannot examine one without considering the other (Arnold and Roos 1974, 410).

In the presidency-centered order, MCs will act to reclaim positive authority over the design and implementation of policy when two conditions hold. First, the majority party must be able to agree on a future course of policy. Altering the institutional relationship between Congress and the president carries with it a certain amount of risk. Should policy over which MCs fight to become responsible fail, they will be blamed. If those in the majority disagree over what specific policies will look like once Congress reclaims authority over them, they are unlikely to challenge presidential leadership. In the analysis below, I argue that ideological cohesion serves as a proxy for policy preferences. Agreement on a future course of policy is, therefore, more likely when the majority party is more ideologically cohesive.

Even if they can agree on the benefits of reassertion, majority party MCs may still opt not to pursue it if those in the minority stand a good chance of successfully defeating individual proposals. Stated differently, majority party MCs will only devote time and energy to reassertion bills if they can be confident that such bills will pass. For this reason, the overall size of the majority party is important to my argument. When the majority is large relative to the minority, it can be more confident that those bills it chooses to bring to a final vote will pass (Gailmard and Jenkins 2007). We are thus more likely to observe successful reassertion as the majority party grows.

Finally, MCs in the majority today cannot be sure that bolstering Congress positive authority will put them at a disadvantage if they are in the minority tomorrow. Such uncertainty may produce enough inertia to keep majority party MCs from supporting reassertion. A similar argument applies to those in the minority. By supporting reassertion, they may be empowering congressional

majorities to enact policy that would otherwise have been dealt with through the executive branch bureaucracy. Policy enactments are hard to reverse but unilateral presidential action can be reversed as soon as a co-partisan takes the White House. Minority party MCs may, therefore, prefer to block legislative reassertion attempts.

For these reasons, the institutional changes wrought by reassertion may prove too significant to overcome the transaction costs associated with them. Transaction costs of this kind emerge in a variety of political venues, but they all reflect the following idea: "social adaptation to institutions drastically increases the cost of exit from existing arrangements" (Pierson 2000, 491-492). Applied in this context, transaction cost theory suggests that even though the pre-reassertion status quo may prove inefficient to members of both parties, they may still avoid altering it due to fears that any new arrangement will be worse. One way to minimize political risk, however, is to distribute it to those against whom one is competing. If a large and cohesive majority party can also win "buy-in" from opposition party members, they will be more likely to pursue reassertion. It is for this reason that bills of this kind are conditional on majority party strength *and* bipartisan cooperation. Reassertion is, on average, more likely when supported by members of both parties. When successfully enacted, reassertion legislation provides a "public good" to all members.[5]

While he does not address reassertion explicitly, Mayhew does give us some reason to believe that bipartisan support for measures that bolster Congress' institutional prerogatives are not impossible. In the second half of *Congress: The Electoral Connection*, Mayhew argues that "if all members did nothing but pursue their electoral goals Congress would decay or collapse" (Mayhew 1974, 141). In order to prevent decay or collapse, MCs engage in an activity that he calls "institution maintenance," and one manifestation of institutional maintenance is action intended to "check the modern presidency" (Mayhew 1974, 158). Unfortunately, Mayhew does not offer any specifics about

[5] The benefits won through reassertion are non-rivalrous and non-excludable, and they are "indivisibly spread among the entire community, whether or not individuals desire to consume" them (Samuelson 2010, 337).

the form that such checks will take and, as a consequence, his claim is confounding. The individualistic pursuits Mayhew attributes to MCs—credit-claiming, position-taking, and advertising—are activities designed to shore up the individual's short-term goals. Institution maintenance, on the other hand, is a future-oriented goal that benefits all members of Congress. The benefits to be gained through "institution maintenance" are shared.

Mayhew thus begins his work by presenting us with almost entirely self-interested MCs, and then introduces us to members who defy this description. Moreover, his discussion of institutional maintenance does not address when or why the average MC would choose to support action that bolsters congressional capacity at the expense of the executive branch. This is particularly important because, as I have already discussed, reelection is directly influenced by the president's use of positive power. Some scholars have taken these factors as evidence to support the claim that action on behalf of future-oriented, collective goods through reassertion is something Congress simply does not do. They argue that the collective problem in this area of policy is so severe that it almost entirely precludes reassertion (Moe 1993; Moe and Wilson 1994; Bradley and Morrison 2012; Posner and Vermeule 2010).

The data I collect and analyze belies such a claim. The legislative action that I categorize as reassertion represents one specific way in which Congress engages in institutional upkeep. In the presidency-centered order, Congress is always at risk of losing—or sacrificing—its power to a president who is always pursuing power. Reassertion is one way in which MCs resist and reverse this trend. Yet, for all of the reasons I have described above, scholars have overlooked this form of lawmaking because the substantive aims pursued by reassertion do not fit neatly into common assumptions about how MCs behave. The legislative behavior I describe is characterized by MCs working together to contest presidential leadership, and to pursue a positive role in policy development. It is certainly true that in the presidency-centered order, the institutional relationship

between Congress and the president discourages this kind of lawmaking. Yet reassertion laws do pass. I claim that they this outcome is more likely under the following conditions:

(1) the president is politically and/or institutionally weak;
(2) the majority party in Congress is large and cohesive;
(3) the bill wins bipartisan support

In order to further justify these claims, Chapter 2 provides a description of the transition from a Congress-centered to a presidency-centered order. In the course of this argument I will make clear why the contemporary relationship between Congress and the president discourages reassertion. I will also make clear how the content of reassertion bills contributes to the influence of the three conditions I have described.

IV. CONCLUSION

By examining legislative reassertion, we gain insights into a substantively important but understudied realm of legislative behavior. To date, political scientists have dealt with issues tangential to reassertion in one of two ways: by simply assuming that Congress lacks the will and capacity to compete with a power-pursuing president; or to assume that inter-branch conflict is catalyzed by partisan conflict.

In this analysis I offer a different approach. First, I define a previously neglected area of lawmaking and I compile a data set of legislation that comports with this definition. Second, instead of assuming that MCs will not compete with a predominant president, I make clear how the presidency-centered order makes reassertion *conditional*, not *impossible*. Third, instead of assuming that (a) MCs simply lack the motivation to reassert or (b) are motivated only by partisanship, I perform a series of empirical tests to determine the conditions under which reassertion is more/less likely. Finally, I call attention to a substantively important area of policymaking. It is through reassertion that MCs pursue ends that are vital to the maintenance of a balanced constitutional regime, as well as

to popular self-government. As I argue in the next chapter, the conditions under which reassertion is pursued follow directly from the substantive goals of this kind of legislation.

In the chapters to come, I explore these claims in a variety of ways. In Chapter 3, I undertake a series of statistical tests that aim to focusing on overall reassertion activity—the total number of reassertion bills voted on during each chamber year from 1947-2002—as well as successful reassertion—the probability that Congress will successfully pass one or more reassertion bills during a given chamber year. By comparing attempts and successes, I am able to distinguish the conditions that led to reassertion from those instances in which MCs *could have* passed a reassertion bill but did not. In Chapter 4, I examine individual level behavior by focusing on the roll-call votes for the bills in my data set. In this chapter I intend to further substantiate my argument by focusing on how the president's political weakness and an individual member's ideological position influence his decision to vote for or against a specific reassertion bill. Then, in Chapters 5 and 6, I explore how these empirical claims are borne out "in real time" by providing detailed examinations of the failed effort to pass the Bricker Amendment in 1954 as well as the successful enactment of the War Powers Act in 1973. Before getting into the empirical analysis, however, Chapter 2 further explores how the substantive aims of reassertion legislation influence the political conditions under which they are pursued and passed.

CHAPTER 2
SUBSTANCE AND ACTION IN A PRESIDENCY-CENTERED ORDER

In their 2006 article "exhorting" those in the subfield of American Political Development (APD) to "engage more fully with Congress," Katznelson and Lapinski highlight the need for a "robust and systematic approach to the content of lawmaking." The aim of such an approach is to provide "testable propositions about how and when the substance of policy can actually affect lawmaking" (Katznelson and Lapinski 2006, 245). Chapter 1 heeds their exhortation by providing the framework for an argument that links policy content, MC behavior and the emergence of the presidency-centered order. Stated in general terms, my central claim is that political development within the American constitutional order—the emergence of the predominant presidency—influences the "preferences and behavior" of members of Congress (Katznelson and Lapinski 2006, 245). The conditions under which MCs pursue and successfully pass legislation contesting presidential predominance are a product of the reciprocal relationship between Congress and the executive branch in the presidency-centered order. The empirical analyses to follow will describe and test a series of propositions specifying the conditions that are systematically linked to reassertion.

My examination also provides a novel perspective on the "status of liberalism" in the United States (Katznelson and Lapinski 2006, 247-249). By delimiting executive branch power, reassertion legislation reaffirms the United States' long-standing commitment to governance by clearly articulated and widely "known" legal statute. In the presidency-centered order, governmental action is increasingly undertaken on the president's discretionary power, without debate and in the absence of enabling statute. Reassertion works against this trend. Through these bills, Congress clearly articulates and regulates both governmental and presidential power, thereby reaffirming its own ability to develop and implement law and to check the executive branch itself. In this context, reassertion serves a "constitutional" purpose.

To be clear, even though successful reassertion generates outcomes that I characterize as "constitutional," I am not arguing that enactment of such legislation is a wholly high-minded affair. The presidency-centered order exists because MCs derive political benefits from this institutional arrangement, and a significant amount of research demonstrates that they willingly transfer legislative authority to the executive branch. In addition, I argue that one precondition for successful reassertion is presidential weakness. As I argued in the previous chapter, when the president is weak, MCs can no longer expect to benefit from deference to his institutional standing. In short, therefore, the constitutional ends generated by reassertion are subordinate to judgment by MCs about how best to serve their own political best interests. This fact does not invalidate the substantive significance of the bills I study. Instead, it reflects a central assumption made by the Founders themselves: that the "private interests of every individual may be a sentinel over the public rights" (*Federalist 51*).

Reassertion legislation also aims to ensure that governmental action in particular areas of policy is only undertaken after being subjected to the formal legislative process. Policy enacted through unilateral presidential action, or by administrative means, reflects the priorities of two constituencies: the president and the administrators. Policy enacted by Congress, on the other hand, makes it possible for a much broader range of constituencies to be represented in any new enactments. Lowi (1985) argues, "since 1946, part of the test of good government has been productivity—service delivery, of what, to whom. Representation continues to be important, but the test of service delivery now outweighs it" (51). By legislating policy decisions out of executive branch and the administrative state and making Congress responsible for them, reassertion legislation harkens back to this older criteria for judging government: whether "due process" was "observed in the adoption of important policies" (Lowi 1985, 51). In this way, reassertion

legislation also pursues "democratic" ends. Rule by articulated law and representation both represent fundamental aspects of the American "liberal tradition." Reassertion legislation bolsters both.[6]

More specifically, reassertion bills pursue "constitutional" ends by redistributing power away from the executive branch while bolstering congressional capacity to design and implement policy independent of the president's institutional preferences. They provide for "articulated governance"—government action justified through the enactment of formal legal statutes—by delineating and regulating the range of action available to Congress, the president and the bureaucracy. Such action is necessary today, because the institutional capacity available to modern presidents allows them to act as though they have a "legal right to do whatever the needs of the people demand, unless the Constitution or the laws explicitly forbid him to do it" (Roosevelt 1913, 357). By formally proscribing and regulating presidential power, reassertion legislation shrinks the president's opportunities to govern through the bureaucracy, or on his own unilateral authority. Reassertion also demonstrates the process by which the legislative branch uses its positive institutional authority in order to prevent the president from monopolizing the power to act.

Reassertion bills pursue "democratic" ends when they either mandate that policy development occur within Congress rather than the agencies that comprise the administrative state, or bolster Congress' capacity to provide for policy leadership. When policy is designed and implemented within the executive branch alone, "administration" trumps "politics." Administrative decisions reflect the political/institutional priorities of the president as well as the judgments of bureaucrats or technical experts who rely on "objective" or "scientific" criteria. The public and its representatives are largely excluded from this form of policymaking. Instead, they become passive observers who hold the president accountable rather than participating in the construction of policy.

---

[6] Huntington (1981) identifies these principles as component parts of the "American Creed." In his words, the "essence of constitutionalism is the restraint of governmental power through fundamental law. […] The essence of democracy is popular control over government, directly or through representatives" (33)

Administration offers the public few points of access to the process of policy development. Presidents, in turn, become "managers" who are responsible for acting on the "public good" even if the public is not directly aware of it (Kagan 2001, 2250).

When policy is developed in Congress, the norms and priorities adhered to are those associated with "politics" rather than "management." The decisions of MCs, unlike those made within the administrative state, are open for the public to see. They also must be reached through consensus and after deliberation and debate. Openness and deliberation, in turn, lead MCs to consider the preferences of outside interests before making decisions. It is not the case that all constituents wield an equal amount of influence over the decisions of MCs. Yet, the potential for outside participation obligates MCs to consider perspectives that do not always meet the same "objective" or "technical" criteria guiding administrators. The central point is that by forcing a change in the venue in which policy is developed, successful reassertion brings a different—and potentially broader—set of interests to bear on legislative enactments. Unlike presidents, these interests are not always "think[ing] nationally" because they represent specific groups, regions, or sectors of the public (Arnold 1992; Howell, Jackman and Rogowski 2013; Manin 1997). In this context, reassertion meets the political needs of MCs by allowing them to "represent" organized publics. It undercuts the president's preferences because policy is no longer designed, first and foremost, with "aggregate" outcomes in mind.

In order to fully explore how the content of reassertion legislation influences the conditions under which it is accomplished, Sections I, II and III of this chapter describe the transition from a Congress-centered to a presidency-centered order. In the process, I make clear how these bills subvert norms of governance associated with our current constitutional regime. In Sections IV and V, I further expand upon the substantive aims of reassertion legislation. In particular, I focus on how the constitutional and democratic aims of these bills run contrary to the institutional

preferences of modern presidents. For it is in the conflict between MCs and the president that I generate the testable predictions guiding my empirical analysis.

I. A "MODIFIED" SYSTEM OF SEPARATED POWERS

Constitutional governments consider the distribution and use of power in light of what deal with the Wolin (2004) calls the "'R's: restraints upon power, recognition or authorization of sufficient power to govern effectively, and regularization or non-arbitrariness in the actual exercise of power" (404). In the American political tradition these "three R's" manifest in institutional structures that provide for the separation, checking and balancing of powers. Separation, checking and balancing represent the "dominant principle of the American political system" (Wood 1998, 449). As Madison argued, they comprise the "the first principle of free government" because they enable the government to "control the governed" while "oblig[ing] it to control itself" (Quoted in Wood 1998, 152; *Federalist 51*).

Despite the important role that separation, checking and balancing play in the operation of the "three R's," they represent an "area of political thought in which there has been extraordinary confusion in the definition and use of terms" (Vile 1998, 2). More specifically, scholars and practitioners frequently conflate these ideas even though they are not synonymous. A "purely" separated system is one in which each branch of government is assigned a function and then strictly prohibited from encroaching upon or performing those tasks assigned to the others (Vile 1998, 13). Checks and balances, on the other hand, describe a particular constitutional design in which each branch of government is "given the power to exercise a degree of *direct* control over the others by authorizing it to play a part, although only a limited part, in the exercise of the other's functions" (Vile 1998, 18).

The American constitution does not rigidly partition all functions, but instead allows power to flow between branches. Indeed, with the exception of those powers strictly enumerated and

assigned to each branch by the constitution itself, the locus of governing authority on policy questions is decided through the political process. Explaining this design scheme in *Federalist 37*, Madison states that "experience" led the Founders to recognize that "no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces—the legislative, executive, and judiciary." Linked to this claim is Madison's belief that no "constitutional discrimination of the departments on paper" will provide "sufficient security against the encroachments of the others." "Experience," Madison argues, "taught us a distrust of that security" (Quoted in Vile 1998, 169). Recognizing their own inability to perfectly align functions with branches, the Founders instead designed a system in which governing power moves fluidly between Congress, the courts, and the presidency. Recognizing that "parchment barriers" between branches would not ensure a healthy separation of powers, the Founders imbued each branch with a mechanism for preventing excessive centralization of power.

Manin characterizes this combination of power-sharing and power-balancing as a "modified form of the functional separation of powers" (1994, 31). "Being authorized to exercise a part of the function primarily assigned to another," he argues, "each branch can inflict a partial loss of power to another if the latter [does] not remain in its proper place" (Manin 1994, 57). One contemporary manifestation of this scheme is seen when MCs decide to develop policy internally, to delegate policymaking authority to the executive branch, or to reclaim power from the executive branch (See: Kiewiet and McCubbins 1991; Epstein and O'Halloran 1999). This choice demonstrates that power is shared, protected, checked, and fought over. For example, over the course of American history the power to declare and wage war has moved in between the legislative and executive branches (Zeisberg 2013). Members of Congress have, at times, acquiesced to a president's argument that his role as Commander-in-Chief empowers him to initiate hostilities. At other times, MCs have debated and passed legislation to bolster Congress' powers over war making by explicitly cabining the

president's. Such efforts generally incite determined executive branch opposition. Here we see that checking and sharing provide an "invitation to struggle" over who will take the lead in particular areas of policy (Corwin 1984, 201).

One important component of this "modified" system of separation is the distribution of powers with different valences to each branch. Hamilton gives voice to this idea when, in *Federalist 33*, he asks "[w]hat is a power, but the ability or faculty of doing a thing? What is the ability to do a thing but the power of employing the means necessary to its execution?" These rhetorical questions direct our attention to an important distinction between positive and negative governmental power. Positive power—a legislative initiative, for example—compels an individual or group to do something in pursuit of a particular policy or political end. Negative power—the veto, for example—constrains the exercise of positive power. It keeps government from mandating that citizens abide by certain mandates of law of policy (Parsons 1966, 121). Negative power, in other words, *controls* the exercise of positive power. Woodrow Wilson makes a similar point when he argues that "power is a positive thing; control a negative thing" (Wilson 1893, 90). Afforded the authority to write, pass, and implement laws compelling action from the citizenry, Congress has traditionally been the source of positive power in our constitutional system. To prevent the accumulation of governmental power in Congress, the Founders expected the Supreme Court (through judicial review) and the president (through veto) to exert control through negative capacity.

By distributing positive power to Congress, and negative powers to the executive branch and the Court, the Founders put into practice their view that "only power arrests power" (Arendt 1963, 151). Ours is a system, argues John Adams, in which "power must be opposed to power, force to force, strength to strength, interest to interest" (Quoted in Haraszti 1952, 219). Our constitution creates multiple sources of governmental power, and it imbues them with different valences in order to prevent one branch from expanding to such an extent that it destroys the others. Arendt's

analysis of America's constitutional revolution posits the creation of balanced system that relies upon multiple centers and valences of power for its continuing equilibrium as "perhaps the greatest American innovation in politics." No single branch, she argues, can "outgrow and expand to the detriment of other centers or sources of power" (Arendt 1963, 151-153).

Reassertion is one manifestation of this institutional design because it allows Congress to arrest or reverse the arrogation of legislative authority by the modern president. In the contemporary era, the president wields both positive and negative power. As a consequence, Congress must actively protect its own positive authorities from a president who can act without formal congressional authorization. Stated differently, reassertion pits positive power against positive power: Congress' constitutional lawmaking authority against the *modern* president's "legislative" authority.

That Congress would need to reassert itself vis-à-vis the president is a fact largely unanticipated by the Founders, because they were more concerned with ensuring that the judicial and executive branch's had the means by which to check the growth of the legislative power. Reassertion represents a particularly modern feature of the constitutional system they designed. Through reassertion, ambitious MCs pursue their own individual political goals while simultaneously affirming Congress' institutional capacity to inflict a "partial loss of authority" on the executive branch. Successful reassertion runs contrary to the modern president's institutional preferences, because it erodes his ability to act autonomously or unilaterally. Or, in the words of William Howard Taft, it delineates and delimits the "undefined residuum of power" that modern presidents have at their disposal (Taft 2009, xiv).

Reassertion legislation is substantively "constitutional" because it provides for what Waldron (2013) calls "articulated governance" (456). When governance is articulated, government action is justified through the enactment of legal statutes by the legislature. In this scheme, therefore,

lawmaking *precedes* implementation of new policy so as to ensure that the "various aspects of law-making and legally authorized action are not just run together into a single gestalt" (Waldron 2013, 457). The process of articulated governance also affords the public various opportunities to participate in the actual construction of law. It is true, of course, that most members of the public do not have direct access to legislators, but they certainly have more access to legislators than they have to administrators within the executive branch. Finally, articulated governance provides an institutional forum for legislators to deliberate and debate "in a general way—at the level of normative generalization and general justificatory considerations" (Waldron 2013, 460-461). Put another way, articulated governance provides the public an opportunity to know about, and weigh in on, policy enactments.

To better understand articulated governance, we should consider its opposite: discretionary power. In *The Executive Unbound*, Eric Posner and Adrian Vermeule—two leading legal academics—provide a clear examination of discretionary power, while arguing that the constitutional system I have described above has completely broken down. According to Posner and Vermeule (2010), "law does little to constrain the modern executive" (15). Separation, checking and balancing no longer operate, because the president's managerial responsibilities obligate him to act without prior legislative authorization. More specifically, he is expected to make "rapid ongoing adjustments in complex policy matters, adjustments that cumbersome legislative […] processes are unable to supply" (Posner and Vermeule 2010, 19). Discretionary power is undertaken when action is more important than constitutional procedure, effectiveness is more important than consent, and accountability is more important than participation.

The discussion of the Foreign Intelligence Surveillance Act that I provide in the previous chapter highlights the transition from discretionary power to articulated governance. Between 1924 and 1978, presidents found themselves with the undefined, discretionary power to engage in

domestic eavesdropping. They could both create and implement surveillance policy without informing the public of the standards that guide their decisions. They could also violate those standards at any time without public knowledge or consent. Congress reasserted when it became clear how presidents were actually putting this power to use. By passing FISA, Congress delineated the norms and procedures that would guide surveillance policy. In so doing, it defined and regulated the scope of executive branch power by affirming its own positive authority to develop and implement publicly known standards that would regulate future decisions about eavesdropping. FISA is also an example of Congress establishing articulated constraints and regulations on presidential action through the open, deliberate, consensus-driven legislative process.

The constitutional aims pursued by reassertion legislation help to substantiate my claim that bills of this kind are systematically more likely to become law when the president is institutionally and/or politically weak. Congress has a better opportunity to replace discretionary power with articulated governance if the president's competence as a manager has been called into question. If neither the public nor MCs can rely on the president for effective leadership in particular policy areas, it is more likely that MCs will pursue reassertion. Weakness affords Congress the best opportunity to overcome likely presidential opposition, because it encourages those from the president's party to support reassertion as a way of distancing themselves from him. Weakness also encourages those in the opposition party to support reassertion rather than simple obstruction, because the opportunity costs for doing so are at their lowest.

The Founders recognized that just because the constitution enables those in each branch of government to protect its institutional powers, such action is not automatic. Accordingly, they worked to incentivize checking and balancing by intentionally linking the "interest of the man" to the "constitutional rights of the place" (*Federalist 51*). In other words, they expected ambitious politicians to protect the institutions from which they wielded power as a form of self-promotion.

Stated in the words of *Federalist 51,* "ambition must be made to counteract ambition." As I have already described, many contemporary analyses simply assume that the rise of the modern presidency invalidates this claim. I argue instead that in the era of presidency-centered government successful reassertion is possible, but is constrained to moments of presidential weakness.

II. GETTING TO A PRESIDENCY-CENTERED SYSTEM

In his classic study, *Democracy in America*, Alexis de Tocqueville argues that the states are "in reality the authorities which direct society in America." "So feeble and so restricted is the share left to the administrators," he goes on to say, "so little do they forget their popular origin and the power from which they emanate" (Tocqueville 1961, 59, 298). Here Tocqueville identifies a defining feature of American history: a "highly developed democratic politics" preceded centralized, "concentrated governing capacity" (Skowronek 1982, 8).

For much of American history the national government lacked a centralized bureaucracy, thereby rendering it incapable of "enforce[ing] uniform rules throughout the entire society" (Wolin 2001, 256). As a consequence, the tasks of governance fell to members of Congress, each of whom took the lead in writing and implementing federal legislation. Then-political scientist Woodrow Wilson describes this mode of governance in *Congressional Government: A Study in American Politics* when he characterizes Congress as "the aggressive spirit […] the motive power of government" (1885, 36). According to Wilson, the legislative branch held so much power that it put at risk our system of separated powers in precisely the way the Founders worried it would. "Our own system has been […] subject to 'a gradual change in the direction of a concentration' of all the substantial powers of government in the hands of Congress," he argues. In this governing order, presidential power "waned because the power of Congress" predominated (Wilson 1885, 43; Griffin 1991, 680).

Lowi (1985) and Skowronek (1982) expand upon Wilson's claim by identifying links between congressional predominance and modes of governance operating through the early years of the 20th

century. They demonstrate that for the great bulk of American history, the tasks associated with governing fell to the states and to representatives in the legislative branch. Decentralization and federalism, in turn, generated particular imperatives and modes of governance well suited for Congress. For example, the halls and backrooms of the legislative branch facilitated a "logrolling politics" that could "best service states and localities" (Skowronek 1982, 23). This kind of governance gave rise to what Skowronek calls a "state of courts and parties"—a system in which a decentralized judicial system and state-based parties were the only institutions with the capacity to coordinate national politics (1982, 39-46). Lowi refers to this mode of governance as a "patronage state" because policy written by Congress provides "resources that could be distributed to a variety of interests and claimants throughout the country " (1985, 28). In the absence of a federal bureaucratic apparatus capable of carrying to decisions made by administrators without MC participation, Congress motivates action by distributing resources to local political officials.

In this decentralized, Congress-centered political order, presidents relied on the veto to wield power and to protect themselves from legislative aggrandizement. President Andrew Jackson, for example, referred to the veto as the "the people's tribunative prerogative" and he used it to protect the public from what he called an "oligarchic legislature" (Quoted in Vile 1998, 190). Jackson's frequent use of the veto was not without controversy. According to Senator Henry Clay, the frequency with which Jackson deployed the veto suggested a "total change of the pure republican character of government" through the "concentration of all power in the hands of one man" (Quoted in Goldsmith 1974, 613). Although the veto helped President Jackson restrain the power of the legislature, it did not afford him an opportunity to take the initiative in advancing a political or policy agenda. The veto is a negative, reactionary power and Jackson's reliance on it did not durably expand the institutional capacity available to presidents (Wolin 2001, 255). Those who followed Jackson in the White House did not find new resources for deploying positive power and they were

no more likely to present Congress with programs for "positive legislation," or to engage in unilateral action on behalf of particular policy aims (Lowi 1985, 37).

Consider also President Lincoln's deployment of executive branch power during the Civil War. According to Rossiter (1948), Lincoln's use of executive power suggested the emergence of a "constitutional dictatorship." Lincoln called forth the militia, unilaterally enlarged the regular army, and imposed a blockade on Southern ports through executive proclamation (Rossiter 1948, 225-230). He also spent funds without formal legislative authorization and suspended the writ of habeas corpus. Taken together, Lincoln's wartime decisions represent a departure from "established and constitutional American practice" (Rossiter 1948, 228). At the same time, Lincoln made clear that his actions were exceptional and justified by the crisis of Civil War. Indeed, he argued that "measures otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the constitution, through preservation of the nation" (Quoted in Kleinerman 2005, 806). Lincoln's aggressive use of executive power was not institutionalized, nor did it become common practice among those who took office after him.

Indeed, as Andrew Johnson ascended to the presidency after Lincoln's death, we see that Lincoln's decisions did not durably expand the power available to the president. Worried that Lincoln had set a dangerous precedent, and angered at Andrew Johnson's behavior and stance toward Reconstruction, MCs quickly and successfully moved to reestablish the Congress-centered order that operated through the antebellum years (Whittington 1999, 113-157). By pursuing impeachment charges against President Johnson, and by passing the Tenure of Office Act in March 1867, Congress successfully returned the executive branch to the "primarily ministerial" status it held through the antebellum years (Whittington 1999, 131).

As MCs moved to demonstrate that Lincoln's decisions during the Civil War did not represent a "new normal," they continued to depict Congress as the "living manifestation of the

people in their sovereignty" (Whittington 1990, 137). According to Pennsylvania's Republican Representative Thaddeus Stevens, "the people" expected Congress to exercise powers "ample for all the necessities of national life" by "adapt[ing] the administration of affairs to the changing conditions of national life" (Quoted in Whittington 1999, 138). Stevens' argument is nearly identical to the claim that Woodrow Wilson would come to make about the presidency, but in the immediate post-war era, this Congress-centered view of our system carried the day. And through the remainder of the 19th century Congress retained its position as the motive force in government, In fact, as the 20th century dawned, Woodrow Wilson was still bemoaning "congressional government."

As the Progressive era took root in the early years of the twentieth century, Congress' status as the voice of the people, and its predominant place in the constitutional order, came under attack. Progressive reformers believed Congress to be an institutional obstacle that must be overcome if their agenda was to be enacted. These reformers sought a "pure democracy," one in which the people were "masters of their own constitution," (Quoted in Milkis 2009, 14). In the words of Herbert Croly, Progressives aimed to unite the "Hamiltonian principle of national political responsibility and efficiency with a frank democratic purpose" (2014, 189). Croly draws his view of national government from *Federalist 4* in which Hamilton argues,

> "[o]ne government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of policy. It can harmonize, assimilate, and protect the several parts and its members, and extend the benefit of its foresight and precautions to each."

Standing in the way of this goal was a Congress-centered order in which MCs catered to "special interests" at the expense of the public good. This mode of governance prevented the individual states and their representatives in Congress from developing wholesale solutions to pressing national problems. Only the president, with bureaucratic experts at his side, could spearhead this kind of

capacious policy agenda. For the Progressives, empowering "the people," became synonymous with empowering the president.

President Theodore Roosevelt embodied and gave voice to the Progressive vision. He aimed to revive the "Hamiltonian ideal" by pursuing "constructive national legislation" through which an "efficient national organization" would serve as the "necessary agent of the national interest and purpose" (Croly 2014, 208). Accordingly, he positioned himself—and the office of the presidency—as the "steward of the people." In his role as people's steward, Roosevelt argued, the president should not restrain himself from acting on behalf "what was imperatively necessary for the Nation" until "he could find some specific authorization to do it." Instead, the president should act as though he had a "legal right to do whatever the needs of the people demand, unless the Constitution or the laws explicitly forbid him to do it" (Roosevelt 1913, 357).

As a political scientist—and then as president—Woodrow Wilson also advocated for a more assertive presidency. In *Constitutional Government in the United States*, Wilson argues that to satisfy both domestic and international responsibilities the United States should change "the balance of [constitutional] parts" such that the president would become the "front of government" (1908, 59). Invoking Darwin's theory of natural selection, Wilson argued that government is "modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life" (Wilson 1908, 56). And the "sheer pressure of life" was putting a strain on traditional constitutional arrangements. Industrialization, urbanization, and the problems that emerged from these developments had exposed "severe limitations in the mode of governmental operations that had evolved over the nineteenth century" (Skowronek 1982, 13). Traditional modes of governance were incapable of adequately meeting new and complex social, political, and economic problems. Like a living species, the Progressives argued, a constitutional government must adapt to survive in a new environment.

To address the displacement and inequality resulting from industrialization, argued the Progressives, the United States needed a large bureaucratic apparatus through which "enlightened administrators" could pursue policies that served the public interest (Milkis 2009, 15; Skowronek 2009, 2084). To be effective, these administrators could not be beholden to particular geographic interests. Accordingly, the Progressive vision was one that tethered national administrators to a bolstered presidency, both of which would serve a national constituency. In other words, the Progressives aimed to "empower the presidency…to envelop it in a new community of national interests…[to create an office] that would be less self contained, more fully democratized, and more outwardly directed in orientation" (Skowronek 2009, 2084). Progressive reformers tied this claim to a view that those inside the administrative apparatus they proposed must adopt the perspective of business and "scientific management." The policies they spearheaded gave rise to independent regulatory commissions designed to manage the power of business, and new labor regulations that protected child workers. The Progressive reform agenda also helped guide the United States' transition from "proprietary-competitive" capitalism to "corporate-administrative" capitalism (Sklar 1986, 4). Finally, Wilson and the Progressive Democrats "reconstitute[d]" the American system of civil administration, the army, business regulations" (Skowronek 1982, 165-284).

The "Newtonian" view of government, against which Roosevelt, Wilson and the Progressive movement contended, was skeptical of such adaptation. Newtonians suggested that constitutional survival requires opposite forces to be automatically "offset against each other as checks" (Wilson 1908, 56). Balance, they believed, makes for healthy government. Giving voice to the Newtonian view, ex-President William Howard Taft warned the country in 1916 that Roosevelt's "stewardship theory" "ascrib[ed] an undefined residuum of power to the president." The stewardship theory, in his view, amounted to an "unsafe doctrine [that]…might lead under emergencies to results of an arbitrary character, doing irremediable injustice to private right" (Quoted in Brownlow 1949, 6). To

the Progressives, however, Newtonians offered a rigidly formal perspective in which "traditional constitutionalism [was] the final word in politics," even though traditional constitutionalism failed to adequately address the "new social and economic condition[s]" that threatened to delegitimize and undermine the entire constitutional order (Croly 1998, 25-26). Taft's defense of traditional constitutional forms previews an argument that will reemerge among those promoting legislative reassertion: without new and formal checks on executive branch authority, the president's power is limited by the possible, not by law or constitutional principle.

Despite the implementation of significant policy initiatives during the early decades of the 20th century, Progressive reforms did not successfully displace the Congress-centered political order that predated Wilson's tenure. In pushing these initiatives, Wilson worked *through* the Democratic Party caucus in Congress, rather than above it, outside of it, or as its leader (James 2000, 123-199). More specifically, Wilson made use of the party caucus—an intra-congressional organization that considered using "binding resolutions" to turn the party into a cohesive voting bloc—to implement important regulatory reforms (Remini 2006, 280-281; James 2000, 141). Close cooperation with Congress did not, however, indicate that MCs saw President Wilson as the party or policy leader. According to James, Wilson was still "bound by vestiges of the nineteenth-century norm of legislative deference" (2000, 144). And while the caucus proved pivotal in helping pass central aspects of the Progressive Agenda, both Lowi (1985, 43) and Skowronek (1982, 14) find that by the end of the Progressive era, Congress held onto its predominant status within the overall constitutional system.

Further testifying to this point is the fact that that Presidents Taft, Harding, Coolidge, and Hoover, could still adopt a constrained view of presidential power. They *chose* to play the role of clerk—and they could do so—specifically because they took office prior to the New Deal.

Following Franklin Roosevelt's tenure, clerkship was no longer an option because "the circumstances calling for strong presidents…[are] no longer exceptional" (Lowi 1985, 40).

As we will see, Franklin Roosevelt, his supporters and those who followed him in office would rely on Progressive era arguments to justify the structural reforms that solidified the president's predominant place in American politics. In this way, aspects of the Progressive vision—an institutionalized executive branch affording the president administrative powers, prioritizing necessity over constitutional form and a belief in the benefits of "scientific" management—would reemerge during the New Deal and in the years after. The seeds of the presidency-centered political order that would flower during the New Deal were planted during the Progressive Era.

III. CONGRESS DISPLACED, PRESIDENCY PREDOMINANT

Not until the end of Franklin Roosevelt's tenure did the executive branch displace Congress as the "motive force" in American politics. As late as the mid-1930s Congress even played the lead role in matters of war, an area of policy-making now seen by most as wholly governed by the "commander-in-chief." Indeed, in the years leading up to World War II, the "role of Congress as the decider was assumed" (Griffin 2013, 29-58). Unlike Roosevelt's predecessors, however, post-New Deal presidents preside over a standing army that can be deployed on the president's authority alone. Whereas the pre-New Deal presidents had to seek congressional authorization for military build-ups and troop deployments, those who followed FDR did not operate under this constraint. Following the war, Congress also legislated into existence a permanent national security bureaucracy within the executive branch, thereby affording the president the capacity to act without congressional authorization (Hogan 1998; Koh 1990; Sparrow 1996; Stuart 2008; Wills 2010). With these new powers at his disposal, President Truman for the first time asserted unilateral authority to initiate war as one facet of their foreign policy authority (Griffin 2013, 69). This enhanced institutional capacity was not limited to national security policy, but was replicated across a range of policy areas. It is this

fact that led to the grafting of the presidency-centered order on top of the Congress-centered mode of governance in place until the mid-20th century.

One consequence of New Deal reforms was the emergence of the "modern" president. Described by scholars as "managerial" (Arnold 1998), "administrative" (Nathan 1983; Milkis 1993), and "institutional" (Burke 2000), presidents who followed Franklin Roosevelt took charge of an institutional apparatus designed to afford presidents the means to wield positive power in new ways. Modern presidents have the institutional capacity to make decisions unilaterally; they set the agenda for federal level policy-making; at their disposal is a staff and advisory system that comprises an executive branch bureaucracy; and they are the most "visible" actors in the political system (Greenstein 1988, 4). As a consequence, members of Congress and the public now *expect* presidential leadership, and the president satisfies this expectation by playing a lead role in formulating and implementing policy, as well as in setting the policy agenda. In the words of Huntington, after the New Deal all of the "initiative in formulating legislation, in assigning legislative priorities, in arousing support for legislation, and in determining the final content of the legislation enacted […] clearly shifted to the executive branch" (1965, 28). The president has displaced Congress as the "motive force" in American politics.

The consequences of this displacement can be seen in the various ways that contemporary presidents wield both power and influence. The president's role as Commander-in-Chief, Chief of State, Chief Executive, Chief Diplomat, Chief Legislator, and Chief of the Party indicate that he is no longer simply a negative counterweight to Congress. In the famous words of Richard Neustadt the modern president "cannot be as small as he might like" (1990, 6).

Neustadt's *Presidential Power and the Modern Presidents* introduced the idea of a breakpoint between the modern and pre-modern presidency. The modern presidency, he argues, arose in response to a particular change in the external environment: namely "the transformation into routine

practice of the actions we once treated as exceptional" (Neustadt 1990, 6). With crisis as a near-permanent fixture of the post-New Deal world, members of Congress and the public came to see the presidency anew. Whereas presidents in the pre-modern era could play the role of "clerk," the modern president cannot because the public and those in Congress now expect him to be the "great initiator." They relied upon and expected "the man inside the White House to do something about everything" (Neustadt 1990, 7; Lobel 1989; Plotke 1996).

More recent work by Rudalevige (2002), Cohen (2012), and Edwards (2012) substantiate Neustadt's argument by identifying new opportunities for presidential leadership. Each study demonstrates that while the president cannot unilaterally bring into existence those programs he prefers to see enacted, his role in the policymaking process does afford him new sources and opportunities for wielding *legislative* powers. Cohen provides a stark illustration of this point. By studying presidential proposals and congressional activity, his analysis makes clear that "Congress might have been the center of legislative activity" through the early twentieth century, "but that presidents become more central to the legislative process from the second half of the twentieth century onward" (2012, 109-110). Here, therefore, we see a significant shift from the pre-modern era in which presidents relied on Congress and party leaders for direction and initiative.

To satisfy his role as "chief legislator," those studying the "institutionalization" of the executive branch demonstrate the new tools presidents use to wield influence over policy. Institutionalization is illustrated by the increase in the size, complexity (in both function and structure), and bureaucratization of the executive branch itself (Burke 2000; Ragsdale and Theis 1997; Pfiffner 2002). With a growing budget and a significant personnel boost, modern presidents now have the resources needed to develop and implement policy. As a consequence, they are more likely to utilize unilateral avenues of action—for example, executive orders and signing statements—to direct executive branch agents (Kagan 2001; Howell 2003; Mayer 2002). Here again we see a

significant difference between the pre-modern president who found himself with few institutional resources—and thus a heavy reliance on Congress—and the contemporary president who presides over an expansive and institutionalized executive branch.

The president's use of unilateralism and other tools associated with what Kagan (2001) calls "presidential administration," reflect a shift of power away from Congress. A president with the capacity to unilaterally create new policy realities forces Congress either to acquiesce, or to spend costly time formally reversing his decisions (Howell 2003, 101-136). In other words, the expansion of the president's positive powers leaves MCs with a mirror image of the choice faced by the pre-modern *presidents*: acquiesce, or initiate an inter-branch battle to reverse decisions that have already been made.

A related line of scholarship demonstrates the powers available to the president through his authority over the large administrative state. To be sure, the president's formal power to direct executive branch agencies is shared with Congress because the legislative branch retains its advice and consent powers, as well as the power of the purse. Moreover, Congress' decision to delegate power *to* the executive branch varies according to the prevailing political conditions (Epstein and O'Halloran 1999). There exists no one-to-one relationship between policies the president prefers, and the decisions of those within the bureaucracy. Yet, recent work has illustrated that the increasing politicization of the bureaucracy allows presidents to exert a greater amount of control over administrative decisions because the leaders of both independent and executive branch agencies tend to share the president's beliefs and preferences (Lewis 2008; Lewis and Devins 2008). A number of additional analyses also have demonstrated the president's structural advantages over Congress in the contest to control and direct the bureaucracy (Moe 1987; Lewis and Moe 2009; Wood 2011). As a consequence, legislative delegation of authority to the executive branch ensures executive branch "dominance" instead of cooperative power-sharing (Wood 2011, 807).

Concomitant with the growth of positive presidential power through the institutionalization of the executive branch is the president's growing *political* influence. In his famous opinion in the 1952 *Youngstown Sheet & Tube Company* case, Supreme Court Justice Robert Jackson identified the president's important new role as "party head." According to Jackson,

> "[t]he rise of the party system has made a significant extra constitutional supplement to real executive power. No appraisal of his necessities is realistic which overlooks that he heads a political system as well as a legal system. Party loyalties and interests, sometimes more binding than law, extend his effective control into branches of government other than his own and he may often win, as a political leader, what he cannot command under the constitution" (Quoted in Levinson and Pildes 2006, 2314).

Milkis (1993) illuminates Jackson's claim by demonstrating how the New Deal gave rise to a "new, executive-centered party system." In this system, the parties are not organized in a way that encourages "members to consult one another and reach agreement" but are instead designed to facilitate the "benevolent dictatorship of the president" (Milkis 1993, 9; Milkis and Rhodes 2007). The modern president's direct role in party building activities is identifiable as far back as the Eisenhower presidency (Galvin 2009). The effect of this increasing political influence is born out in studies that demonstrate MCs increasingly see their own political livelihoods as tied to the president's policy successes and failures, as well as overall standing among the public (Lebo and O'Geen 2011; Gronke, Koch, and Wilson 2003). The modern president's political and institutional influence significantly influence congressional decision-making.

The emergence of the presidency-centered order and the displacement of Congress are central to this study because they make reassertion necessary. For if the president did not threaten to overwhelm Congress, then MCs would not need to engage in reassertion. Presidential predominance also directly influences MCs' willingness and capacity to pursue reassertion. MCs increasingly believe that their own political survival is contingent upon the policy successes that result from presidential leadership. Reassertion forces them to choose between deference and confrontation. MCs are also

aware that by pursuing reassertion when a member of the opposition party controls the White House, they will be constraining a future White House ally. Finally, reassertion legislation forces the president to choose between supporting his own co-partisans in Congress and defending the institutional prerogative of the office. Anticipating the modern president's aversion to any constraints, MCs will pursue reassertion when the president is least likely to oppose them. In short, Congress' *can* "recapture the aggressive spirit," but its opportunities for doing so are conditional on factors related to presidential weakness and legislative branch strength.

IV. REASSERTION VS. "ADMINISTRATION"

In his September 1932 address to the Commonwealth Club of San Francisco, Franklin Roosevelt proclaimed that "the day of enlightened administration has come." Expert administrators would take the lead in setting and managing both domestic and foreign policy. "Our task," he argued, is the

> "soberer, less pragmatic business of administering resources and plants already in hand, of seeking to reestablish foreign markets for surplus production, of meeting the problem of under-consumption, of adjusting production to consumption, […] of adapting existing economic organizations to the service of the people"

The final report submitted by Roosevelt's Committee on Administrative Management (Brownlow Committee) in 1937 reflected this claim. "The very growth of the nation" and the "vexing social problems of our times," argue the report's authors, could only be dealt with by employing "modern types of management" (Brownlow Report, 2). Such management techniques required the creation of a "responsible and effective chief executive as the center of energy, direction and administrative management; the systematic organization of all activities in the hands of qualified personnel under the direction of the chief executive; and to aid him in this, the establishment of appropriate managerial and staff agencies" (Brownlow Report 1937, 2).

In 1937, at Roosevelt's behest, the Brownlow Committee's suggestions were introduced in Congress as part of a discrete reorganization bill. If enacted, the reforms proposed by the report

would have empowered the executive branch to autonomously formulate and implement policy, enabled the president to hire and protect the jobs of New Deal loyalists, and enveloped independent regulatory commissions in a new system of executive branch control (Milkis 1993, 114-119). Labeled the "dictator bill" by its critics, this reform effort went down to defeat in 1938. Yet Roosevelt did not give up on his plans for reorganization, and by 1939 his Administration had regrouped. That year, Roosevelt's allies in Congress successfully passed a pared down reorganization bill which he signed on April 3. Even in its more limited form, this bill led "inexorably and directly" to an institutionalized executive branch (Gailmard and Patty 2012, 243).[7]

More specifically, the bill provided the president with staff support and the authority to implement reorganization plans subject to a legislative veto by concurrent resolution. It also authorized FDR to unilaterally appoint six "administrative assistants," which he did in September 1939. Initially charged with the task of "gathering, condensing, and summarizing information," these positions would soon proliferate and become the Executive Office of the President (EOP) (Milkis 1993, 127). Today, the well-staffed EOP formulates policy and helps to develop an executive branch policy agenda (Gailmard and Patty 2012, 244). And as the president more frequently took on these responsibilities, the public and Congress came to expect and rely upon him to fulfill these leadership tasks (Neustadt 1955). In sum, the 1939 reorganization plan helped the president claim important positive powers: the power to formulate and propose policy and the power to unilaterally implement policy through the sprawling administrative state. Presidents after Roosevelt took on a new responsibility: that of "Chief Administrator."

---

[7] A number of political scientists have documented the transition to a presidency-centered, bureaucratic state. Moe and Lewis argue that in the post-New Deal era, governance is "bureaucratic and presidentially led" (2010, 369). Skowronek argues that the New Deal "turned the bureaucracy itself into the extraconstitutional machine so necessary for the continuous operation of the constitutional system" (1982, 289). According to Milkis, we now live in the "administrative republic" (1993, 16). Lowi finds that "the rise of a large government with a large administrative core came relatively late in the United States but its coming is undoubted" (1979, 24).

As Chief Administrator, the president is compelled to put enlightened administrators to work in a way that produces beneficial outcomes for a national constituency. Once the presidency became "administrative," therefore, it became the vehicle for acting on a principle central to the Progressive movement: the president—and the president alone—can discern and act upon a public interest that "exists outside of government" (Skowronek 2009, 2089). New Dealers shared this view. For example, the Brownlow Report argues that "the general interest is superior and has priority over any special or private interest," and only the president has the capacity to act on "the judgment and will of the people of a nation" (Brownlow Report, 1). More importantly, New Dealers believed that averting the next crisis was contingent upon the elevation of those who understand the "scientific principles of administration" to positions of power (Skowronek 1982, 286). Modernity called for responsible leaders of the "professional class" to take charge of policy development and implementation because only they understood the empirically verifiable links between policy inputs and outputs (Rana 2012, 1456). New Dealers turned the executive branch into the institutional home for such experts.

As New Deal reforms took root during the 1940s, and then continued to expand both the executive branch and the administrative state through the remainder of the 20th century, the United States came to resemble what Max Weber called a "bureaucratized" state. Writing in 1922, Weber predicted that the United States would abandon its commitment to decentralization by bureaucratizing in response to the "greater zones of friction with the outside" and as the "needs of administrative unity at home" grew more urgent (Weber 1978, 971). As social and economic practices become more complex, the more effective governments would rely on "personally detached and strictly objective expert[s]" who operate within non-political administrative institutions (Weber 1978, 975). The bureaucracy, Weber argues, provides experts with the "optimum possibility for carrying through […] administrative functions according to purely objective considerations."

Bureaucracy also optimizes "precision, speed, unambiguity, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs" (Weber 1978, 973).

I quote Weber at length because his description of bureaucratization helps to motivate the distinction I draw between "administration" and "politics." When policy issues become matters of administration addressed by experts in accordance with rules derived from "objective" assessments of the links between inputs and outputs, "representatives of the people hardly possess an authentic area of action" (Arendt 1964, 272). Stated differently, administration depoliticizes political questions by preventing debate and deliberation among the people's representatives, and by preventing the public from participating in the construction of policy. In fact, the central aim of "administration" is to prevent public participation in the development and implementation of policy. Policy outcomes generated through administration reflect what the president and the administration he leads deem to be a strictly scientific application of objective means to achieve their interpretation of the "public interest." For this reason, the implementation of administration serves to distance the people from the sources of governmental power (Wolin 2004, 402). And, as I have described, such separation was intentional, because administration assumes that a largely uneducated citizenry cannot be trusted to contribute to policy solutions.

The "administrative" view emerges in Roosevelt's support for the Brownlow Report and his effort to create an executive branch that acts "independently" of the party system (Milkis 1993, 127). The federated party system empowered local officials and encouraged public participation. It also served as an institutional power base for parochial MCs. To act independently of the party system was, therefore, to act independently of Congress. Administration led to a mode of governance in which the public *and* its representatives in Congress are deemed unqualified for active self-governance because both impeded the implementation of "modern techniques of administration." As New Dealer Pendleton Herring argued, widespread public participation in policy formulation

would likely lead to a catastrophe in which "the whole structure [of the economy] will topple and crash" (Quoted in Rana 2012, 1459). Unsurprisingly, when it enacted New Deal reforms empowering executive branch administrators, Congress constrained its own ability to influence future policy decisions (Katznelson 2013, 421).

Administration as a mode of governance works at cross-purposes with "politics." For policy questions to be politicized, non-experts among the public and within Congress must be able to deliberate, debate, and participate in the development of answers. For this reason, "politics" is related to articulated governance. Political debates can only occur if citizens are aware that specific actions are being contemplated or enacted. If matters are left to experts instead of being "open to opinions and genuine choice" argues Arendt, "there is no need for Madison's 'medium of a chosen body of citizens' through which opinions must pass and be purified into public views" (Arendt 1963, 237). Correspondingly, "politics" only occurs around those issues that are not considered matters for the application of "objective" or "scientific" rules and procedures. Reassertion legislation pursues democratic ends by subjecting public issues to the practices associated with politics instead of allowing them to become matters for administration.

In Chapters 4 and 5 I will examine in detail how Eisenhower and Nixon both attempted to keep matters of administration from becoming matters of politics as MCs pursued reassertion. For the purposes of this discussion it is important to understand that "politics"—open debate and contestation by the public and its representatives over proposed government action—is different from "administration"—policy development and implementation carried out behind closed doors and at the behest of the president. For a more concrete application of this distinction, consider the on-going debate over the activities of the National Security Administration (NSA) catalyzed by Edward Snowden.

On June 5, 2013, the *Guardian* published the first story based on the documents former NSA employee Edward Snowden took from the National Security Administration (NSA) and leaked to reporters.[8] From this story Americans learned that the NSA collects the "metadata" from millions of their phone calls.[9] In the months since, the world has learned a great deal more about NSA activities worldwide.[10] Snowden's revelations have motivated a number of discrete policy reforms. In Congress, bipartisan coalitions in the House of Representatives and the Senate have coalesced behind a reform bill called the "USA Freedom Act."[11] Among other aims, this bill prohibits bulk surveillance, places new restrictions on the process by which intelligence agencies are granted access to phone data, limits the amount of time such data can be stored and bolsters privacy protections for American citizens. In short, it reasserts congressional authority over 21st century surveillance powers. For his part, President Obama responded to these stories by convening a five member panel—the "President's Review Group on Intelligence and Communications Technologies"—and in December 2013 this group released a report that informed Congress' reform proposals.

For the purposes of this discussion, the most salient aspect of the Snowden controversy is President Obama's claim that just because the United States has the technical capacity to "do something doesn't mean we necessarily should."[12] This claim is instructive because it makes clear how administration diverges from politics. Whereas MCs engage in an open debate over the rules guiding internet surveillance, President Obama suggests that by existing statute, capacity, and a sense

---

[8] This story can be found here: http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order

[9] Metadata, according to the *Guardian*, is defined as "the 'envelope' of a phone call or internet communication. For a phone call this would include the duration of the phone call, the numbers it was between, and when it happened. For an email it would include the sender and recipient, time, but not the subject or content. In both cases it would include location information."

[10] A complete timeline of the Snowden revelations can be found here: http://america.aljazeera.com/articles/multimedia/timeline-edward-snowden-revelations.html

[11] Information about the act can be found here: http://beta.congress.gov/bill/113th-congress/house-bill/3361

[12] For example, refer to the following sources: http://www.washingtonpost.com/politics/running-transcript-president-obamas-december-20-news-conference/2013/12/20/1e4b82e2-69a6-11e3-8b5b-a77187b716a3_story.html; http://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence; http://www.politico.com/story/2013/10/obama-surveillance-message-lost-in-translation-99003.html

of propriety should serve as constraints on executive branch decisions. In other words, President Obama argues that executive branch "self-regulation" is a sufficient response to this controversy.

The "can vs. should" claim proffered by President Obama reflects an effort to assuage widespread public concerns over the scope of unlegislated and obscure governmental power. It also reflects President Obama's effort to protect the discretion and autonomy that allows national security administrators to pursue the "public interest" without constraints on their decisions. In the context of this debate we see how expertise is in tension with representation, and discretion is in tension with articulated governance: these are the terms of conflict between "administration" and "politics."

This conflict also helps to identify why successful reassertion is systematically more likely when the majority party in Congress is cohesive and when a particular reassertion proposal wins bipartisan support. If the majority party in Congress cannot agree on a set of proposals to guide policy that was heretofore "administrative," it is unlikely to pursue reassertion. When they pursue reassertion, MCs in the majority party commit to a future course of policy and this commitment has the potential to directly influence the party's reputation. If the policy they enact fails, it will be impossible for them to engage in blame avoidance by simply distancing themselves from the president.

This fact also helps to justify my claim about bipartisanship. The majority party can only share the blame resulting from a potentially failed reassertion policy if it wins their support for any specific proposal. Accordingly, reassertion legislation is more likely to pass if the majority party can convince the minority to accept responsibility for its enactment. Blame avoidance, in this case, is synonymous with bipartisan cooperation. In the case of the USA Freedom Act, for example, Wisconsin Republican James Sensenbrenner worked with Michigan Democrat John Conyers to fashion a bill that would win bipartisan support. Viewed together then, we see that the constitutional

and democratic aims pursued by reassertion legislation follow directly from behaviors and preferences generated by the presidency-centered order.

V. Reassertion and Liberalism

Political scientists, philosophers, legal scholars and historians have debated the meaning and history of philosophical liberalism for hundreds of years. Their analyses have helped to illuminate the complex theoretical package of beliefs that comprise philosophical liberalism. Liberalism means many things to many people, I do not intend to supplement with a new interpretation of its principles or to adjudicate between existing works. However, I began this chapter by arguing that my analysis provides a novel way of assessing the "status of liberalism in America," and I hold to that argument (Katznelson and Lapinski 2006, 248). It should be clear by now that I see substantive aims of reassertion—articulated governance and "politics" over discretion and "administration"—as directly relevant to such an assessment. In keeping with APD's long-standing commitment to an ongoing examination of the "liberal tradition in America" I will end this chapter by making clear the links between liberalism and reassertion (Hartz 1991).

In his analysis liberalism in America, Louis Hartz's argues that "Locke dominates American political thought as no thinker anywhere dominates the political thought of a nation" (Hartz 1991, 140). From this claim, Hartz draws the conclusion that all political contestation within the United States is carried out within conceptual borders drawn and permanently set by Locke. All Americans, Hartz claims, believe that the legitimacy of state institutions is contingent on popular consent from a citizenry of political equals. Those who operate within America's state institutions, in turn, are committed to "limited government" and "atomistic social freedom" (Hartz 1991, 60-66). Articulated governance and the prioritization of "politics" over "administration" are themselves aspects of this vision of liberalism. Consent cannot be granted unless the public has an opportunity to weigh in on policy decisions and/or "know" what government is doing through the publication of enacted

statutes. Similarly, a commitment to political equality suggests that all of those upon whom government acts should have an opportunity to play a role in what government does. A wholly administrative system—one led entirely by "experts" drawn from the "professional classes—is not committed to this aspect of Lockean liberalism.

Locke's views on representation and consent follow from his beliefs about human capacity. Central to Locke's view of human agency is his belief that *all* humans have the intellectual capacity needed to reason their way toward desired ends (Taylor 1989, 159-176). In *An Essay Concerning Understanding*, for example, Locke argues that "a man may suspend the act of his choice from being determined for or against the thing proposed, till he has examined whether it be really of a nature, in itself and its consequences, to make him happy or not" (Quoted in Taylor 1989, 170). It is this ability to reason that leads humans to constitute governments. Through reasoning they acknowledge the "corruption and viciousness of degenerate men" and conclude that only by sacrificing some of their "natural liberty" to a government that is "obliged to secure everyone's property" will they be safe to pursue their own economic well-being (Locke 2003, 153; Wolin 2004, 282-292). In Locke's words, the "great art of government" is to control "the increase of lands and the right of employing them" and to "secure protection and encouragement of honest industry of mankind, against the oppression of power" (Locke 2003, 118).

Central to Locke's claim about the human willingness to constitute governments is his argument that those over whom government has control have consented to its regulative power. Consent, in turn, is contingent upon the existence of a constitution stipulating that government action must be justified by the establishment of "standing laws promulgated and known to the people" (Kleinerman 2007, 209). Moreover, when the consenting public no longer believes in the legitimacy of government, Locke stipulates that they have the "supreme power" to remove or alter it (Locke 2003, 166; Wolin 2004, 276). Here again, Locke makes clear his belief in the reasoning power

of humans: those who reason their way into governments can reason their way out and constitute government anew. In short, humans can govern themselves and the only legitimate governments are those in which humans consent to rules that allow for a maximum amount of self-governance.

Viewed together, Locke's argument that humans have the capacity to recognize the value of consensual government, to constitute it, and to keep abreast of its legitimacy through a reasoned analysis of "known" law are central pillars of the "liberal tradition" in America. Building on Locke, the American Constitution establishes a consensual government that restrains "corruption and viciousness;" it provides citizens with equal political rights because it assumes that everybody has the capacity to reason; and it stipulates that government action must accord with "known" laws written by those who represent the governed.

These aspects of Lockean liberalism emerge with such frequency over the course of American history that to stipulate a complete list of examples would require its own project. I will instead provide a couple of notable examples as a way of demonstrating my point. Wilentz's (2005) discussion of Andrew Jackson's presidency highlights Jackson's commitment to popular self-government by illustrating how Jackson worked to "ventilate and democratize the executive." In Jackson's own words, he aimed for executive branch duties to be "so plain and simple that men of intelligence may readily quality themselves for their performance" (315). Additionally, Greenstone (1993) argues that President Abraham Lincoln's commitment to "reform liberalism" led him to the view that all human beings held the potential to develop "their fundamental, distinctively human capacities" (245). From this view Lincoln also held that "common education […] would provide everyone with informational resources to participate on an equal footing in economic and political life (Rana 2012, 1444). Participation and the decentralized nature of American government through the mid-twentieth century allowed the citizenry to understand what government did and why. In the words of Tocqueville, the citizen "involves himself in all the happenings of communal life […] and

penetrated by their spirit, acquires a taste for order, *understands the interrelation of powers* […] and acquires clear and practical ideas about the nature of his duties as well as the extent of his rights" (Quoted in Wolin 2001, 214; italics mine).

Simply recounting these examples is, of course, not the same thing as documenting if and how they manifested. Indeed, plenty of historical evidence attests to the fact that these words did not describe the lived reality for African-Americans, women, Native Americans, and others. The fact that significant portions of the population were, for many years, prohibited from participating in government leads Smith (1993) to argue that the United States has a tradition of a "ascriptivism" that competes with liberalism. The short list above is not intended to whitewash the legacy of ascriptivism. It is instead to demonstrate one way in which the Progressive/New Deal commitment to government by experts represents a departure from an older set of views.

Progressives and New Dealers responded to the crises brought on by industrialization, Depression, and global war by offering a vision of government in which the professional classes held the reins. They placed great faith in the policy "sciences" and they believed that the tasks of government were best suited for those with expertise. The public, they believed, had the capacity to render judgment but could not be relied on to participate in policy development or implementation. Whereas Lincoln and Jackson sought to democratize the offices of government, New Dealers believed that modern conditions necessitated rule by the professional classes. Whereas Tocqueville observed that participating afforded the citizenry an avenue for understanding why government acts as it does, New Dealers believed that "administration" worked best when it need not rely on widespread participation or justification. Instead of the citizenry implementing and explaining why particular actions are being taken, it is left to judge "outcomes." Administration and government by experts works at cross-purposes with central aspects of the liberal tradition.

Hartz's argument provides powerful support for the notion that political ideas motivate and constrain political action. And, as I have already argued, ideas about techniques that comprise "modern governance" motivated the New Deal reformers who successfully ushered in the era of presidency-centered government. In the case of reassertion, ideas derived from the American application of Lockean liberalism provide a philosophical justification for this kind of legislative behavior. More, these ideas contend with aspects of the Progressive/New Deal philosophy discussed above. When they advocate for reassertion, MCs invoke the theoretical link between political representation and consent, as well as between self-government and articulated governance.

In the case studies below, I will demonstrate that supporters of reassertion invoke those aspects of the liberal tradition not prioritized during the New Deal. I will explain, for example, how Republicans supporting the Bricker Amendment saw it as a necessary corrective to the tendency of both Presidents Roosevelt and Truman to engage in secret executive agreements. Such agreements are illegitimate, argues the 1952 Republican Party platform, because they are made without the "knowledge or consent of Congress or the American people."[13] Similarly, I will explain how Democratic Party support for the War Powers Resolution of 1973 reflects the view that "remote and impersonal government agencies" precluded broad pubic involvement in "formulating, implementing, and revising" federal policy.[14] For liberals and conservatives, Democrats and Republicans, invoking the ways in which the presidency-centered order erodes consent and articulated government serves as the philosophical foundation for reassertion. These ideas are vital to America's public philosophy, and by focusing on reassertion we gain insights into the role Congress plays in protecting them.

[13] The Republican Party platform can be viewed here: http://www.presidency.ucsb.edu/ws/?pid=25837
[14] This quote comes from the 1972 Democratic Party platform which can be viewed here: http://www.presidency.ucsb.edu/ws/?pid=29605

VI. CONCLUSION

In the previous chapter, I introduced reassertion and argued that it represents a particular kind of lawmaking. I also set out the conditions under which I expect that reassertion bills will be voted on and successfully passed. These conditions follow from the emergence of the presidency-centered order. In this chapter, I make clear *why* the substance of reassertion is directly related to the conditions under which they are pursued. In this way, I make clear how the legislative content of reassertion legislation "shape[s] how members act" (Katznelson and Lapinski 2006, 243).

Reassertion legislation pursues constitutional aims when it proscribes and regulates executive branch power and bolsters legislative capacity by requiring articulated governance. The conditions under which this substantive aim is pursued reflect the fact that "legislative independence […] can be sustained by the responsibility to call the strong executive to account, a responsibility that cuts across party lines" (Mansfield 1989, 17). If the opposition party holds the majority in Congress, then it is more likely to pursue reassertion when the president is politically and/or institutionally weakened because weakness renders him less likely to mount successful opposition. Weakness encourages those from the president's party to also support reassertion as they try to distance themselves from him. For the same reason, weakness incentivizes reassertion even if the president's party holds the majority because MCs no longer expect the president to provide political benefits. In this case, reassertion offers MCs an opportunity to engage in "position-taking" by distancing themselves from him.

The political and policy-based conditions under which reassertion bills are more likely to succeed attest to the difficulties that inhere to this type of lawmaking. When Congress reasserts, it behaves as though it were a unitary actor rather than an aggregation of multiple actors. The structures and incentives prevailing in the presidency-centered order limit the opportunities for Congress to act as an "it" rather than a "they" (Shepsle 1992). In so doing, they constrain the

circumstances under which the legislative branch will act to bolster its autonomous policymaking and implementation powers. Stated in the language of American Political Development, these constraints demonstrate how "different rules, arrangements, and timetables put in place by changes negotiated at various points in the past will be found to impose themselves on the actors of the present and to affect their efforts to negotiate changes of their own" (Orren and Skowronek 2004, 11).

CHAPTER 3
WHEN DOES CONGRESS REASSERT?

To this point, I have made the following set of interlocking arguments. First, I argue that Congress reasserts when MCs pass bills *bolstering Congress' positive, autonomous policymaking authority vis-à-vis the executive branch.* Reassertion legislation "delimits" the executive branch by stripping it of formal policymaking or implementation powers, thereby bolstering the legislative branch's role in governance by imposing new constraints on executive branch authority. Delimiting legislation may also establish new reporting requirements on executive branch administrators. Congress also reasserts when it reforms internal structures and processes in ways that afford the legislative branch enhanced policymaking capacity, or that allow it to better contest the president's first-mover and information advantages. Reassertion through internal reform includes the creation of new oversight committees and new institutions for the production of policy-relevant information, and increased committee staff allowing for the development of policy expertise.

In the second part of my argument, I claim that reassertion is one legislative response to the rise of the modern, presidency-centered order. The president directs a sprawling bureaucratic apparatus and is held responsible for the policies it produces. As a consequence, he has the resources and incentives to act unilaterally, to protect and expand his institutional capacity for autonomous and to assume an increasing amount of "legislative" authority. In many circumstances, MCs benefit from this arrangement because it allows them to spend time on reelection-specific activities, and to play the "blame game" when policy outcomes go awry. At times, however, MCs reassert in order to "recapture the aggressive spirit." When doing so, MCs affirm the legislative branch's institutional independence from the executive branch. Reassertion legislation also pursues "constitutional" and "democratic" ends by providing for articulated, consensus-driven governance.

My third and final claim so far is that the conditions under which MCs work to pass bills of this kind reflect the reciprocal relationship that exists between Congress and the president in the presidency-centered order. More specifically, the incentives and behaviors generated by the presidency-centered order make reassertion conditional upon presidential weakness, party cohesion, and bipartisan cooperation.

Having made these claims, I now set out to substantiate them through a series of empirical tests. In what is to follow, I describe how I identified and catalogued the reassertion bills MCs considered between 1947-2002. The bills included in this new dataset of congressional reassertion efforts then serve as the outcome of interest allowing me to assess the accuracy of the argument I have made. The tests I carry out provide support for my "conditional reassertion" thesis.

I. IDENTIFYING LEGISLATIVE REASSERTION

In this analysis, reassertion legislation is the outcome variable to under analysis. Accordingly, I first went about collecting and indexing *all* individual reassertion bills voted on in the House of Representatives and/or the Senate between 1947-2002. To complete this task, I conducted a systematic search of the *History of Bills and Joint Resolutions* (*HBJR*). Published at the conclusion of each congressional chamber year, the *HBJR* catalogues and describes the intent and legislative history of each bill introduced during that year. The *HBJR* is also digitized and key-word-searchable.

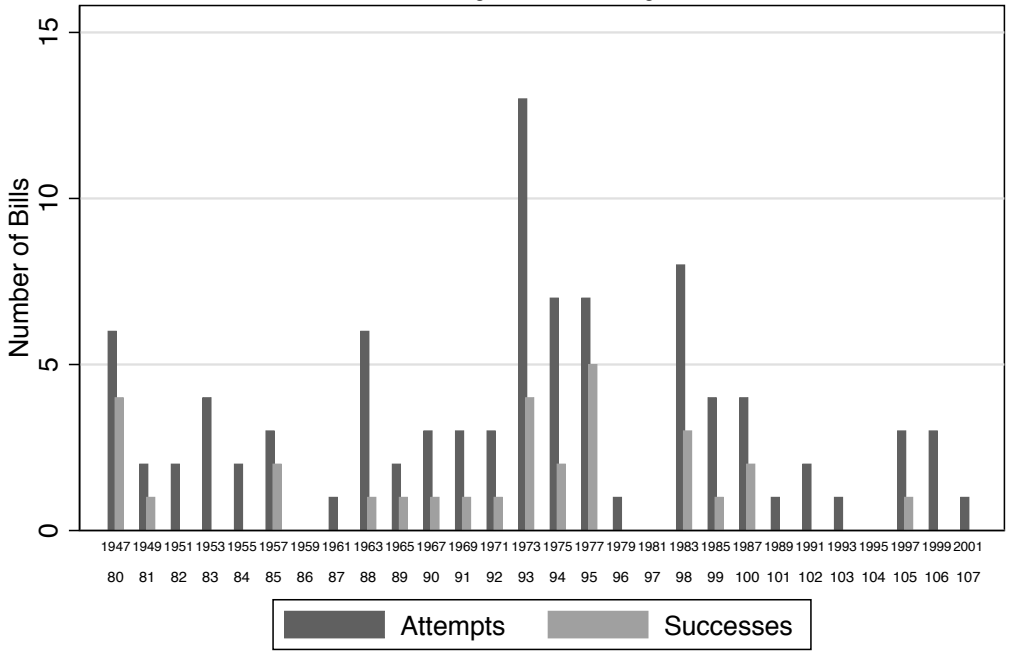
In the first stage of my research I developed a dictionary of search terms relevant to reassertion and which I used to guide me through the *HBJR*.[15] Once I found a potential reassertion bill, I referred to the debate over the bill documented in the *Congressional Record* as a way of confirming that members believed themselves to be engaging in reassertion. Then, in the second stage of my search, I went back through the *HBJR* to examine all legislation that received a final

[15] The terms that guide my keyword search are as follows: amendment, approve, authorize, congress, control, constitution, execute, inform, legislative, limit, oversight, prohibit, president, require, report, repeal.

passage vote during each chamber year. This second step allowed me to catch any bills that would have been overlooked due to inaccuracies and limitations imposed by the key word search.

Figure 3.1 illustrates the results of my search. In the figure, the dark bars represent the total number of reassertion bills that receive a final passage vote in one or both houses of Congress during a given chamber year. The lighter bars represent the number of reassertion bills that successfully pass both houses of Congress during a given chamber year. I will explain the importance of this distinction below.

Figure 3.1: Reassertion Legislation: 1947-2002
80th Congress - 107th Congress



The results of any research project reflect decisions made by the researcher about what data to collect and how to collect it. This project is no different. The research strategy that I implement allows me to analyze the clearest example of legislative reassertion—when it is pursued through individual bills designed for this purpose specifically. The "cost" imposed by this strategy is that it forces me to neglect reassertion amendments included in non-reassertion legislation. I also neglect

reassertion that takes the form of individual provisions written into bills that are not located by my search procedure.

This latter design "cost" reflects a larger difficulty confronting those who seek to examine how legislative content drives lawmaking. The length and complexity of legislation makes any comprehensive analysis of content very difficult to carry out. Historically, political scientists have mitigated this dilemma by constructing lists of "landmark" bills and then constraining their substantive analyses to these bills alone (Mayhew 1991; Howell, Adler, Cameron and Riemann 2000; Stathis 2003). Even if we discount the inherently subjective nature of their decisions about what makes one bill significant and another insignificant, this strategy prevents political scientists from gaining insights into why *potentially* significant bills fail. Legislative failure—when a bill is defeated at the final vote stage—is important because it is frequently preceded by lengthy and illuminating political contestation. By examining failure, in other words, we gain insights into the specific conditions facilitating success. By focusing on successful enactments alone, political scientists have provided us with vital insights about the politics of lawmaking. At the same time, by limiting analyses to successful enactments they have neglected explanations illuminating why a particular bill passed *when it did.*[16] What about the political conditions allowed a particular kind of bill to pass? Under what conditions would a similar bill fail? These are the questions I aim to confront.

More specifically, in order to identify the conditions under which Congress successfully reasserts, we must also consider instances when reassertion legislation *might have passed but did not* (Geddes 1990; Flores-Macias and Kreps 2013). I provide such a comparison by arguing that legislative reassertion is *possible* whenever a reassertion bill makes it to floor for a final passage vote in one or both houses of Congress, but does not pass. In the analysis I refer to this outcome as "attempted" reassertion. I set these attempts against "successful" reassertion—those bills that make

[16] As we know from Pierson (2000), timing plays a particularly important role in determining the fate and consequences of policy enactments.

it through both houses of Congress.[17] For example, in Chapter 5 I emphasize this distinction by examining Ohio Republican Senator John Bricker's attempt to pass a constitutional amendment that would have empowered Congress to regulate executive agreements. The long, public and contentious battle over Bricker's proposal did not result in successful reassertion. Yet, it was part of an important series of debates between Congress and the president over the scope of executive branch power. MCs engaged in a similar debate in the latter half of the 1960s. In this case, however, they successfully passed the War Powers Resolution (WPR). Discussing when and why Bricker's amendment failed helps to make clear how the political conditions I explore empirically below also helped the WPR pass.

The results presented in this chapter represent the first effort to systematically examine the conditions under which MCs pursue reassertion. The results I present also provide insights into why reassertion did not happen when it might have—a perspective that undermines claims about Congress' near complete unwillingness to even attempt to pass legislation challenging the presidential predominance. The data limitations that I describe above also suggest that the reassertion activity I document *under-represents* MCs' overall willingness to reassert. This analysis is not intended to be the last word on reassertion. It is instead a first effort to systematically examine one form of congressional behavior largely overlooked by contemporary scholars.

Finally, this study examines some of the theoretical foundations of positivist scholarship on delegation and lawmaking in our separated system. By examining the conditions under which reassertion bills become law, this analysis considers untested empirical implications of important theoretical models. If the conditions under which reassertion bills are attempted or successfully passed are not in accordance with the assumptions of these studies, then we have some reason to doubt their theoretical foundations.

[17] I consider a bill that is passed by both the House of Representatives and the Senate as a success even if it is vetoed by the president.

II. Reassertion Legislation as a Dependent Variable

The questions that I aim to answer, and the strategy I adopt for doing so, allow me to directly confront ways in which two related lines of scholarship fail to fully account for reassertion. In Chapter 1, I categorize these studies as "Darwinian" or "Newtonian" in their approach. Darwinians argue that whereas presidents have the power and incentive to actively pursue institutional power while Congress has neither. Applied to my analysis, the Darwinian argument suggests that we should never observe reassertion. They also argue that reassertion does not happen because the president anticipates it and adjusts his behavior accordingly. As a consequence, Darwinians either dismiss reassertion when it happens, or they treat it as ad hoc and not amenable to systematic analysis.

The Newtonians, on the other hand, give us reason to treat reassertion as one more product of divided government. While they do not directly bills similar to those I consider below, they make a series of claims in which they posit partisan conflict as a catalyst for inter-branch conflict. More specifically, as a president of one party pursues his policy goals by exerting pressure on Congress, and Congress exerts its own counter-force by pushing back. Is reassertion motivated by partisanship? If so, can we rely on divided government to drive enactment of reassertion legislation? I explore these questions below.

Before beginning my empirical analysis, I will explore these arguments in more detail. By exploring the implications of these argument, I highlight how my claims that reassertion is conditional on presidential weakness, party cohesion, and bipartisan cooperation add to contemporary views on congressional behavior in the presidency-centered order.

The Darwinian Perspective: Oversight, Overreach and the Latent Threat of Reassertion

According to the Darwinians, only the fittest survive the inter-branch struggle for governing power. For all of the reasons I describe in Chapter 1, the modern president is well equipped for this struggle. Congress is not. The Darwinians give us little reason to expect that Congress will "prevent

power from slipping through its fingers" (*Youngstown Sheet & Tube Co. v Sawyer*, 343 U.S. 579, 1952 [Jackson, J., concurring]). Indeed, the Darwinians make clear all the ways in which Congress has failed to heed Chief Justice Jackson's warning. In addition, they make a strong case on behalf of their claim that collective action costs prevent MCs from acting on behalf of institutional prerogatives even if they wished to do so. At the same time, arguments from this perspective must confront the fact that presidents do not run roughshod over the constitutional system. Their "pursuit of power" is not without constraint. Why? If Congress is incapable of mounting a response what does a president have to fear?

The Darwinians provide two answers, First, they make clear that presidents do actually fear a potential countermove by Congress, and they moderate their behavior in order to prevent it. Presidents and executive branch administrators design and implement policy in ways that hew close enough to the preferences of the median member of Congress—or the relevant oversight committee—to avoid catalyzing legislative intrusion into policy areas over which the executive branch wields authority (Ferejohn and Shipan 1990; Shipan 2004; Howell and Pevehouse 2007; Kriner 2010). This argument hinges on the idea that Congress *can* check or reverse presidential action. Accordingly, I argue that it is not too much of a stretch to assume that Congress can reassert in order to bolster its role in the development and implementation of policy.

The Darwinians do not offer much in the way of argument or evidence to illustrate when we should expect Congress to check the executive branch. One study does suggest that any countermove against the president will occur when MCs' "incentives to act" align with "their ability to effectively do so" (Howell 2003, 111; Moe 1999, 448). Yet, this is as far as the investigation proceeds. Darwinians do not systematically examine the specific conditions under which MCs work together to check the executive branch because they view it as almost entirely implausible. "It remains extremely doubtful," argues Howell (2003), "that enough members […] will serve their

institution […] in order to mount a forceful and sustained fight against the president over the proper balance of power" (112). My argument aims to identify when incentives and ability align in ways that make reassertion possible and appealing. The evidence that I present suggests that this form of legislative behavior is common enough to afford us with some general expectations for when it is more or less likely to occur.

The Newtonian Perspective: Partisan Conflict, Inter-branch Conflict and "Mechanical" Reassertion

Three interlocking claims are central to the Newtonian position: (1) MCs have underlying policy preferences; (2) these preferences reflect partisan commitments as well as a commitment to "effective policy"; (3) MCs will act on behalf of these preferences even when such action brings them into conflict with the executive branch. When viewed together, these claims provide insights into the Newtonian position on when Congress moves against the executive branch even though such action is rarely the focus of their analyses. In short, the situation they present is one in which partisan conflict or disagreements over policy outputs can motivate MCs to check the executive branch. These motivations are powerful enough to overcome the constraints described so well by the Darwinians.

For a more concrete demonstration of this argument, consider the "transaction cost" approach to delegation proposed by Epstein and O'Halloran (1999). On this argument, the policymaking process is said to suffer from the "hold-up problem" described by economists in their studies of firm behavior (Coase 1937; Williamson 1986; Dixit 1998; Eggertsson 1990). The "hold-up problem" posits a situation in which two parties, each of which benefits from cooperation, fail to work together because one of the parties fears that any agreement will result in a permanent loss of bargaining power and profits. As a consequence of their inability to cooperate, socially beneficial

products that would otherwise be produced are not. These products are "held-up" by the uncertainty that results from agreements which necessarily precede production.

Applied to politics, the hold-up problem describes a situation in which a necessary policy (product) is not passed (created) because, on the one hand, re-election-seeking members lack the requisite time and expertise to craft something they are comfortable implementing. On the other hand, they are unwilling to simply transfer all design and implementation authorities to administrators with the more expertise. Like the firm executive who fears the loss of bargaining power and profits, legislators fear losing authority over the design and implementation of policy. By parting with their influence over policy outputs, MCs are putting themselves at risk of being punished by voters who may be unhappy with the decisions of unelected administrators (Epstein and O'Halloran 1999, 41-51).

To overcome the hold-up problem MCs delegate a range of provisional powers to executive branch administrators through an "incomplete contract"—one that allows for an ongoing process of negotiation as the parties adjust their "actions in response to changing circumstances" (Epstein and O'Halloran 1999, 38). Legislation crafted by MCs stipulate the terms of an incomplete, separation of powers "contract" between Congress and the president though which both parties benefit. MCs trade off the transaction costs associated with making policy internally against those incurred by delegation. The "policy-contracts" that reflect this trade-off then fall along a continuum that runs from policies that Congress "makes" (no delegation) to those that it "buys" (total delegation).[18] Just as a firm contracts out when doing so allows for the maximization of profit, members delegate to maximize their individual reelection prospects. The president accepts such authority because he "always prefers more discretion" (Epstein and O'Halloran 1999, 150). Central to this argument is the

[18] When members choose to make policy internally, the costs incurred come from "the inefficiencies of the committee system." Members weigh these costs against the "principal-agent problems of oversight and control," incurred through delegation (Epstein and O'Halloran 1999, 49).

idea that MCs are only willing to delegate because any decision made today can be altered tomorrow. Incompleteness ensures that power delegated is not power sacrificed.

Reassertion, as I describe it, is a form of congressional behavior largely ignored by those who explore the implications of the transaction cost approach because they focus instead on *ex ante* controls written into these policy-contracts. Through the effective use of administrative procedures and political controls, they argue, MCs manage the authority they delegate in a way that would make reassertion unnecessary (McCubbins and Schwartz 1984; McCubbins, Noll, and Weingast 1987; Weingast and Moran 1983). More specifically, MCs' commitments to party and policy effectiveness—factors that lead them to write incomplete contracts— are demonstrated by the fact that procedural and administrative controls over delegated authorities fluctuate as a consequence of both partisan battle and policy complexity (Balla 1998; Bawn 1995; Gailmard 2009; Patty and Gailmard 2007). These factors also appear as MCs design administrative institutions themselves. political and policy concerns lead MCs to create agencies that allow for a varying amount of autonomous action by those operating within them (MacDonald 2007; Wood and Bohte 2004). Of course presidents also have preferences about agency design. Unsurprisingly, they seek to maximize executive branch control over any and all administrative agencies (Lewis 2003; Lewis 2008).

These studies provide important insights into how party contestation leads members to narrow the range of authority delegated to the executive branch bureaucracy. Yet they neglect any discussion of the circumstances under which MCs move to formally renegotiate a standing policy-contract. Instead, they give us reasons to believe that such renegotiation is possible because the contracts they describe are all provisional and are thus likely to be altered as the parties to them change (Epstein and O'Halloran 1999, 37; Bendor and Meirowitz 2004). More specifically, they suggest that party conflict will motivate inter-branch conflict because the force exerted on a standing contract by a president from one party will activate a counter-force from his opponents in Congress.

In the case of reassertion—congressional action that is analogous to renegotiation—MCs are not only aiming to bring a single policy in line with a new set of preferences. They are instead acting to reclaim from the executive branch authority over the process by which policy is designed and implemented. Moreover, by reasserting MCs actually *impose* a new contract on a president because they require him to do without powers that he once possessed. If a president always prefers more discretion, then he would rather not lose the discretionary power he already wields. To what extent does partisan conflict motivate contract renegotiation? Is it right to see partisan conflict as a motivation for MCs to reaffirm those aspects of liberalism given voice by reassertion? Newtonians provide us with no answer to these questions. They lead us to believe that reassertion under these circumstances is logical and theoretically possible but they provide no empirical evidence to demonstrate that their logic translates into action.

III. Testing for Conditional Reassertion

In Chapters 1 and 2, I argue that when they seek to enact reassertion legislation, MCs subvert modes of behavior generated by the presidency-centered order. As a consequence of this fact, I stipulate that reassertion is systematically more likely when:

(1) the president is politically and/or institutionally weak;
(2) the majority party in Congress is large and cohesive
(3) the bill wins support from a bipartisan coalition

In Section II above I explain how and why much contemporary political science fails to fully demonstrate the conditions under which MCs pursue and successfully pass reassertion legislation. In so doing, I make clear how my claims run contrary to the expectations of Darwinians and Newtonians. In the remainder of this chapter I substantiate these claims through a series of empirical tests designed to make clear the conditions under which reassertion legislation is pursued and successfully enacted.

Reassertion and Presidential Weakness

I test the influence of presidential weakness by examining its "political" and "institutional" manifestations. The two-term limitation imposed by the 22nd Amendment weakens the president *institutionally*. Barred from running for a third term, second-term presidents face a "cycle of decreasing influence" beginning almost as soon as the re-election campaign ends (Light 1999). As influence wanes, the president and executive branch officials exhibit "less energy and creative stamina" (Light 1999, 37). As a consequence, the president provides fewer political benefits to MCs, many of whom are running for reelection. Similarly, a president's co-partisans in Congress may have deferred to his leadership through the first four years. They are less likely to show deference during the second term because they must protect their own political futures even if that means further handicapping a "lame duck." Institutional weakness increases the probability of successful reassertion because it erodes the commonly held belief among MCs that by defending the president, they are also defending themselves.

The institutional weakness created by the 22nd Amendment also influences the thinking of those MCs in the opposition party. Under divided government, opposition party MCs make strategic decisions about how best to oppose the president. As I have already discussed, the president's opponents in Congress can choose to pursue oversight hearings and investigations, they can filibuster and/or they can hold up confirmation of executive branch appointees. Reassertion is a "costly" strategic choice because it (a) requires legislative enactment; (b) will almost certainly be opposed by the president; and (c) provides a collective benefit to the all of those within the institution.

MCs minimize the costs associated with (a) and (b), by pursuing reassertion when the president is *least likely* to oppose them when his co-partisans are *most likely* to defy him. Both of these conditions hold during the second term. A president who is on his way out of office has less to lose

from any legislative enactment that weakens the executive branch itself than does a president in his first term. During the second term, MCs can best expect that the time and energy they commit to reassertion will be rewarded with successful enactment of reassertion legislation. Together, these arguments lead to the following hypothesis:

> **Hypothesis 3.1:** All else equal, the frequency with which Congress attempts reassertion, and the probability of successful reassertion, both systematically increase during a president's second term.

The null hypothesis for this claim is that second term status has an effect on the probability of successful reassertion and the total number of reassertion attempts that is not systematically distinguishable from zero. In the regressions themselves, second terms status is an indicator variable coded as 1 for all chamber years that full during years 5, 6, 7, or 8 of a president's term, and 0 otherwise.[19]

The president is *politically* weak when he lacks support among the public at large among the majority party in Congress and/or among the members of his own party. As I have already argued, in the presidency-centered order both MCs and the public expect the president to take the lead in designing and implementing policy. As a consequence, MCs are most likely to pursue reassertion legislation when the president's reputation, competence, and leadership skills are called into question. In addition, as the president's popularity wanes, the political value of reassertion increases because bills of this type provide MCs with an opportunity to publicly contest presidential leadership and to take a position "against" a sitting president. Position-taking is central to any campaign for

[19] I do not code a term completed by unelected presidents as "second term." For example, I consider 1973 (93rd Congress, 2nd Session) to be part of Nixon's second term. I do not consider the 94th Congress, during which Gerald Ford completed Nixon's term, to be a "second term." In this case, Ford is eligible for reelection where Nixon would not have been.

reelection and reassertion legislation provides a potentially high-profile opportunity for engaging in it (Mayhew 1974).[20] This argument leads me to the following hypothesis:

> **Hypothesis 3.2:** All else equal, the frequency with which Congress attempts reassertion, the probability of successful reassertion, both systematically increase as presidential popularity declines.

The regression models incorporate three different measures of political weakness. The first is simply the president's annual average approval rating for each chamber year between 1947-2002.[21] The second and third are similar measures except they capture the approval rating among those who self-identify as members of the majority party in Congress, and those who self-identify as members of the president's party (Lebo and Cassino 2007). The null hypothesis for political weakness is that a decline in presidential popularity has no systematic effect on the probability of successful reassertion.

The measure capturing approval among those who self-identify as members of the president's party is also useful as evidence for my claim that that reassertion is a bipartisan endeavor. Confirming its significance gives us reason to believe that MCs in the president's party use reassertion legislation as an opportunity to distance themselves from an unpopular president. Intra-party unpopularity is one clear example of a situation in which reassertion is both appealing and possible. In this case, MCs from *both* parties can use reassertion legislation as a vehicle for pursuing political goals at the president's expense. When the president is unpopular among his co-partisans, MCs of both parties are most likely to work together on behalf of Congress' institutional prerogatives.

The models below also control for factors not incorporated into my argument but which may also influence the frequency and likelihood of reassertion. For example, in order to test my

---

[20] I provide details about how I operationalize all the variables I use, as well as where I find them, in the Appendix to this chapter.

[21] All of the approval rating data I use is accessible through The Gallup Organization's "Presidential Job Approval Center" (located here: http://www.gallup.com/poll/124922/presidential-approval-center.aspx).

argument that reassertion is conditional on presidential weakness I control for factors that would suggest a link between reassertion and presidential aggrandizement. Accordingly, the models include a variable that is simply a count of the total number of executive orders issued during each chamber year. Executive orders are a potent form of executive branch unilateralism so we may find that reassertion systematically increases as president's more frequently deploy this tool (Howell 2003; Mayer 2001).

Alternately, we may find that the strength president's draw from the "honeymoon period" following an election motivates reassertion. If MCs seek to demonstrate Congress' institutional role in the face of presidential aggrandizement, they may do so quickly following an election. To test this claim I include an indicator variable coded as 1 for the first two years of a president's term and 0 otherwise (Epstein and O'Halloran 1999).[22]

Finally, I explore the potential for systematic relationship between war and reassertion. It has long been understood that the executive branch grows in strength and influence when the president is called on to play the role of Commander-in-Chief. If Congress reasserts in order to reverse the growth of presidential power during war, then we should see a systematic relationship between reassertion and the immediate post-war period. The models include an indicator variable coded as 1 for the two years following the major military engagements that occur during between 1947-2002.[23] If reassertion is systematically related to presidential aggrandizement, then the coefficients on each of these variables should be greater than zero.

The final set of control variables include the models below include a measure of the annual average unemployment rate, a measure of the US federal budget surplus/deficit over total federal expenditures for each chamber year between 1947-2002, a year in term variable and a variable

[22] According to my coding, the honeymoon period applies only to the first two years of a president's first term.
[23] Following Howell (2003, 210), I consider official American "wars" that occur during this period to include: the Korean War, the Vietnam War, and the Persian Gulf War. Accordingly, the applicable post-war periods are 1954-1955, 1976-1977, and 1992-1993, respectively.

measuring the number of attempts Congress makes during a given year. I include the unemployment and budget surplus measures to ensure that environmental factors related to the country's economic condition are not actually driving MC decision-making. The president is often blamed for periods of economic hardship and lauded for periods of economic growth so if we see a systematic relationship between reassertion and unemployment, we have some reason to believe that MCs are responding to economic and not political conditions (Fiorina 1981). Similarly, Epstein and O'Halloran (1999, 130) find that MCs provide presidents with more discretion during periods of budget surplus. I control for this factor as a way of making clear whether reassertion simply reflects the inverse of the relationship they identify.

By controlling for the total number of reassertion bills voted on during each chamber year, guard against endogeneity. This measure ensures the probability of success is not simply driven by the number of possible successes. Finally, the year in term variable controls for varying influence that presidential approval may play over the course of a president's term in office. In Table 3.1, I provide summary statistics for all the variables discussed to this point.

Table 3.1: Summary Statistics for Presidential Weakness Variables

Variable	(N)	Mean	Std. Dev.	Minimum	Maximum
Successes	56	0.35	0.48	0	1
Second Term	56	0.25	0.437	0	1
Approval Rating	56	0.54	0.12	0.26	0.76
Approval Rating (Maj. Party)	56	0.59	0.24	0.17	0.95
Approval Rating (Pres. Party)	56	0.77	0.13	0.43	0.95
Annual Unemployment Rate	56	5.59	1.53	2.9	9.7
Surplus	56	-0.07	0.11	-0.25	0.49
Executive Orders	56	62	20.70	31	118
Start Term	56	0.5	0.50	0	1
Post-War	56	0.1	0.31	0	1
Attempts	56	1.64	1.73	0	10
Year in Term	56	3.5	2.08	1	8

Tables 3.2 and 3.3 show the effect that presidential weakness has on the probability of Congress successfully passing one or more reassertion bills during a given chamber year.[24] Table 3.2 represents the baseline model so it does not include any of the control variables related to presidential aggrandizement. Table 3.3 tests my argument about presidential weakness against the claim that reassertion is motivated by an aggrandizing president. For these tests success, is coded as an indicator variable taking the value of 1 if one or more reassertion bills pass during a given chamber year, and 0 otherwise. I use logistic regression to estimate the effect of presidential weakness on reassertion because the variable in these models is dichotomous.

[24] Figure A.3.1 in the Appendix plots and summarizes the marginal effects for all covariates included in Table 3.3. Figure A.3.2-A.3.4 plots and summarizes all covariate first difference estimates.

Table 3.2: Logit Estimation: Effect of Presidential Weakness on Probability of Reassertion
Baseline Model

Variable	Model 1 (β\SE)	Model 2 (β\SE)	Model 3 (β\SE)
Second Term	5.69**	3.45*	5.64**
	(2.84)	(2.01)	(2.99)
Approval Rating	-18.06**		
	(7.66)		
Approval Rating (Majority Party)		-6.58**	
		(3.07)	
Approval Rating (President's Party)			-13.86**
			(6.90)
Controls			
Annual Unemployment Rate	0.27	0.07	0.36
	(0.25)	(0.39)	(0.31)
Surplus	-3.83	-13.64**	-6.33
	(5.19)	(6.62)	(5.46)
Attempts	3.44***	3.19***	3.06***
	(1.01)	(0.72)	(.(0.98)
Year in Term	-1.17**	-0.79*	-0.98**
	(0.60)	(0.44)	(0.48)
Constant	4.78	-1.55	4.87
	(4.49)	(2.87)	(4.16)
	$R^2 = 0.62$	$R^2 = 0.62$	$R^2 = 0.61$
	N=53	N=53	N=53

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: One or more successes during a chamber year.

Robust standard errors reported in parenthesis.

Table 3.3: Logit Estimation: Presidential Weakness, Presidential Aggrandizement and Probability of Reassertion

Variable	Model 1 (β\SE)	Model 2 (β\SE)	Model 3 (β\SE)
Second Term	7.83**	6.80**	8.08***
	(4.01)	(3.02)	(2.62)
Approval Rating	-18.46*		
	(10.60)		
Approval Rating (Majority Party)		-15.78**	
		(6.88)	
Approval Rating (President's Party)			-12.73*
			(6.88)
Controls			
Annual Unemployment Rate	0.57	0.50	0.86
	(0.44)	(0.39)	(0.73)
Surplus	-7.33	-9.16	-29.89***
	(7.97)	(7.81)	(11.62)
Executive Orders	0.05	0.03	0.13
	(0.03)	(0.03)	(0.08)
Start Term	0.26	-0.38	-0.0.68
	(1.32)	(1.08)	(1.87)
Post-War	-2.02**	-2.14**	-5.75**
	0.97	1.00	(2.57)
Attempts	3.96***	3.34***	4.99***
	(1.42)	(1.08)	(1.18)
Year in Term	-1.34**	-1.08	-1.40***
	(0.61)	(0.41)	(0.64)
Constant	-0.88	0.69	-11.21
	(5.66)	(5.00)	(4.18)
	$R^2 = 0.66$	$R^2 = 0.64$	$R^2 = 0.74$
	N=53	N=53	N=53

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: One or more successes during a chamber year.

Robust standard errors reported in parenthesis.

The results presented in Tables 3.2 and 3.3 provide strong support for the effect of presidential weakness on the probability of successful reassertion. In both tables, the baseline model and the model controlling for presidential aggrandizement the second term variable and the approal rating variable(s) are reliably significant in the correct direction.

In order to provide a substantive interpretation of these results I use Clarify. This program allows me to to estimate a change in the predicted probability of reassertion as the independent variables of interest change (King, Toms and Wittenberg 2003). The results obtained in the baseline test show that when a president moves from his first to his second term, the probability of successful reassertion increases by 85 percent in Models 1 and 3 and 70 percent in Model 2. In the

test controlling for presidential aggrandizement, the probability of successful reassertion increases by 92 percent (Model 1), 95 percent (Model 2) and 90 percent (Model 3).

In addition, when the president's approval among the public at large, among those who affiliate with the majority party in Congress, and among his co-partisans moves from the 25th to the 75th percentile, the probability of success declines by 71 percent, 60 percent, 48 percent, respectively in the baseline model. In the full model the probability of success declines by 72.5 percent, 93 percent and 48.5 percent, respectively.[25] The fact that the probability of success significantly increases as support among the president's co-partisans declines suggests the existence of a link between bipartisanship and this form of lawmaking.

Table 3.4: Marginal Effects of Presidential Weakness on the Probability of Reassertion

Explanatory Variable	Change in Explanatory Variable	Change in Probability of Reassertion (%)
Second Term	First Term to Second Term (0 to 1)	92.3
Approval Rating	75th to 25th Percentile (63% - 43%)	72.5
Approval Rating (Majority Party)	75th to 25th Percentile (84% - 37%)	93
Approval Rating (President's Party)	75th to 25th Percentile (86% - 70%)	48.5

Note: Marginal effects taken from Table 3.3.
They are calculated by setting all other variables to mean values.
Change in the Second Term Variable Averaged Across Models .

In none of the models are the control variables that proxy for executive aggrandizement reliably significant in the correct direction. In fact, the post-war variable is consistently significant in the wrong direction. Contrary to those who argue that Congress reasserts in order to reclaim powers it lost during war, I find that the probability of successful reassertion systematically *declines* in the period immediately after a war ends. The results presented in Table 3.3 make clear that MCs will not

[25] To further substantiate these findings I include a marginal effects plot and a plot of simulated first differences in the Appendix. I also include similar figures for Majority Party Approval and Approval among Presidential Co-Partisans.

reassert as a direct response to presidential aggrandizement because successful reassertion is conditional on the president's *institutional* and *political* weakness.

I move next to examine if presidential weakness also generates a higher rate of reassertion attempts. My aim in doing so is to determine whether the conditions under which Congress successfully passes reassertion are different from those under which Congress "attempts" reassertion. If we find that Congress attempts reassertion at a higher rate in response to presidential aggrandizement, then we have some reason to believe it is one motivation driving MCs. More specifically, a higher rate of reassertion would serve as evidence that Congress does take steps to counteract presidential aggrandizement. These attempts to reclaim institutional authority may simply fail because these bills are pursued when a president is institutionally or politically strong. In these models the dependent variable is a count of the total number of reassertion bills receiving a final passage vote in one or both houses of Congress during each chamber year from 1947-2002. To carry out these tests I use negative binomial regression.[26]

Tables 3.5 and 3.6 show the effect that presidential weakness has on the frequency of reassertion attempts. The results here provide less support for my claim that weakness motivates a higher overall rate of attempted reassertion. The second term and approval rating variables are significant in just one version of the baseline model. They are, however, significant in the predicted direction. Additionally, while the second term variable is reliably significant in the correct direction in the model controlling for presidential aggrandizement, none of the approval rating measures are significant. Here again none of the measures serving as proxies for presidential aggrandizement are reliably significant across models.

---

[26] For these tests I choose negative binomial regression instead of a poisson because the variance of the dependent variable—Attempts—is two times larger the mean. This finding suggests that the Attempts variable is overdispersed (it includes "excess zeros.") Additionally, negative binomial models do not assume that the events being counted in period t are independent of the events being counted in period t+1, t+2, etc.. Applied to my analysis, this model does not assume that reassertion attempts in one year are independent of attempts that occurred in previously.

Table 3.5: Negative Binomial Estimation: Effect of Presidential Weakness on Reassertion Attempts

Baseline Model

	Model 1 β\SE	Model 2 β\SE	Model 3 β\SE
Second Term	0.98	0.77	1.06*
	(0.62)	(0.52)	(0.63)
Presidential Approval Rating	-1.66		
	(1.32)	(0.01)	
Approval Rating (Majority Party)		-0.48	
		(0.53)	
Approval Rating (President's Party)			-1.87*
			(1.06)
Controls			
Annual Unemployment Rate	-0.01	0.01	0.02
	(0.1)	(0.12)	(0.11)
Surplus	-0.93	-1.10	-0.95
	(1.16)	(1.33)	(1.11)
Year in Term	-0.15	-0.10	-0.15
	(0.13)	(0.10)	(0.12)
Constant	0.19	0.82	1.97
	(1.59)	(0.94)	(1.29)
	N=56	N=56	N=56

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

The dependent variable is the total number of reassertion bills voted on.

Robust standard errors reported in parenthesis.

Table 3.6: Negative Binomial Estimation: Presidential Weakness, Presidential Aggrandizement and Reassertion Attempts

	Model 1 β\SE	Model 2 β\SE	Model 3 β\SE
Second Term	1.06*	0.97*	1.09*
	(0.62)	(0.54)	(0.61)
Presidential Approval Rating	-0.97		
	(1.48)	(0.01)	
Approval Rating (Majority Party)		-0.67	
		(0.57)	
Approval Rating (President's Party)			-1.20
			(1.32)
Controls			
Annual Unemployment Rate	0.01	0.01	0.03
	(1.0)	(0.10)	(0.10)
Surplus	-1.71	-2.48	-1.58
	(1.11)	(1.43)	(1.09)
Year in Term	-0.12	-0.08	-0.12
	(0.13)	(0.09)	(0.11)
Executive Orders	0.01	0.02**	0.01
	(0.01)	(0.01)	(0.01)
Start Term	0.11	0.13	0.13
	(0.24)	0.23	(0.13)
Post-War	-0.12	-0.14	-0.13
	(0.34)	(0.34)	
Constant	0.19	-0.41	0.63
	(1.59)	(0.84)	(1.83)
	N=56	N=56	N=56

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

The dependent variable is the total number of reassertion bills voted on.

Robust standard errors reported in parenthesis.

These tests provide some reason to believe that that reassertion activity picks up during a president's second term, but no reliable evidence to suggest that MCs introduce more reassertion bills as presidential popularity declines. Further, we see no evidence that MCs attempt reassertion with a higher frequency in response to an aggrandizing president. As a consequence, the results I present offer no reason to believe that presidential aggrandizement motivates this kind of lawmaking.

Intra-Congressional Influences on Reassertion

The next set of models explores the influence of intra-congressional political dynamics on reassertion. In the pages above I argue that in the presidency-centered order, MCs in the majority party will only pursue reassertion if they (a) agree on a substitute policy; and (b) believe that they will not be wasting time and energy pursuing legislation that is unlikely to pass. The likelihood of policy agreement and policy enactment are in turn contingent on intra-party cohesion and the overall size of the majority party. MCs who are ideologically similar are more likely to share preferences over policy outputs and as the majority party grows in size it stands a greater chance of overcoming opposition from those in the minority party.

In order to account for the cohesion and size of the parties in Congress, the models below include a variable that measures the average "legislative potential for policy change" (LPPC) score for each chamber year. Developed by Cooper, Brady and Hurley (1979), LPPC scores represent a combination of four factors which together produce a tool for judging the majority party's opportunity for enacting new policy. These factors include (1) size of majority party; (2) majority party's internal cohesiveness; (3) size of minority party; and (4) minority party's internal cohesiveness.[27] A higher LPPC score means that a larger and more cohesive majority party is contending against a smaller and more fractured minority party (Howell 2003, 86; Howell and Pevehouse 2007, 60-61). In this circumstance it is more likely that the majority party will enact new policy. When the majority is small and fractured, or when it faces a large and cohesive minority, the

[27] Following Howell (2003, 209) and Howell and Pevehouse (2007, 59), I calculate each chamber's LPPC score in the following way: Chamber LPPC = [(majority party size in percent) X (cohesion of the majority party)] – [(minority party size in percent) X (cohesion of the minority party)]. I then average the two scores for an average annual LPPC score. Howell (2003) and Howell and Pevehouse (2007) utilize *Congressional Quarterly's* party unity scores as a way of capturing party cohesion. These scores are published in the Brookings Institution's *Vital Statistics on Congress* which can be accessed here: http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-mann-ornstein. Unfortunately, the Brookings data is not available for the 80th-82nd or 87th Congress'. I substitute the party unity scores for each chamber calculated by Poole and Rosenthal. That data can be found here: http://pooleandrosenthal.com/party_unity.htm.

likelihood of new policy enactment shrinks. Restated as a hypothesis, the size and cohesion of the majority party should work as follows:

> **Hypothesis 3.3:** All else equal, the frequency with which Congress pursues reassertion, and the probability of successful reassertion, both increase as a given Congress' average LPPC score increases.

The null hypothesis is that average LPPC will have an effect on the probability of successful reassertion, and the total number of reassertion attempts, that is greater than or equal to zero.

As an alternative measure I also run these tests with a variable that simply measures the size of the majority party as a percentage of Congress. If the coefficient on this variable is greater than or equal to zero, we have reason to believe that reassertion is contingent on the existence of a large congressional majority. Size empowers the majority to overcome opposition from the president and from those in the minority party.

By turning to intra-congressional factors, I am also able to test the Newtonian claim that partisan conflict motivates inter-branch conflict. If this claim is true, then we should observe a systematic relationship between reassertion and divided government. Accordingly, these models include a dummy variable coded as 1 for each chamber year under divided government and 0 otherwise. If party conflict motivates reassertion, we should see a systematic and positive relationship between party conflict and reassertion activity/success.[28]

The final Congress-level factor that I include in the second set of models is a variable measuring the level of polarization during each chamber year.[29] As the parties polarize, opportunities for bipartisan cooperation decline and so does the probability that MCs will collaborate to pass legislation that restrains the president (Devins 2008). Indeed, the gridlock

[28] In terms of coding, the models below follow conventional accounts in considering government to be unified in a given Congress if the same party controls the House, the Senate, and the presidency. The relationship between divided government and lawmaking is also developed in a large and important literature For example, see: Mayhew (2001); Edwards, III, Barrett, and Peake (1997); Coleman (1999); Binder (1999); Howell, Adler, Cameron, and Riemann, (2000); Clinton and Lapinski, (2006).

[29] In this context, polarization refers to the increasing ideological distance between the parties.

resulting from polarization encourages presidents to act unilaterally and it encourages MCs who seek to deliver on policy promises to accept presidential unilateralism unilateral action (Howell 2003). Under these circumstances, there exist compelling reasons to actively avoid reassertion. Accordingly, I expect that as polarization within Congress increases, both the frequency of reassertion attempts and the probability of successful reassertion will decline. The null hypothesis in this case is that the effect of polarization on reassertion will be less than or equal to zero.

To measure polarization, I rely on the DW-NOMINATE scores developed by Poole and Rosenthal (1997). The NOMINATE algorithm collects and analyzes all of the votes taken by each member of Congress during a given chamber year. Assuming that these votes proxy for each MCs underlying policy preferences, NOMINATE computes and assigns each MC a numerical score ranging from -1 to 1. That score, in turn, serves a measure of ideology on which -1 denotes an extreme liberal and +1 an extreme conservative. The measure of polarization I utilize represents the difference in the DW-NOMINATE scores of the median members of the two parties in the House of Representatives.[30] Table 3.7 provides summary statistics for all of the Congress-level variables.[31]

Table 3.7: Summary Statistics for Intra-Congressional Variables

Variable	(N)	Mean	Std. Dev.	Minimum	Maximum
LPPC Score	56	0.12	0.07	0.02	0.27
Divided Government	56	0.64	0.48	0	1
Polarization	56	0.61	0.10	0.47	0.86
Majority Party Size (pct.)	56	0.57	0.05	0.50	0.68

[30] McCarty (2007) reports various measures of polarization including Senate-based measures and an average of the House and Senate, but he finds that the results are substantively similar.
[31] These tables also include the unemployment and budget surplus control variables included in the presidential weakness tables for the reasons that I describe above.

In Tables 3.8 and 3.9 I present the results of tests identifying the effect that intra-congressional factors have on the probability of successful reassertion, as well as on the frequency of reassertion attempts. These tables show that constraining my analysis to intra-congressional factors alone provides only marginal explanatory leverage on the likelihood or frequency of reassertion. In Table 3.8—measuring the likelihood of success—none of the independent variables of interest are significant. In Table 3.9—measuring the frequency of attempted reassertion— the polarization variable is the only one with any reliable explanatory power. Substantively, this result indicates that suggests that the rate with which Congress attempts reassertion declines by 0.65 bills per year if we move the polarization measure from the 25th to the 75th percentile.

Table 3.8: Logit Estimation: Effect of Intra-Congressional Factors on Probability of Successf Reassertion

Variable	Model 1 (β\SE)	Model 2 (β\SE)
Average LPPC	6.01	
	(6.94)	
Majority Party Size		14.00
		(8.92)
Polarization	-2.68	-2.16
	(6.31)	(6.48)
Divided Government	0.86	0.95
	(1.18)	(1.12)
Surplus	-4.35	-3.68
	(4.97)	(4.77)
Annual Unemployment Rate	0.17	0.10
	(0.31)	(0.32)
Attempts	2.44***	2.51***
	(0.66)	(0.68)
Constant	-5.21	-12.63**
	(3.84)	(5.22)
	$R^2 = 0.54$	$R^2 = 0.55$
	N=53	N=53

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: One or more successes during a chamber year.

Robust standard errors reported in parenthesis.

Table 3.9: Negative Binomial Estimation: Effect of Intra-Congressional Factors on Reasserti Attempts

	Model 1 β\SE	Model 2 β\SE
Average LPPC	1.48	
	(2.08)	
Majority Party Size		0.96
		(3.08)
Polarization	-3.30**	-3.31**
	(1.34)	(1.36)
Divided Government	0.47	0.43
	(0.32)	(0.31)
Surplus	-1.20	-1.25
	(1.19)	(1.18)
Annual Unemployment Rate	-0.03	-0.02
	(0.12)	(0.12)
Constant	2.12	1.73
	(0.94)	(1.83)
	N=56	N=56

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

The dependent variable is the total number of reassertion bills voted on.

Robust standard errors reported in parenthesis.

I began this chapter by arguing that both the size and cohesion of the majority party and the political/institutional weakness of the president influence reassertion. The results above provide strong evidence in support of my claim that these decisions are conditional on the president's institutional and political weakness. The evidence supporting my claim about majority size and cohesion is not as convincing. The final set of models included in this chapter test these claims simultaneously in order to determine if they have a jointly significant effect on reassertion. Stated differently, these tests will examine if presidential weakness influences the likelihood and frequency of reassertion if we also control for party strength and cohesion, divided government, and polarization.

A Conditional Model of Legislative Reassertion

Tables 3.10, 3,10a, 3.12 and 3.12a provide the most well-rounded examination of the conditions under which Congress attempts, and successfully passes, reassertion legislation. If the claims I make about the effect of presidential weakness on reassertion retain their explanatory power after controlling for polarization, party conflict, party cohesion, and party strength, then we can be more confident in them. In short, I aim to make clear a set of joint conditions under which MCs find themselves with the incentive and the ability to reassert legislative authority vis-à-vis the executive branch.

Table 3.10 and 3.10a further substantiate my claim that presidential weakness increases the probability of successful reassertion. The second term and approval rating(s) variables are all reliably significant in the correct direction. Substantively, the results presented in Table 3.10 indicate that if we hold all other variables at their means (or medians where appropriate), the probability of reassertion increases as the president moves from his first to his second term by 89 percent in Model 1, 97 percent in Model 2, and 83 percent in Model 3. Completing a similar procedure for the approval rating(s) measures, we see that moving from the 25th to the 75th percentile of each variable decreases the probability of successful reassertion by 77 percent (annual average), 61 percent (among the president's co-partisans), and 85 percent (among those in the majority party).[32] The marginal effects produced by models included in Tables 3.10 and 3.10a are also statistically significantly different from zero. In Table 3.11a, I present all of the marginal effects of the variables tested below.

[32] In the Appendix, Figures A.3.5-A.3.12 summarize and plot the average marginal effects and simulated first differences for all covariates included in Table 3.10 and 3.10a.

Table 3.10: Logit Estimation: Conditional Reassertino

Variable	Model 1 (β\SE)	Model 2 (β\SE)	Model 3 (β\SE)
Second Term	6.56**	5.57**	9.45**
	(3.36)	(2.80)	(4.48)
Approval Rating	-18.00**		
	(7.69)		
Approval Rating (President's Party)		-16.93**	
		(7.13)	
Approval Rating (Majority Party)			-12.11***
			(3.62)
Controls			
Annual Unemployment Rate	0.075	0.19	-0.12
	(0.32)	(0.31)	(0.44)
Surplus	-2.29	-5.00	-19.00
	(5.23)	(6.06)	(12.36)
Year in Term	-1.16*	-1.09	-1.22**
	(0.60)	(0.68)	(0.62)
Attempts	3.26***	3.15***	3.76***
	(0.98)	(0.88)	(1.16)
Size of Majority Party	20.08**	9.12	29.78**
	(8.31)	(9.73)	(14.50)
Polarization	-3.54	-1.91	-15.22**
	(6.01)	(7.09)	(6.62)
Divided Government	0.47	2.09	-1.34
	(2.11)	(1.97)	(2.16)
Constant	-3.70	3.26	-5.64
	(4.66)	(5.00)	(8.23)
	$R^2 = 0.65$	$R^2 = 0.64$	$R^2 = 0.73$
	N=53	N=53	N=53

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: One or more successes during a chamber year.

Robust standard errors reported in parenthesis.

Table 3.10a: Logit Estimation: Conditional Reassertion

Variable	Model 1 (β\SE)	Model 2 (β\SE)	Model 3 (β\SE)
Second Term	6.67*	5.70**	9.08**
	(3.62)	(2.80)	(3.98)
Approval Rating	-20.00**		
	(9.06)		
Approval Rating (President's Party)		-18.40***	
		(7.11)	
Approval Rating (Majority Party)			-12.84***
			(3.62)
Controls			
Annual Unemployment Rate	0.18	0.28	0.07
	(0.33)	(0.31)	(0.40)
Surplus	-1.09	-4.93	-17.97
	(5.21)	(6.32)	(11.11)
Year in Term	-1.24*	-1.17*	-1.19**
	(0.66)	(0.68)	(0.57)
Attempts	3.38***	3.26***	3.81***
	(1.14)	(0.94)	(1.20)
Average LPPC	11.95*	3.83	18.22**
	(7.18)	(7.53)	(9.13)
Polarization	-4.63	-1.92	-18.01**
	(6.36)	(7.30)	(7.42)
Divided Government	0.60	2.17	-1.04
	(2.23)	(2.16)	(2.14)
Constant	7.82	8.85	10.25**
	(5.40)	(5.43)	(4.72)
	$R^2 = 0.64$	$R^2 = 0.64$	$R^2 = 0.72$
	N=53	N=53	N=53

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: One or more successes during a chamber year.

Robust standard errors reported in parenthesis.

Tables 3.10 and 3.10a also show that intra-congressional factors increase in their explanatory power once we control for the president's political and institutional standing. Whereas in Table 3.8 the majority size and LPPC score variables fail to meet accepted thresholds of statistical significance, both achieve significance in models controlling for the president's annual average approval rating. Substantively, these results mean that when the majority size variable moves from the 25th percentile to the 75th percentile, the probability of successful reassertion increases by 27 percent.[33] Performing the same operation with the LPPC score variable increases the probability of successful reassertion by 22 percent. Accordingly, we have some reason to believe that the chances of reassertion increase as the majority party grows in size and cohesion.

Table 3.11a: Marginal Effects: Conditional Reassertion

Explanatory Variable	Change in Explanatory Variable	Change in Probability of Reassertion (%)
Second Term	First Term to Second Term (0 to 1)	90
Approval Rating	75th to 25th Percentile (63% - 43%)	77
Approval Rating (President's Party)	75th to 25th Percentile (84% - 37%)	61
Approval Rating (Majority Party)	75th to 25th Percentile (86% - 70%)	85
Majority Party Size	25th to 75th Percentile (53% - 61%)	27
Average LPPC	25th to 75th Percentile (0.07 - 0.17)	24

Note: Marginal effects taken from Table 3.3.
They are calculated by setting all other variables to mean values.
Change in the Second Term Variable Averaged Across Models
Majority Party Size Variable from Table 3.10, Model 1
Average LPPC Variable from Table 3.10a, Model 1

Moving now to tests focusing on the frequency with which MCs attempt to reassert, we see less evidence for the explanatory power of presidential weakness or intra-congressional factors.

[33] For these calculations, I hold all other variables to their mean values.

Once again the polarization measure reliably meets accepted thresholds of statistical significance. Substantively, the coefficient on the polarization variable indicates that a one standard deviation increase in polarization, on average, leads to 0.47 fewer reassertion bills per chamber year (if all other variables are held at mean values). On the other hand, the model predicts that the rate of reassertion attempts will increase by 1.94 bills during a president's second term (on average, holding all other variables at mean values).

Table 3.12: Negative Binomial Estimation: Conditional Reassertion

	Model 1 β\SE	Model 2 β\SE	Model 3
Second Term	1.00*	0.99*	0.89*
	(0.57)	(0.55)	(0.50)
Approval Rating	-1.30		
	(1.38)		
Approval Rating (President's Party)		-1.52	
		(1.33)	
Approval Rating (Majority Party)			-0.94*
			(0.57)
Annual Unemployment Rate	-0.03	-0.02	-0.01
	(0.11)	(0.12)	(0.12)
Surplus	-1.51	-1.70	-2.09*
	(1.25)	(1.28)	(1.24)
Year in Term	-0.13	-0.13	-0.08
	(0.13)	(0.12)	(0.10)
Majority Party Size	0.82	0.04	0.19
	(3.00)	(3.25)	(3.04)
Polarization	-3.37**	-3.23**	-4.23***
	(1.36)	(1.34)	(1.36)
Divided Government	0.19	0.30	0.04
	(0.27)	(0.30)	(0.29)
Constant	2.91	3.55	3.45
	(2.28)	(2.61)	(2.15)
	N=56	N=56	N=56

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

The dependent variable is the total number of reassertion bills voted on.

Robust standard errors reported in parenthesis.

Table 3.12a: Negative Binomial Estimation: Conditional Reassertion

	Model 1 β\SE	Model 2 β\SE	Model 3
Second Term	0.98*	0.97*	0.87*
	(0.58)	(0.57)	(0.50)
Approval Rating	-1.36		
	(1.33)		
Approval Rating (President's Party)		-1.50	
		(1.26)	
Approval Rating (Majority Party)			-0.94*
			(0.57)
Annual Unemployment Rate	-0.04	-0.03	-0.02
	(0.11)	(0.11)	(0.11)
Surplus	-1.48	-1.63	-2.03
	(1.26)	(1.28)	(1.26)
Year in Term	-0.13	-0.12	-0.08
	(0.13)	(0.12)	(0.10)
Average LPPC Score	1.09	0.65	0.68
	(2.09)	(2.23	(2.14)
Polarization	-3.37**	-3.18**	-4.20***
	(1.36)	(1.35)	(1.34)
Divided Government	0.22	0.33	0.07
	(0.28)	(0.29)	(0.29)
Constant	3.28	3.45	3.47
	(1.52)	(1.57)	(1.37)
	N=56	N=56	N=56

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

The dependent variable is the total number of reassertion bills voted on.

Robust standard errors reported in parenthesis.

IV. DISCUSSION

The results I present make two important points about congressional-executive dynamics in the modern era. First, and most importantly, we see that reassertion activity is systematically linked to the president's political and institutional weakness. This finding runs contrary to the Darwinian claim that Congress does not reassert, and/or that reassertion is too rare to be examined systematically. Additionally, the results I present depart from Newtonian theory by demonstrating that reassertion has no systematic relationship to partisan conflict. Congress *can* "recapture the aggressive spirit," even if the opportunities for doing so are constrained by presidential strength and the potential for bipartisan cooperation.

The systematic relationship between reassertion and presidential weakness suggests that while MCs cannot be relied upon to routinely defend or expand Congress' institutional status within the constitutional order, they will do so when such action electorally beneficial. As in so many of the decisions made by MCs, reassertion is driven by the pursuit of individual political goals. This relationship, in turn, should serve as a warning to those who believe that Congress retains the capacity to reclaim legislative authority held by the president. Whether the president has assumed legislative authority unilaterally, or if Congress delegated it to him by Congress, MCs cannot renegotiate separation of powers "contracts" whenever executive branch administrators pursue policies that do not fit with congressional preferences. Only in the abstract can MCs reclaim authority at a time of their choosing. In reality, their opportunities for doing so are limited.

Third and finally, partisan conflict does not generate all forms of inter-branch conflict. We cannot, therefore, conclude that party conflict provides the oil that allows our constitutional system to "go of itself." Reassertion contributes to the maintenance of a healthily balanced system, and it is contingent upon bipartisan cooperation. Accordingly, as the parties polarize and as MCs prove less willing to work across party lines, they are less able to reassert Congress positive, autonomous policymaking powers. In short, the findings above reinforce an argument made by both political scientists and legal scholars in which polarization is seen as an obstacle to the separation and balance of powers (Devins 2009; Mann and Ornstein 2008).

As a first effort to systematically examine the conditions under which reassertion is attempted and achieved, the findings presented here are not intended to serve as the final words on this specific form of lawmaking. At the same time, however, the results I present do raise concerns about the consequences of delegation and health of our system of separate, co-equal powers.

Appendix

Table A.3.1: Variables, Operationalization and Sources

Variable	Operationalization	Source
Success	Reassertion bill passes during a given chamber year? yes=1, no=0	Constructed by author through search of *History of Bills and Joint Resolutions*
Attempt	Number of reassertion bills receiving a final passage vote in House or Senate during a given chamber year	Constructed by author through search of *History of Bills and Joint Resolutions*
Second Term	Chamber year falls during year 5, 6, 7, 8 of president's term? yes=1, no=0	*Historical Statistics of the United States*
Approval Rating	Annual average approval rating for a given year	Constructed by author using Gallup Presidential Job Approval Center
Approval Rating (Majority Party)	Annual average approval rating among respondents identifying as members of majority party	Constructed by author using Gallup Presidential Job Approval Center
Approval Rating (President's Party)	Annual average approval rating among respondents identifying as members of president's party	Constructed by author using Gallup Presidential Job Approval Center
Unemployment Rate	Annual average unemployment rate for a given chamber year	Constructed by author using Labor Force Statistics from Current Population Survey at Bureau of Labor Statistics
Polarization	Polarization score by Congress	Constructed by author by calculating the difference in the DW-NOMINATE scores of the median members of the two parties in the House of Representatives
Divided Government	Control of the House/Senate and Presidency split between parties? yes=1, no=0	*Historical Statistics of the United States:* Table Eb296-308 "Political Party Affiliations in Congress and the presidency"

Table A.3.1: Variables, Operationalization and Sources (Continued)

Variable	Operationalization	Source
Surplus	Annual measure of budget surplus as a share of total federal outlays	Calculated by author using *Economic Report of the President, 2003*
Executive Orders	Number of Executive Orders issued during each chamber year	Executive Orders Disposition Tables Index in Online Federal Register
Start Term	Chamber year falls during year 1 or 2 of a president's term? yes=1, no=0	*Historical Statistics of the United States:* Table Eb149-153 "Electoral Votes Cast for President by Party and State"
Post-War	Chamber year falls 1 or 2 years following conclusion of military conflict? yes=1, no=0	Constructed by author based on Howell (2003) categorization of military conflicts
Year In Term	Chamber year corresponding to years 1-8 of a given president's tenure	*Historical Statistics of the United States* Table Eb149-153 "Electoral Votes Cast for President by Party and State"
Majority Party Size	Percent of Congress controlled by the majority party during a given chamber year	*Historical Statistics of the United States* Table Eb296-308 "Political Party Affiliations in Congress and the Presidency"
LPPC Score	[(Maj. Party Size*Maj. Party Cohesion)] -[(Min. Party Size*Min. Party Cohesion)] averaged across both chambers	*Historical Statistics of the United States* Table Eb296-308 "Political Party Affiliations in Congress and the Presidency" "Party Medians from DW-NOMINATE" via VoteView.com

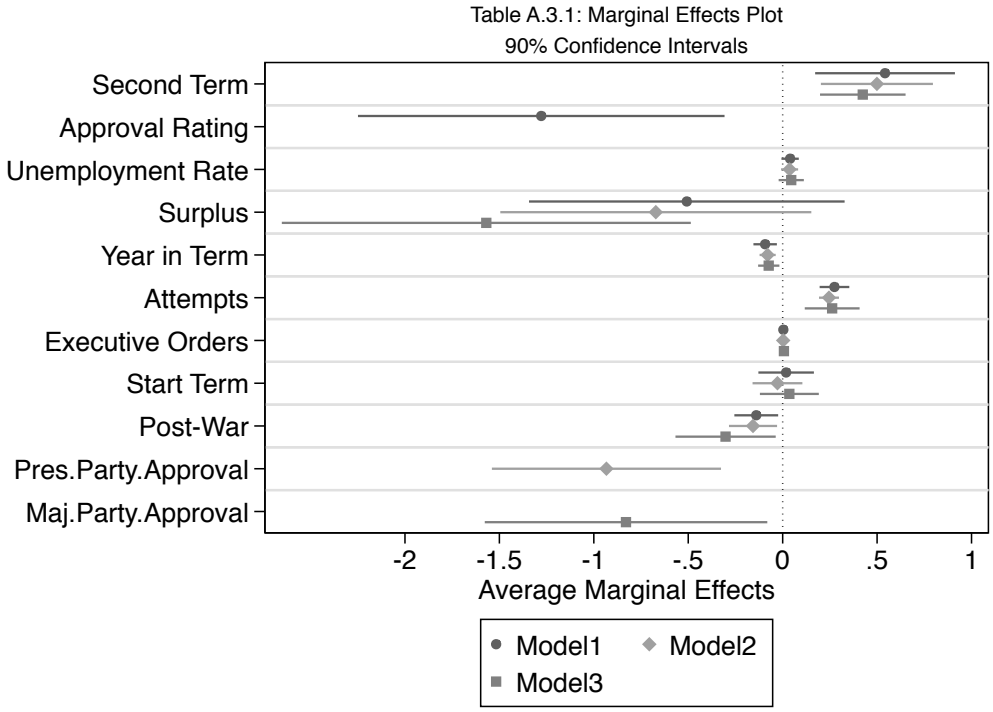


Figure A.3.1 plots the marginal effects of all covariates included in Table 3.3, Models 1-3

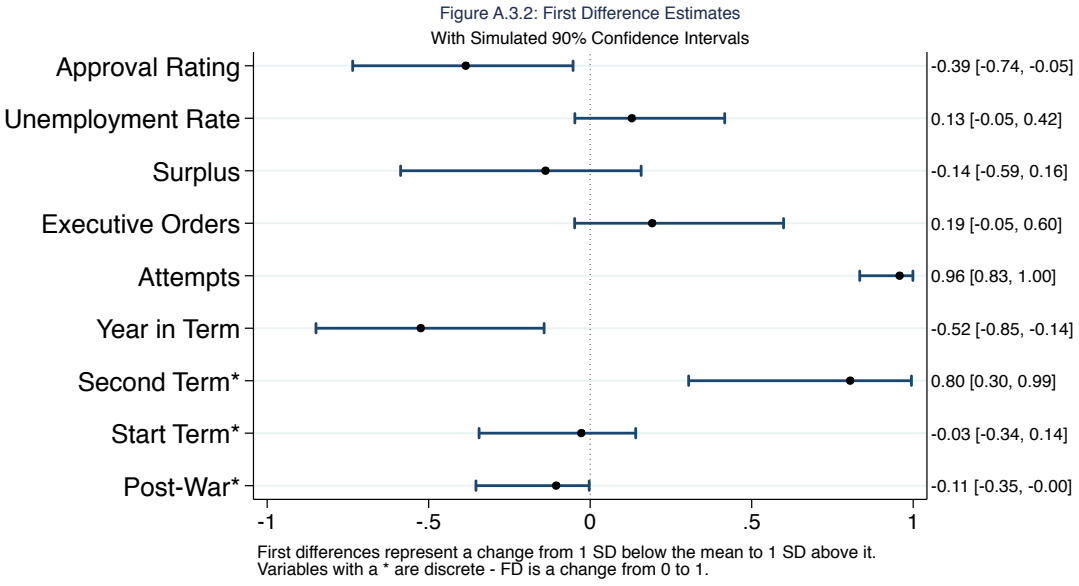


Figure A.3.2 plots the simulated first difference estimates for all covariates included in Table 3.3, Model 1

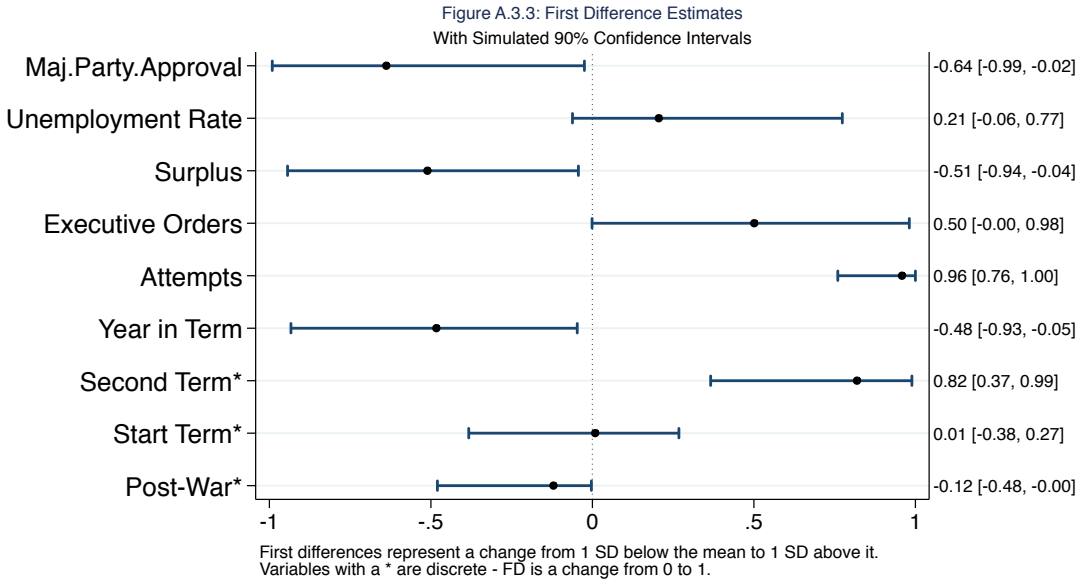


Figure A.3.3 plots the simulated first difference estimates for all covariates included in Table 3.3, Model 2

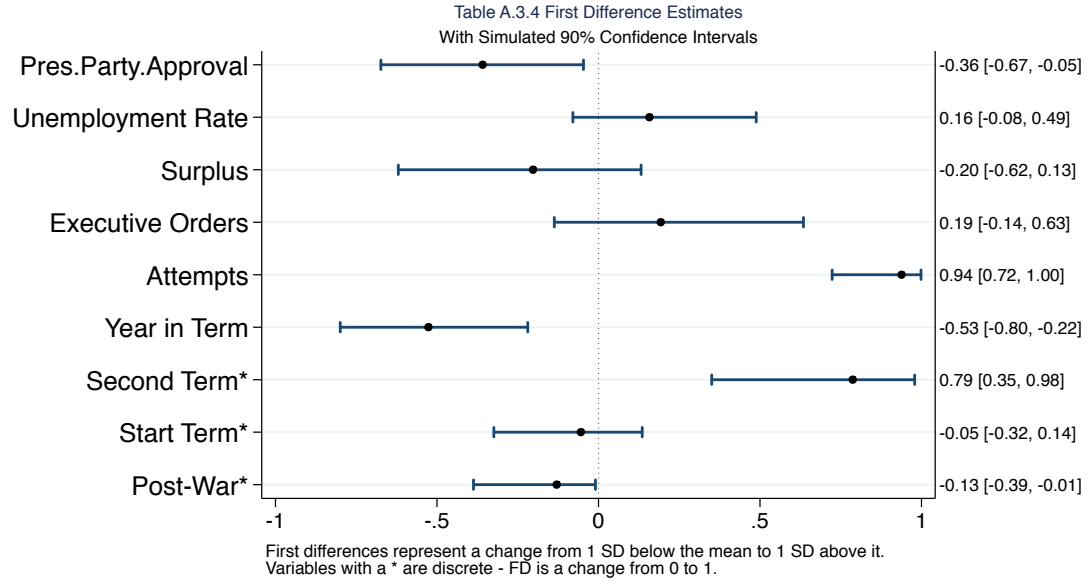


Figure A.3.4 plots the simulated first difference estimates for all covariates included in Table 3.3, Model 3

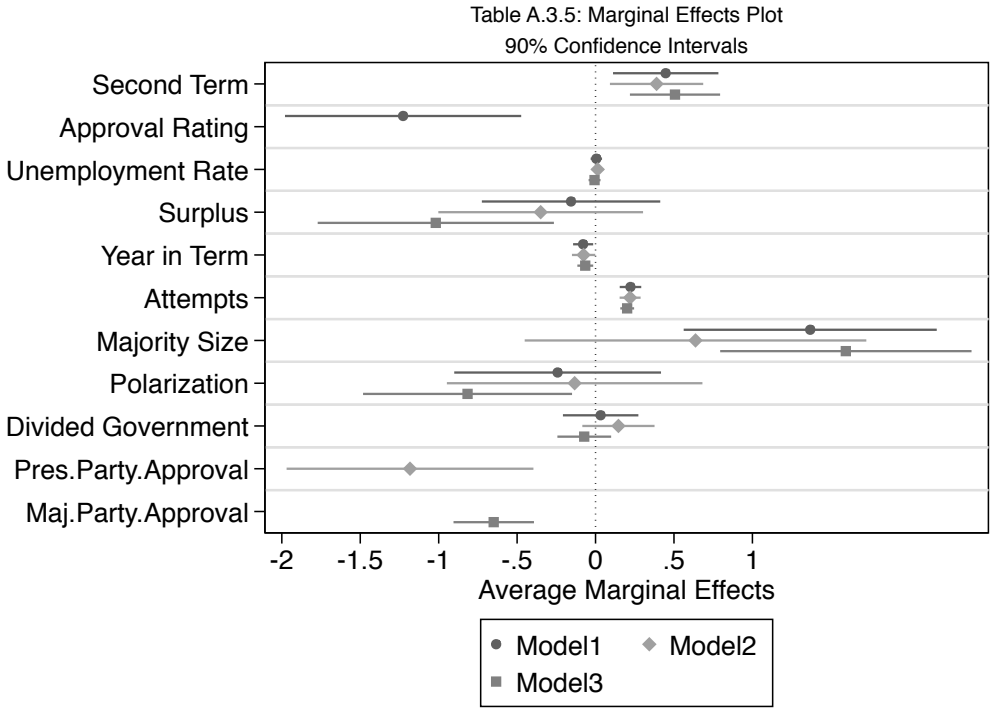


Table A.3.5 plots the average marginal effects all covariates included in Table 3.10, Models 1-3

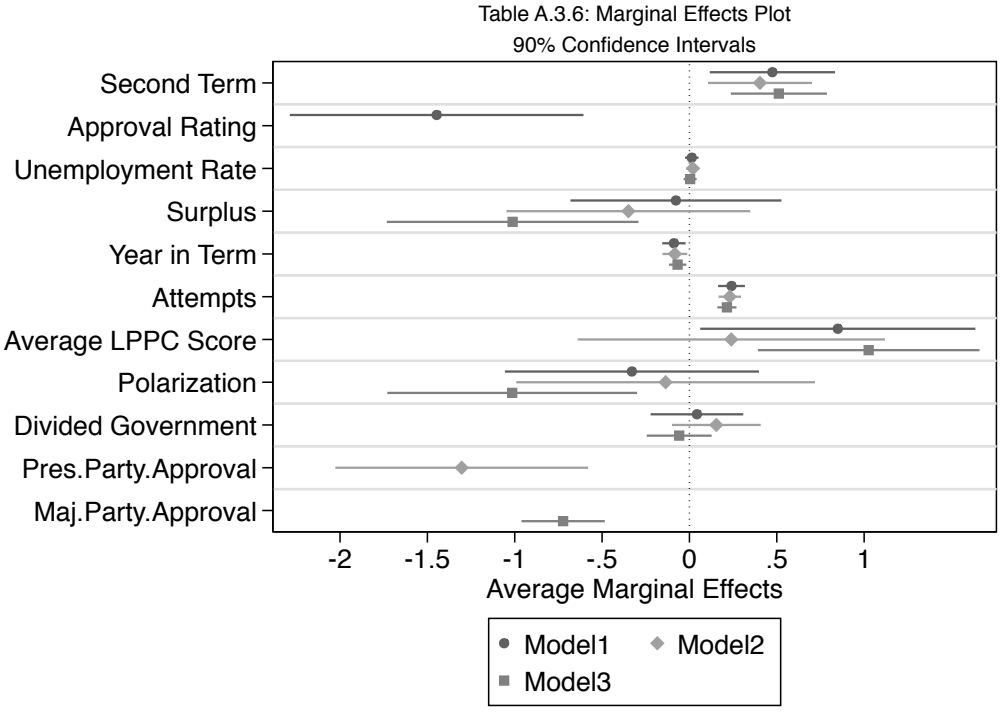


Table A.3.6 plots the average marginal effects of all covariates included in Table 3.10a, Models 1-3

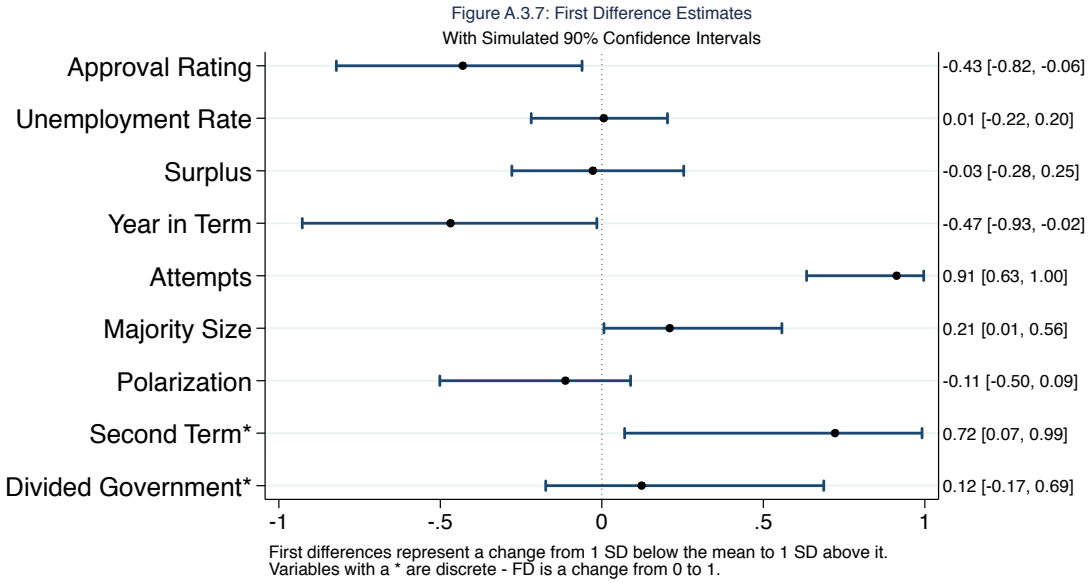


Figure A.3.7 plots the simulated first difference estimates for all covariates included in Table 3.10, Model 1

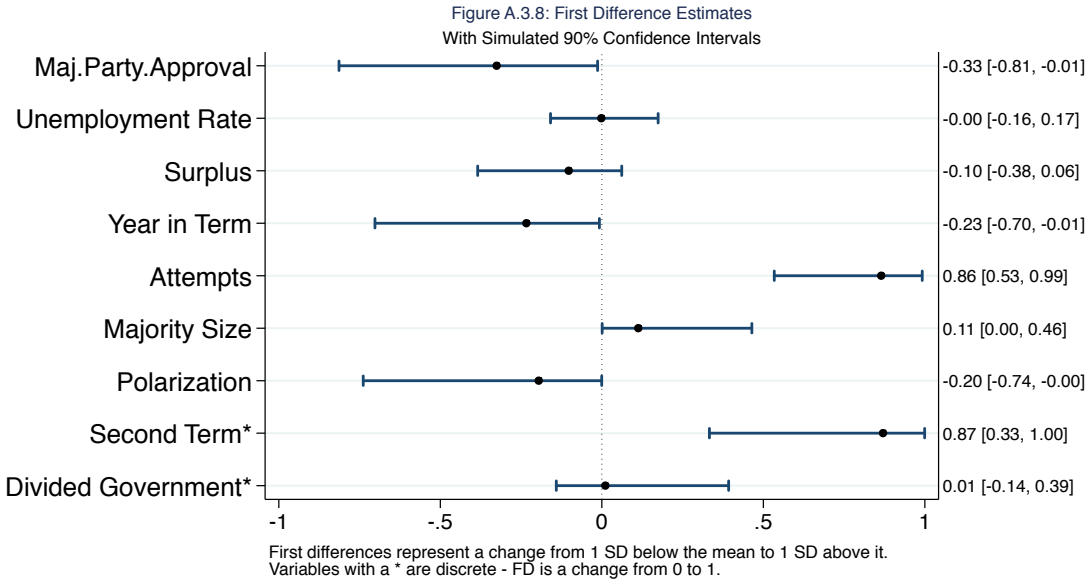


Figure A.3.8 plots the simulated first difference estimates for all covariates included in Table 3.10, Model 2

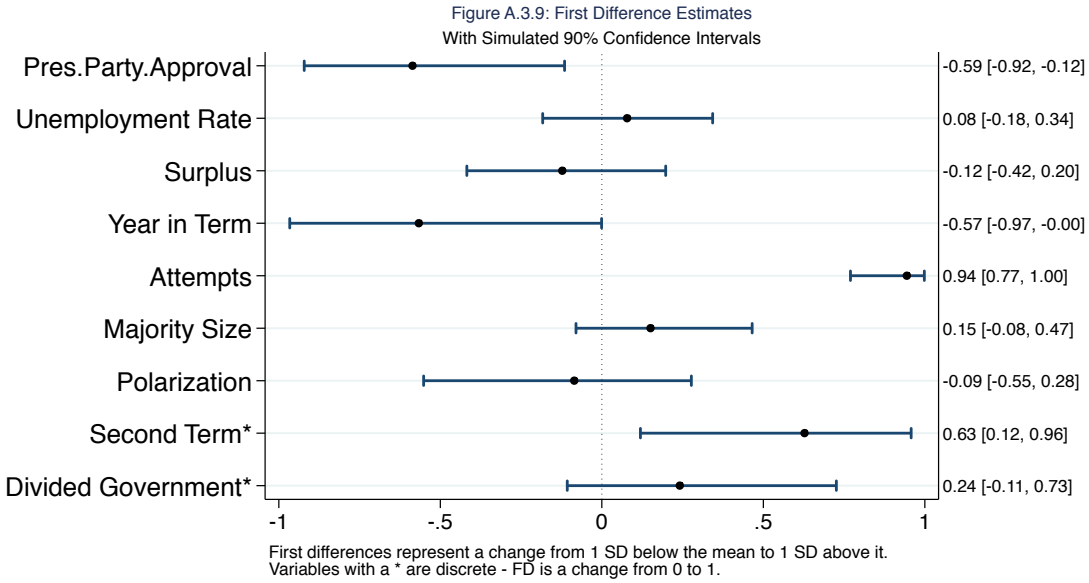


Figure A.3.9 plots the simulated first difference estimates for all covariates included in Table 3.10, Model 3

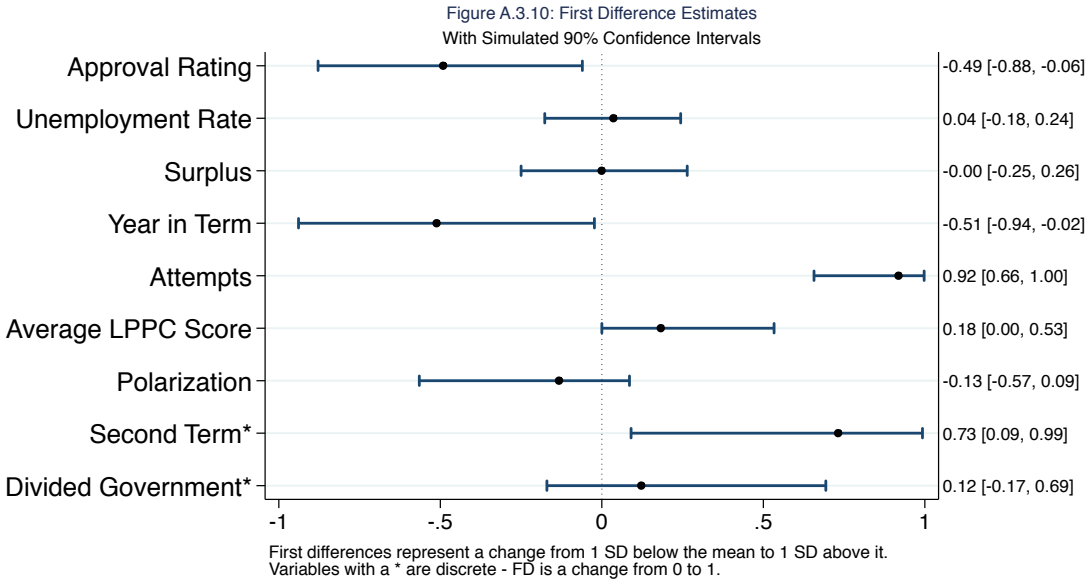


Figure A.3.10 plots the simulated first difference estimates for all covariates included in Table 3.10a, Model 1

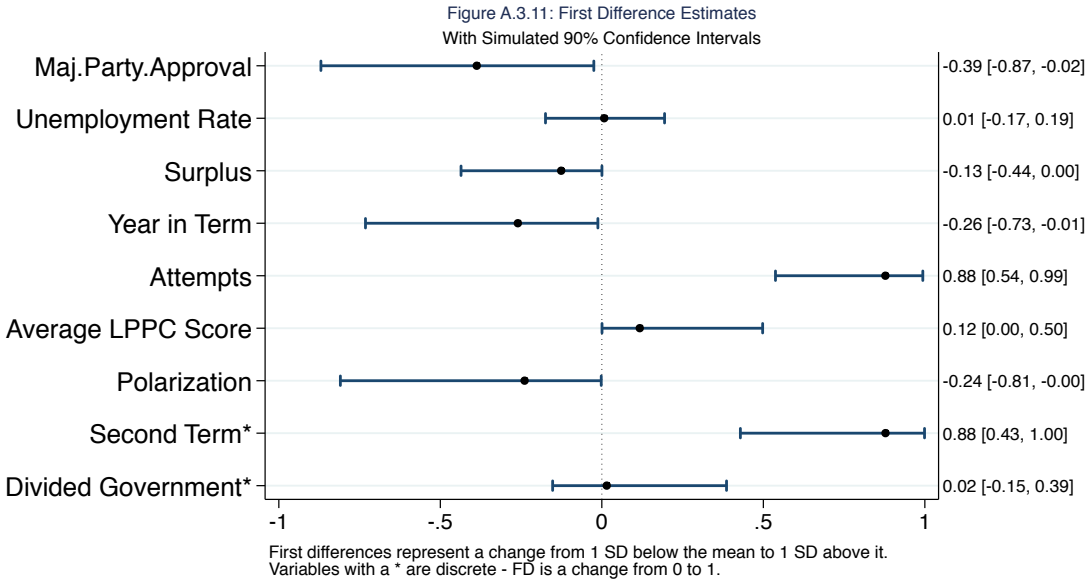


Figure A.3.11 plots the simulated first difference estimates for all covariates included in Table 3.10a, Model 2

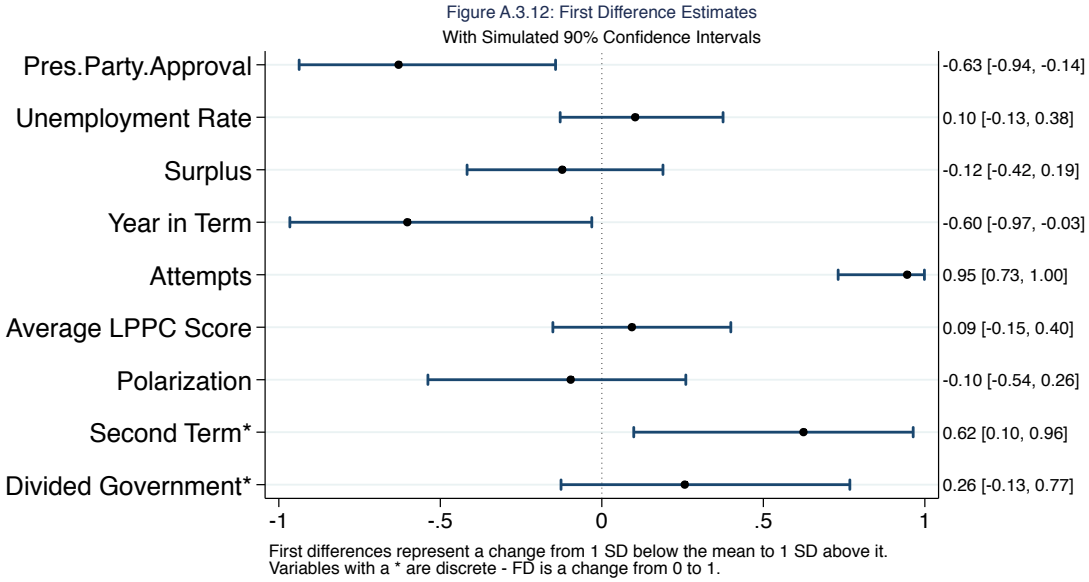


Figure A.3.12 plots the simulated first difference estimates for all covariates included in Table 3.10a, Model 3

CHAPTER 4
THE INDIVIDUAL ROOTS OF LEGISLATIVE REASSERTION

In the previous chapter I examined Congress' propensity to engage in reassertion, as well as the conditions under which reassertion bills are more likely to pass in both the House of Representatives and the Senate. I find that in both its institutional and political manifestations, presidential weakness systematically increases the probability of Congress passing one or more reassertion bills in a given chamber year. An institutionally weakened president is less able to dissuade MCs from challenging his institutional predominance, while political weakness affords MCs an opportunity to distance themselves from an unpopular president. I also provide some evidence to support the claim that the size and cohesion of the majority party also increase the probability of Congress passing one or more reassertion bills in a given chamber year. When the majority party is strong and cohesive, MCs have a better chance of overcoming opposition from the minority party, and they are more likely to agree on a future course of policy to substitute for the executive branch policymaking. Both findings illustrate the inter- and intra-branch factors driving this kind of lawmaking.

In this chapter, I implement the second stage of my empirical analysis by examining how the mechanisms identified in Chapter 3 influence the voting behavior of individual MCs.[34] Rather than examining the number of reassertion bills attempted, or the probability of success, my focus here is on roll call votes corresponding to the reassertion bills in my data set. By making roll call votes the unit of analysis, I provide a more fine-grained examination of *whom* in Congress is influenced by the inter- and intra-congressional factors tested in the previous chapter.[35] Even as I move to a different level of analysis in this chapter, my central goal remains the same. I aim to demonstrate that

[34] The procedure I carry out for testing the determinants of individual votes mirrors the one implemented by Flores-Macias and Kreps (2013). Whereas they examine how party affiliation drives votes for/against war taxes, I examine how measures of presidential weakness, majority party strength/weakness, and ideology explain votes for/against reassertion legislation.

[35] Importantly, this analysis examines only (a) recorded votes; (b) the final passage votes for each of these bills.

presidential weakness and majority party size and cohesion both systematically increase the probability of success (in this case, a "yea" vote).

This chapter will also examine an argument with some bearing on my claims about the intra-congressional factors driving votes for/against reassertion legislation. In *The Imperial Presidency*, Arthur Schlesinger laments the fact that "in the last years presidential primacy, so indispensable to the political order, has turned into presidential supremacy" (1973, viii). He goes on: "the constitutional presidency […] has become the imperial presidency, and threatens to be the revolutionary presidency" (1973, viii). These claims are notable because they come from a liberal who had, to that point, cheered the emergence of "presidential primacy." Indeed, Schlesinger's classic study of the New Deal describes the years from 1919-1936 as "the age of Roosevelt" (Schlesinger 1957; 1958; 1960). In this way, Schlesinger personifies a broader argument about shifting attitudes toward presidential power among both liberals and conservatives.

This argument posits ideological liberals, like Schlesinger, as supporters of presidential primacy from the New Deal until the Nixon presidency. From the Progressive movement of the early 20th century through the presidency of Lyndon Johnson, liberals viewed the presidency as the best institutional site for pursuing their political goals. Once Nixon won the White House, however, liberals condemned executive branch overreach and claimed that the Constitution intended for Congress to be the locus of governing power in the American system. Conservatives, meanwhile, moved in the opposite direction. Beginning with President Taft's objections to Theodore Roosevelt's stewardship theory and continuing through the Eisenhower, Kennedy and Johnson administrations, conservatives viewed the modern presidency with skepticism (Zelizer 2010, 16). Nixon's victory marked a reversal in conservative thinking as they came to embrace the presidency

and its "vast repositories of power" (Skowronek 2009, 2076; Crovitz, Rabkin and Bork 1989; Eastland 1992).[36]

I present evidence to substantiate this claim. The tests below demonstrate that in the years prior to the Nixon presidency, ideological conservatives were systematically more likely to support reassertion legislation. In the years after, they were systematically less likely to do so. Reassertion, as I have argued, is one way in which MCs register opposition to the presidency-centered order. Accordingly, the systematic opposition to legislation of this kind among conservatives demonstrates their commitment to a presidency unfettered by congressionally imposed constraints. The empirical evidence I present to illustrate this "switch in time," offers a novel perspective on the emergence of the "modern" conservative movement.

At the same time, I do not raise this point not only to substantiate extant claims about conservative and liberal attitudes toward the presidency. Demonstrating the conservative "switch in time" also helps me to further clarify why successful reassertion is contingent on bipartisan cooperation. If one of the two major parties demonstrates reliable support for bills of this kind, then their enactment would be possible as long as a critical mass of legislators from such a party holds seats in Congress. On the other hand, if MCs from neither of the two parties reliably support reassertion bills, then their enactment is more likely to be conditional upon support from a bipartisan coalition. In the pre-Nixon years, as long as enough ideological conservatives held seats in Congress, we could expect that their support alone would be enough to push reassertion legislation through. The same cannot be said for the post-Nixon years.

[36] Today, for example, we read that conservatives have learned how to "stop worrying and love the executive branch" (Zelizer 2010, 15-38) and that conservative presidents have helped to create "new imperial presidency" (Rudalevige 2006).

II. Reassertion and the Roll Call Record

The first set of tests that I present below will further test my claims that reassertion is conditional on presidential weakness and the size/cohesion of the majority party. If my results hold, I should find that presidential weakness systematically increases the likelihood that an individual MC will vote for a given reassertion bill. Presidential strength should, therefore, systematically decrease the probability of a "yea" vote. I should also find that MCs are systematically more likely to vote for reassertion as the size and cohesion of the majority party increase. Stated as hypotheses, I argue:

> **Hypothesis 4.1:** All else equal, an individual member of Congress is systematically more likely to vote in favor of a given reassertion bill during a president's second term.
>
> **Hypothesis 4.2:** All else equal, an individual member of Congress is systematically more likely to vote in favor of a given reassertion bill as presidential popularity declines.
>
> **Hypothesis 4.3:** All else equal, an individual member of the majority party in Congress is systematically more likely to vote in favor of a given reassertion bill as the party in grows in size and strength.

By claiming that presidential weakness directly and systematically influences member votes on reassertion bills, I am building on a line of scholarship initiated by Richard Neustadt. Between 1954-1956, Neustadt published three articles identifying how modern presidents influence congressional behavior. Focusing on the development and management of the "president's program"—Neustadt's term for the president's policy agenda—these studies demonstrate that MCs expect presidents to develop and introduce a cohesive set of policy proposals. In keeping with his role as "legislator-in-chief," this "bounded set of legislative requests, comprehensive in subject matter and specific in detail" gives direction to the presidents co-partisans and his opponents alike. For the president's co-partisans, it serves as to guide legislative action. For his opponents, it represents centerpiece of their opposition to him (Rudalevige 2002, 2). Simply stating his policy

goals is, of course, no guarantee to a president that Congress will act on them. Presidents must also persuade MCs to act on this agenda (Neustadt 1954; 1955; 1956).

In *Presidential Power and the Modern Presidents*, Neustadt explicitly links a president's "power" to his capacity for persuasion. From Neustadt's perspective, a more powerful president is one who can convince those in Congress that "what the White House wants of them is what they ought to do for their sake and on their authority" (Neustadt 1990, 30). Critical to a president's persuasive ability is his "status" among both the public and those in Congress because his bargaining power is "heightened or diminished by what others think of him" (Neustadt 1990, 54). For the purposes of this analysis, status is important because without it, a president loses his ability to prevent MCs from "thinking they can cross him without risk" (Neustadt 1990, 55).

Status, skillfulness and the techniques of persuasion are concepts that resist concrete definitions. Indeed contemporary political scientists continue to debate how they manifest and to what extent they explain political outcomes (Kellerman 1984; Greenstein 2004; Edwards 2012). Despite such disagreements, however, political scientists have largely come to agree that one metric for judging presidential success is the frequency with which a president wins votes held on legislative proposals included in his program.[37] As successes mount, the president develops a reputation for effectiveness. His reputation enhances the reputation of his party ("party brand") and this, in turn, helps MCs in their quest for reelection. As a consequence, individual MCs increasingly believe their own political fates are linked to the president's public standing, because "the public is more likely to score wins and losses as they relate to the president, not to the parties of Congress" (Lebo and O'Geen 2011, 5). In previous chapters I describe the line of scholarship suggesting that MCs are less willing to challenge the president's institutional status specifically because they are so invested in his success.

[37] For a summary of such studies see Lebo and O'Geen (2011).

What this argument neglects, however, is how MCs react when the president is politically and/or institutionally weakened. If a president's co-partisans in Congress believe him to be a liability, then they are more likely to "cross him" (to use Neustadt's language). If the president earns a reputation for ineffectiveness, his co-partisans in Congress must distance themselves from the brand he has created. Supporting reassertion legislation is one effective means of achieving separation. If the opposition party controls Congress, they can take advantage of this "distancing" by pursuing reassertion legislation when the president lacks political support among the public.

I highlight this line of scholarship because it provides theoretical support for the tests that I carry out below. When Congress reasserts successfully, the president endures a particular kind of defeat. *All* modern presidents prefer an institutional structure that affords them the maximum amount of autonomy and discretion. *All* modern presidents aim to wield maximum discretionary authority over the bureaucracy. *All* modern presidents prefer that the powers at their disposal remain ambiguous. Autonomy and discretion allow presidents the best opportunity to control their own fates. Ambiguity affords a president the best opportunity to interpret his constitutional powers with maximum flexibility ("Always in Vague," 2014). Successful reassertion runs contrary to these preferences. When MCs bolster Congress' positive, autonomous policymaking powers at the expense of the executive branch, they explicitly "cross" the president.

III. The Individual Roots of Support for Reassertion

In order to test Hypotheses 4.1-4.3, I reintroduce the relevant and substantively significant measures of presidential weakness and intra-congressional size/cohesion described in Chapter 3. At the same time, because I am moving from a macro-level analysis in which outcomes reflect the decisions of Congress as a unit, to one in which outcomes reflect the particular concerns of individual members, I also incorporate new measures which better capture the influence of these factors on individuals. In other words, whereas Chapter 3 explored aggregate outcomes this chapter focuses on the micro-

level decisions that help to comprise the aggregate. My primary aim in this chapter is to explore individual votes, and to do so I leverage explanatory variables most appropriate for judging individual-level decision-making.

The dependent variable examined in this chapter is a dichotomous vote choice. I consider a "yea" vote to be a success and I code it as a 1; I code a nay vote as a 0.[38] In a procedure similar to the one implemented by Flores-Macias and Kreps (2013), I pool all of the votes taken on reassertion bills between 1947-2002 in order to determine if, on average, presidential weakness and/or majority party size/cohesion influence the decisions of individual MCs. In addition, because I am primarily interested in the factors that lead to successful reassertion, I pay particular attention to votes associated with bills that passed both houses of Congress. However, in order to further distinguish the political conditions that contribute to successful reassertion from the conditions in which reassertion might have happened but did not, I also compare these results to votes on attempted bills.[39]

To measure the institutional and political manifestations of presidential weakness, the models below include an indicator variable denoting whether the vote took place during a president's second term. Similar to the models presented in Chapter 3, those below also include an approval rating variable. In this case, however, I focus only on the president's annual approval rating. To further explore presidential weakness, I also include a variable that measures the vote share won by the president in each state during the most recent presidential election. I expect that as

[38] I examine final passage votes only. Votes on amendments, early drafts of proposals and procedural motions are not considered in the regression models below. In addition, I include only the votes of those who explicitly voted "yea" or "nay" in the regressions, thereby leaving out paired votes, abstentions, and announced intentions.
[39] In the data, I include "success" as a separate indicator variable applied to each vote on a reassertion measure that made it through both houses of Congress. In so doing, I can distinguish between votes as I run the models.

vote share increases—as a president's political strength within a given state grows—an individual MC is less likely to vote for reassertion.[40]

To measure the explanatory power of intra-congressional factors on vote choice, I carry over the polarization measure tested in Chapter 3. I expect that as polarization increases, MCs will prove less likely to support a given reassertion bill. As partisan rancor increases, MCs are less apt to pursue legislation that provides a collective benefit

Whereas in the previous chapter I examined the effect of majority party size and cohesion at the Congress-level, in the models below I substitute measures and procedures that are more appropriate for individual-level analysis. More specifically, in order to gauge individual-level cohesion, for each member of the majority party I calculate the absolute value of the difference between his/her first-dimension DW-NOMINATE score and the median nominate score for each chamber during a given year.[41] Each member's "cohesion score" represents the ideological distance separating that specific member from the ideological center of the party. If party cohesion has the expected effect, then the probability of a "yea" vote should increase as the ideological "distance" between and individual member and the center of the party shrinks. In other words, the coefficient on the cohesion measure included in these models should be negative. Alternately, if the average size of the majority party has the expected effect, then the likelihood of a yea vote should increase as the majority party grows.

To measure the effect of the party cohesion variables, I model the dependent variable in a slightly different way. First, I examine only those votes made by members of the majority party. In the data, I include an indicator variable coded as 1 if a given member is in the majority and 0 otherwise. I then separate votes taken by those lawmakers in the House of Representatives from those taken in Senate and I apply the cohesion score accordingly. A member of the majority party in

[40] For these tests I restrict my analysis to roll call votes held in the Senate.
[41] Roberts (2010) performs a similar, but not identical, procedure.

the House of Representatives is compared to the median House member, and a member of the Senate majority party is compared to his/her median Senate counterpart. I do not divide the majority party size variable by chamber of Congress because while the influence of party cohesion may vary by chamber, individual judgments about the link between party size and likelihood of success are not likely to shift.[42] Model 1 in Table 4.4 corresponds to votes in the House of Representatives; Model 2 corresponds to votes in the Senate.

The control variables included in the models represent factors unrelated to my argument that may also drive vote choice. Once again, I control for the annual average unemployment rate and the annual measure of budget surplus as a share of total federal outlays. I also include measures of each MC's first- and second-dimension DW-NOMINATE score. For the tests below, it is important to note that NOMINATE scores falling along the first-dimension account for conflict over the "typical" issues dividing liberals from conservatives—the level of state intervention in the economy and the level of taxation, for example. Second dimension scores, on the other hand, account for conflicts over race and/or geographic section (Poole and Rosenthal 1997).

The models also include two blunt measures of partisanship. The first takes the form of an indicator variable coded as 1 if the member is a Democrat and 0 otherwise. As I will explain in more detail below, reassertion follows a particularly distinctive partisan pattern that must be considered along with my claims about presidential weakness and intra-congressional strength. The second is an indicator variable coded as 1 if the member belongs to the president's party and 0 otherwise. Table 4.1 presents summary statistics for these variables.

[42] Sinclair (2010) finds that "treating the Senate separately from the House in discussing party effects is justified" (339).

Table 4.1: Summary Statistics for Individual Vote Variables

Variable	(N)	Mean	Std. Dev.	Minimum	Maximum
Second Term	16,122	0.32	0.47	0	1
President's Party	16,078	0.44	0.50	0	1
Approval Rating	16,122	0.51	0.10	0.29	0.74
Democrat	16,078	0.58	0.49	0	1
Polarization	16,122	0.60	0.08	0.47	0.84
Surplus	16,122	-0.09	0.14	-0.26	0.40
Annual Unemployment Rate	16,122	6.31	1.82	3	9.6
President's Vote Share	2,722	0.59	0.08	0.30	0.88
Average Size of Majority Party	16,122	0.59	0.05	0.51	0.67
Individual Cohesion Score (House)	7,982	0.17	0.14	0	1.23
Individual Cohesion Score (Senate)	1,607	0.18	0.14	0	0.86
First-Dimension NOMINATE	16,122	-0.04	0.36	-1.08	1.44
Second-Dimension NOMINATE	16,122	0.01	0.53	-1.34	1.63

In Table 4.2 I present results of tests examining the effect of presidential weakness and intra-congressional factors on vote choice. In Model 1, I constrain the dependent variable to votes on reassertion bills that successfully passed both houses of Congress. These findings should be compared to the results of Model 2 in which I constrain the dependent variable to votes on attempted reassertion bills only. Model 3 pools all votes.

Table 4.2: Logit Estimation: Presidential Weakness, Intra-Congressional Factors and MC Vot Choice

Variable	Model 1 (β\SE)	Model 2 (β\SE)	Model 3 (β\SE)
Second Term	0.85***	-0.002	0.66***
	(0.07)	(0.12)	(0.06)
President's Party	-1.29***	-0.66***	-1.27***
	(0.08)	(0.13)	(0.07)
Approval Rating	0.67	2.67***	1.54***
	(0.43)	(0.46)	(0.30)
Democrat	-0.48***	0.04	-0.53***
	(0.16)	(0.20)	(0.12)
Polarization	-1.73***	5.43***	0.51
	(0.46)	(0.86)	(0.38)
Annual Unemployment Rate	0.29***	-0.11**	0.10***
	(0.04)	(0.05)	(0.02)
Surplus	-0.65	2.84***	0.58
	(0.59)	(1.07)	(0.37)
First Dimension NOMINATE	-0.64***	-0.69***	-0.63***
	(0.19)	(0.20)	(0.13)
Second Dimension NOMINATE	0.03	0.01	0.003
	(0.09)	(0.09)	(0.06)
Constant	0.73	-1.92	0.31
	(0.44)	(0.52)	(0.29)
	$R^2 = 0.10$	$R^2 = 0.11$	$R^2 = 0.06$
	N=7,159	N=5,960	N=13,119

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: "Yea" Vote on a Given Reassertion Bill .

Robust standard errors reported in parenthesis.

These models provide some additional support for my argument. First, we see that the second term variable is positive and statistically significant in Models 1 and 3, but not statistically significant in Model 2. If we hold all other variables at mean values, we see that the probability of a given member voting for reassertion increases by 12 percent in Model 1 and 10 percent in Model 3.[43] This finding supports my claim that institutional weakness plays a central role in determining an individual MC's preferences for/against reassertion. Viewed alongside the results presented in Chapter 3, we have more evidence that in the presidency-centered era, reassertion is conditional on a president's lame duck status.

[43] In the appendix Figure A.4.1 summarizes and plots all covariate simulated first difference estimates from this Table 4.1.

We also see that increasing polarization systematically decreases the probability of a "yea" vote on successful reassertion bills, but it systematically increases the probability of a "yea" vote when reassertion bills fail. In keeping with my argument, this finding suggests that MCs are less likely to cooperate on behalf of shared institutional interests as the ideological distance between the two parties increases. The positive relationship between polarization and a vote in favor of reassertion when I restrict the dependent variable to failed bills suggests, once again, that in the presidency-centered order reassertion is conditional on bipartisanship. Substantively, these results indicate that when the polarization scores increases from the 25th to the 75th percentile, the likelihood of a member voting for reassertion declines by approximately 3 percent in Models 1 and 3, holding all other variables at mean values.

These models provide less support for my claim that the president's political weakness systematically influences an MC's preference for or against reassertion. The approval rating measure is not statistically significant in Model 1, while in Models 2 and 3 it is significant in the wrong direction. In other words, we see that political weakness has little influence over votes on successful reassertion legislation.

Finally, we see that the indicator variable identifying those who are Democrats and those who are the president's co-partisans are both reliably significant. The negative coefficient on these variables suggests that Democrats and a president's co-partisans are less likely, on average, to vote for reassertion legislation. Substantively, Democrats are 7 percent less likely than non-Democrats to vote for reassertion (holding all other variables at mean values). If a member belongs to the president's party he is 20 percent less likely to vote for a given reassertion bill. We also see that as a members first-dimension NOMINATE score increases, he is systematically less likely to vote for a given reassertion bill. More specifically, moving from the 25th to the 75th percentile of first

dimension scores decreases the probability that a given member will vote for reassertion by approximately 6 percent. I will discuss this finding in more detail below.

In Table 4.3, I re-analyze the vote data after including a measure of presidential vote share in each state during the most recent election. Unlike their counterparts in the House of Representatives, Senators are responsible to a statewide constituency. Accordingly, I constrain the dependent variable in these models to votes taken in the Senate. My aim here is to provide a more fine-grained analysis of the link between the president's political weakness and votes for successful reassertion legislation. I expect that as a president's electoral support within a given state grows, that state's senator will be systematically less likely to vote for a given reassertion bill.

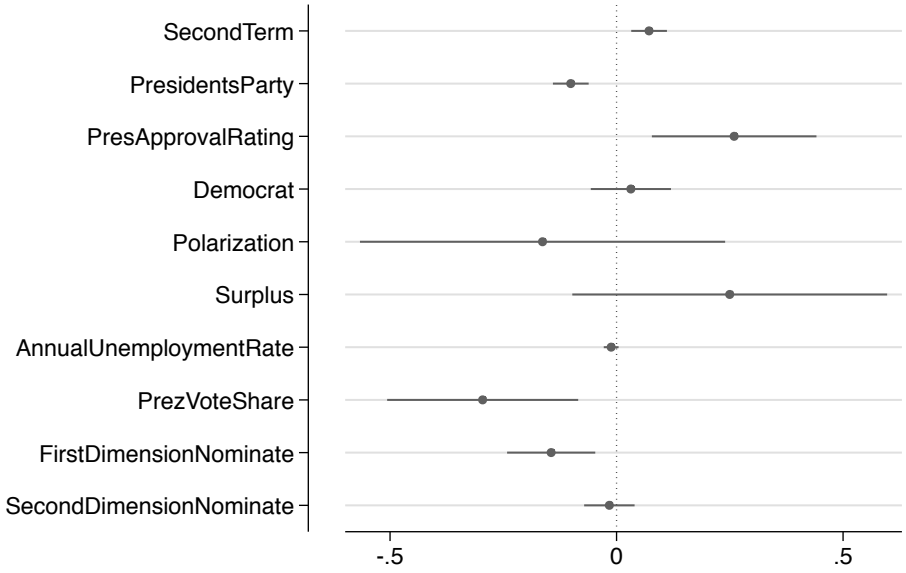
Table 4.3: Logit Estimation: Presidential Vote Share and MC Vote Choice

Variable	**Model 1** (β\SE)	**Model 2** (β\SE)
Second Term	1.00***	-2.34***
	(0.29)	(0.37)
President's Party	-1.42***	-1.18***
	(0.28)	(0.29)
Approval Rating	3.64***	-9.50***
	(1.35)	(1.54)
Democrat	0.44	0.66
	(0.63)	(0.63)
Polarization	-2.29	17.70***
	(2.89)	(2.81)
Annual Unemployment Rate	-0.17	1.02
	(0.12)	(0.20)
Surplus	3.50	11.04***
	(2.46)	(2.46)
President's Vote Share	-4.15***	-0.77
	(1.56)	(1.67)
First Dimension NOMINATE	-2.02***	-2.28***
	(0.69)	(0.62)
Second Dimension NOMINATE	-0.22	0.15
	(0.39)	(0.34)
Constant	5.89	-5.82
	(2.32)	(2.03)
	$R^2 = 0.22$	$R^2 = 0.23$
	N=1,070	N=1,024

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$
Dependent Variable: "Yea" Vote on a Given Reassertion Bill
Robust standard errors reported in parenthesis

In keeping with my expectation, we see that the coefficient on presidential vote share is negative and significant when looking at Senate votes on successful reassertion. On votes that fail, however, the presidential vote share measure fails to reach accepted thresholds of statistical significance. Substantively, this finding indicates that moving from the minimum value of the Presidential Vote Share to its maximum value decreases the probability that an individual will vote for vote for reassertion by approximately 5 percent. Figure 4.3 plots the marginal effects of all covariates in Model 1. In the Appendix Figure A.4.3 plots simulated first difference estimates for the same covariates.

Figure 4.3: Average Marginal Effects Plot with 95% Confidence Intervals
Table 4.3, Model 1



The final set of models in this section tests my claims about the influence of the size and cohesion of the majority party in each chamber. Model 1 in Table 4.4 tests these measures in the House of Representatives and Model 2 tests Senate votes. For these tests, I pool votes on successes and failures so as to provide the broadest possible examination of voting patterns. In Table 4.5, I

examine only the votes corresponding to successful bills. Once again, Models 1 tests votes in the House of Representatives and Model 2 tests Senate Votes.

Table 4.4: Logit Estimation: Majority Party Size, Majority Party Cohesion and MC Vote

Variable	Model 1 (β\SE)	Model 2 (β\SE)
Second Term	1.42***	0.94***
	(0.15)	(0.36)
President's Party	-6.14***	-1.25**
	(0.32)	(0.66)
Approval Rating	9.68***	-3.50**
	(0.83)	(1.41)
Democrat	6.38***	-1.66*
	(0.72)	(0.89)
Polarization	18.93***	-1.60
	(2.33)	(4.16)
Annual Unemployment Rate	0.62***	-0.20
	(0.08)	(0.17)
Surplus	24.70***	1.04
	(2.34)	(1.80)
Individual Cohesion	-3.12***	-1.33
	(0.28)	(0.86)
Majority Party Size	28.40***	22.11***
	(1.76)	(5.57)
Second Dimension NOMINATE	-0.01	-0.24
	(0.08)	(0.22)
Constant	-37.63***	-4.64**
	(2.86)	(1.85)
	$R^2 = 0.29$	$R^2 = 0.09$
	N=6,595	N=1,256

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: "Yea" Vote on a Given Reassertion Bill

Robust standard errors reported in parenthesis

Table 4.5: Logit Estimation: Majority Party Size, Majority Party Cohesion and MC Vote Choice

Variable	Model 1 (β\SE)	Model 2 (β\SE)
Second Term	0.80***	3.08***
	(0.17)	(0.90)
President's Party	-6.90***	-1.99**
	(0.33)	(0.93)
Approval Rating	9.64***	-2.73
	(0.79)	(2.70)
Democrat	0.20	-0.09
	(0.26)	(0.46)
Polarization	-0.45	-7.35**
	(1.10)	(2.93)
Annual Unemployment Rate	0.34***	-0.97***
	(0.10)	(0.36)
Surplus	13.70***	-8.32*
	(2.05)	(5.03)
Individual Cohesion	-3.48***	-1.97*
	(0.41)	(1.07)
Majority Party Size	36.33***	28.60***
	(2.95)	(8.33)
Second Dimension NOMINATE	-0.24*	-0.59*
	(0.12)	(0.31)
Constant	-23.61***	-3.03
	(2.29)	(3.35)
	$R^2 = 0.45$	$R^2 = 0.15$
	N=4,128	N=774

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: "Yea" Vote on Successful Bills Only

Robust standard errors reported in parenthesis

In the House of Representatives, the results match with the expectations of my argument. The coefficient on the cohesion variable is reliably significant in the correct direction, thereby indicating that a "yea" vote is more likely as the ideological distance between a given MC and the chamber median shrinks. Substantively, the results presented in Table 4.4, Model 1 demonstrate that the member who is "ideologically most distant" from the median member of the majority party is approximately 60 percent less likely to vote for a reassertion bill. In Table 4.5, the coefficient on individual cohesion in Model 1 means that the most ideologically distant member of the House is approximately 48 percent less likely to vote for reassertion. The coefficient on individual cohesion in Model 2 means that the most ideologically distinct member of the Senate is 4 percent less likely to

vote for reassertion. These findings suggest that on reassertion legislation, "party effects" in the House are greater than those in the Senate.

IV. TESTING FOR THE CONSERVATIVE "SWITCH IN TIME"

Table 4.2 demonstrates that when we examine votes in both the House of Representatives and the Senate, there exists a systematic and reliable relationship between an individual's vote and his/her party and ideology. The coefficient on the indicator variable denoting whether a given MC is a Democrat is negative and highly significant across a range of specifications of the model. Additionally, as a given MCs first-dimension NOMINATE score increases, the probability of that MC voting for a given reassertion bill systematically declines.

It is not immediately obvious how to interpret these findings, because they suggest that Democrats and ideological conservatives have similar underlying preferences on reassertion bills. While there exists no specific reason why Democrats and conservatives must necessarily disagree on all bills that come to the floor for a vote, these findings mask two important historical facts not accounted for by the models. First, for many of the years between 1947-2002 "Democrat" did not imply "liberal," and "Republican" did not imply "conservative." The bloc of Southern Democrats who comprised a significant portion of the party during these years were not ideological liberals, just as the "Rockefeller Republicans" were not ideological conservatives. A number of recent studies make clear that the parties did not begin to sort into ideological blocs until the 1970s (Levandusky 2009). This fact helps to explain the similar voting pattern of Democrats and ideological conservatives.

For the purposes of this study, however, the more important historical trend unaccounted for by the models above is this: conservative MCs reversed positions on reassertion from a "pro" stance in the years prior to the Nixon presidency, to an "anti" stance in the post-Nixon era. The next set of models shows that from 1947-1968, ideological conservatives were reliable supporters of

reassertion. Mid-century conservatives were "formalists;" they "shunned the Progressives' pragmatism and upheld constitutional arrangements that the shift to presidential government threatened" (Skowronek 2009, 2075). In short, they retained a commitment to the Congress-centered order and supported legislative efforts to reverse the expansion of executive branch power that occurred during the New Deal.

"The conservatives believe that as a practical political matter, the prerogatives of Congress should be defended and restored […] the executive should be curbed" (Burnham 1959, 119). This quote comes from political scientist James Burnham's book *Congress and the American Tradition*. In the years between Franklin Roosevelt's presidency and Nixon's presidency, conservative academics and conservative lawmakers made similar claims. Writing in 1960, for example, political scientist Willmore Kendall argues that conservative MCs oppose a "presidential office so aggrandized as to be able itself to determine how much farther the aggrandizement shall go." In so doing, they "stand with tradition and the Framers" (Kendall 1960, 323). In *Republic in Crisis: Congress Against Executive Force* (1965), Alfred de Grazia makes a similar claim when he warns that the executive branch is so large as to be unmanageable by the president alone (de Grazia 1965; Arnold and Roos 1974, 422). Viewed together, these academic perspectives comport well with midcentury conservatives' commitment to federalism and their concerns with increasing bureaucratization.

Conservatives within Congress made similar arguments in the years prior to Nixon's victory. Speaking from the floor of the Senate in 1951, for example, Ohio's Republican Senator Robert Taft called on members to "assert clearly [Congress'] own constitutional powers unless it desires to lose them" (*CR*, 3.29.51, 2987). At the time, Congress was in the midst of a prolonged debate over President Truman's decision to deploy troops to Europe without first obtaining congressional authorization. Taft went on to condemn Truman's decision for "blithely dismiss[ing] all interest in the maintenance of popular government," because, according to Taft, Truman saw the public as

"too dumb to understand foreign policy" (*CR*, 3.29.51, 2989). Illinois' Republican Senator Everett Dirksen echoed Taft when he characterized the debate as centering on the question of whether "Congress is simply a helpless, frustrated body" (*CR*, 3.29.51, 2985). Michigan's Republican Senator Homer Ferguson, meanwhile, claimed that "what is involved is the cardinal principle of constitutional controls, which make up the system of checks and balances" (*CR*, 4.3.51, 3178). It would be easy to attribute these arguments to simple partisan posturing. Yet, as I document in the next chapter, conservative MCs acted on these claims even during the Eisenhower administration.

At the same time, to acknowledge that the argument for a stronger Congress provided conservatives with a clear opportunity to condemn New Deal is not to question the sincerity of Taft, Dirksen, Ferguson and others. At mid-century, many conservatives viewed the Democratic Party's support for social welfare programs, the emergence of a sprawling national security bureaucracy and the increasing amount of government involvement in society as contributing to a dangerous expansion of federal power (Hogan 1998, 182). On the one hand, they warned of a "creeping socialism," by which they meant a "gradual and half-conscious increase of bureaucratic direction of the economy" (Kirk 2010, 133). They found support for this position in the work of Friedrich von Hayek. Hayek's classic work, *The Road to Serfdom* (1944), posited bureaucratization, the welfare state, and economic planning as contributing to the erosion of democratic self-government (Hogan 1988, 28-29). On the other hand, they worried that New Dealers had put the country on course to become a "garrison state." This term, coined by political scientist Harold Lasswell in 1941, describes "a world in which the specialists on violence are the most powerful group in society" (Lasswell 1941, 455; Katznelson 2013, 481).

I have already described how Franklin Roosevelt and the New Deal Democrats motivated conservative opposition by overseeing the expansion of executive branch power. I will not recount this argument here. I raise it only to note that through the tenure of Lyndon Johnson, liberals

continued to invest their political hopes in an "activist" presidency, and conservatives held to the views I just described. Indeed, as Milkis (1993) demonstrates, President Johnson put the tools of the modern presidency to work as he worked to implement Great Society programs (169-218). For example, Johnson frequently relied on "non-partisan" task forces comprised of experts to construct the reform policies that he worked to see enacted. As a result, "under Johnson […] political and policy responsibility centered on the presidency in an unprecedented fashion" (Milkis 1993, 192). In this context, given a critical mass of ideological conservatives, reassertion legislation could pass with no support from liberal MCs. This is no longer true. In the post-Nixon years, ideological conservatives prove to be reliable opponents of reassertion.

By the time Nixon was elected in 1968, however, liberals had started to second-guess their commitment to an activist presidency (Milkis 1993, 238-244; Skowronek 2009, 2092). In his role as Assistant for National Security Affairs, Henry Kissinger noted this reversal. "The Neustadts, MacGregor Burns' and Steele Commagers who glorified the presidency and its inalienable and admirable right to primacy from 1932 to 1968," he wrote in a 1971 memo, "are found today infesting the Capitol halls testifying that shackles must be forged" (*HFRUS*, 6.2.1971, 837). Kissinger does not go on to note that conservatives, too, had reversed themselves.

Richard Nixon broke with "formalist" conservatism almost as soon as he entered the White House. Far from curbing the power of the executive branch, Nixon doubled the size of the White House Office from 292 staffers under Johnson to 583 (Milkis 1993, 230). Believing that liberals in Congress and the bureaucracy would work to undermine his policy goals, Nixon sought a "more centralized White House structure" that would act on his preferences quickly and without objection (Whittington 1999, 161). He worked to bring the bureaucracy under his control by filling it with handpicked advisers and political appointees (Nathan 1975; Nathan 1983; Whittington 1999, 161). He also asserted the power to impound funds he undermined congressional oversight powers by

invoking executive privilege. Finally, as I will discuss in Chapter 6, Nixon attempted to wage a war in Southeast Asia in secret and despite significant congressional opposition. In short, as legal scholar Peter Quint argues, "it is clear that the actions of the Nixon administration revealed extraordinary attempts to concentrate executive power in the executive branch at the expense of other organs of government" (Quint 1981, 2).

More important than Nixon's use of presidential authority is the fact that the modern conservative movement adopted Nixon's perspective and perpetuated it. Neither Nixon's resignation, nor the reassertion bills passed by Congress in the latter half of the 1970s convinced conservatives to abandon their newfound support for presidential predominance. Instead, they doubled down on this view by constructing the theory of the "unitary executive." This theory came to serve as theoretical validation for their views on the nature and scope of presidential power.

Conservative unitarians envision a "centralized and coordinated executive branch in which the president has unfettered control over any officer who can be said to exercise executive power" (Brown 1999, 1526). More specifically, they argue that the "vesting clause" and the "take care clause" of Article II guarantee the president "unlimited power over the execution of administrative functions" (Lessig and Sunstein 1994, 8). The president and the president alone, they argue, directs, controls, and supervises administrators in executive branch agencies using three devices: his authority to "remove subordinate policymaking officials at will…to direct the manner in which subordinate officials exercise discretionary executive power…[and] to veto or nullify such officials' exercises of discretionary executive power." By this theory, Congress exerts authority only through its appointment power. It cannot direct administrators or seek to limit the president's power to implement his preferred policies (Calabresi, and Yoo 2008).

From these basic claims unitarians in the Reagan Administration came to argue that *all* legislative constraints on executive branch power are unconstitutional (Skowronek 2009, 2100;

Nourse and Figura 2011, 275; Tushnet 2010, 323). According to Skowronek (1997), President Reagan and his advisors believed that the "rise of the presidency to a position of overweening prominence in government" made it a "potent instrument" for pursing conservative policy goals (416). Giving voice to this perspective, Charles S. Fried—Solicitor General from 1985-1989—recounts Reagan's view that the "authority and responsibility of the president should be clear and unitary" (Fried 1991, 135). In 2000, Samuel Alito echoed Fried's view. During a speech to the Federalist Society—a conservative legal organization—Alito recounted the fact that those working in President Reagan's Department of Justice were "strong proponents of the theory of the unitary executive." "I thought then, and I still think," he went on to say, "that this theory best captures the meaning of the constitution's text and structure" ("Bush's Leviathan State" 2006, 8).

The claims of Fried and Alito are borne out in a 1989 memo drafted by Assistant Attorney General William Barr. Titled "Common Legislative Encroachments on Executive Branch Authority," this memo explained ten ways that Congress tried to usurp executive branch authority including "Micromanagement of the Executive Branch, Attempts to Gain Access to Sensitive Executive Branch Information, and Attempts to Restrict the President's Foreign Affairs powers" (Quoted in Savage 2008, 58). Barr's memo went on to call for "consistent" and "forceful" resistance to any interference from Congress. These claims represent a significant departure from conservatism at midcentury and they help to illustrate why conservatives have come to oppose legislative reassertion.

The administration of George W. Bush made famous the theory of the unitary executive and its most outspoken advocate proved to be Vice President Richard Cheney. Despite having served in Congress, Cheney long evinced support for robust presidential power. In 1985, he told a reporter, "I retain strong feelings of the importance of the executive branch […] The President has to have broad leeway to operate. The Congress too often interferes in areas in which he has primacy"

(Savage 2008, 52). Cheney's views did not shift between 1985 and 2001. In a 2002 interview, he expressed a similar position:

> One of the things that I feel an obligation on, and I know the president does, too, because we talked about it, is to pass our offices on in better shape than we found them to our successors. And we are weaker today as an institution because of the unwise compromises that have been made over the last 30 or 35 years ("This Week," 1.27.2002).

From 2001-2009, administration officials relied on the theory of the unitary executive to justify policies related to domestic eavesdropping, CIA black sites, torture and others. The Bush administrations controversial decisions have generated a robust debate about the legitimacy and influence of the theory.

I do not intend to weigh in on the constitutional legitimacy of this theory, but the evidence I present makes clear that conservative voting patterns on reassertion bills in the pre-Nixon and post-Nixon era are diametrically opposed. This fact may not itself be absolute proof that the theory of the unitary executive alone led conservatives to act differently. Whether the theory itself was causal or epiphenomenal will remain a matter of debate. What we can see with more certainty, however, is a distinct change in how conservative members vote. Stated as hypotheses, I argue:

> **Hypothesis 4.4:** All else equal, individual members of Congress' holding office in the pre-Nixon era are systematically more likely to vote for reassertion bills as their first-dimension NOMINATE score increases.

> **Hypothesis 4.5:** All else equal, individual members of Congress' holding office in the post-Nixon era are systematically less likely to vote for reassertion bills as their first-dimension NOMINATE score increases.

In order to distinguish the pre- and post-Nixon eras, the data set of pooled votes includes an indicator variable coded as "1" for all votes taken between 1947-1972 and "0" otherwise. In addition, because these models explore the general voting behavior of ideological conservatives the dependent variable is not constrained to yea votes corresponding to successful bills. Table 4.6

presents the results to tests exploring hypotheses. In the table, Model 1 corresponds to votes taken prior to Nixon's presidency, while Model 2 corresponds to votes taken after.

Table 4.6: Logit Estimation: Conservatism and Reassertion Legislation

Variable	Model 1 (β\SE)	Model 2 (β\SE)
Second Term	5.17***	0.32***
	(1.01)	(0.06)
President's Party	-0.95***	-1.89***
	(0.20)	(0.09)
Approval Rating	-4.95***	6.21***
	(0.64)	(0.39)
Democrat	0.28	-1.36***
	(0.30)	(0.14)
Polarization	7.33***	-1.18**
	(1.36)	(0.47)
First Dimension NOMINATE	2.18***	-1.18***
	(0.31)	(0.15)
Second Dimension NOMINATE	-0.43***	0.08
	(0.13)	(0.06)
Constant	0.12	0.67
	(0.55)	(0.23)
	$R^2 = 0.28$	$R^2 = 0.11$
	N=2,808	N=11,654

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: "Yea" Vote on a Given Reassetion Bill

Robust standard errors reported in parenthesis

The results presented in Table 4.6 substantiate Hypotheses 4.4 and 4.5. Controlling for the same explanatory variables that I use to explain vote choice in the tables above, we see that the first dimension NOMINATE score is highly significant in both models. Most importantly, the sign on the coefficient switches with the move from pre- to the post-Nixon era. In the pre-Nixon era, those MCs in the 75th percentile of first dimension NOMINATE scores are 20 percent more likely to vote for reassertion than those in the 25th percentile. In the post-Nixon era, however, those MCs in the

75th percentile of first dimension NOMINATE scores are approximately 10 percent less likely to vote for reassertion bills than those in the 25th percentile.

V. Discussion

As I stated at the outset of this chapter, I intended for an analysis of individual votes on the reassertion bills in my data set to further substantiate my central argument: reassertion is conditional on presidential weakness and majority party size/cohesion. In other words, my goal was to re-test these causal mechanisms at the individual, rather than the Congress level. Re-testing my central argument us to be more confident in the robustness of the statistical results presented in Chapter 3. Additionally, by moving to an individual-level analysis, I can introduce different measures of key independent variables. These new measures also serve as robustness checks for my argument.

In large part, the statistical results I present in this chapter support my argument. Individual MCs are more likely to support reassertion during the president's second term. In addition, the significance of the presidential vote share measure suggests that the president's political strength within a given state has a direct impact on how the Senator from that state decides to vote. We also have additional reason to believe that reassertion is more likely when the majority party is large and cohesive. As the majority party grows in size, MCs are systematically more likely to vote for a reassertion bill. As the proximity between an individual MCs ideological position and the center of his/her party shrinks, that member is also more likely to vote for reassertion. Thus, when the majority party is more ideologically cohesive, the probability of successful reassertion increases.

Reassertion is conditional, strategic and politically motivated. The Founders crafted a system built for citizens "as they are" rather than citizens "as they should be." MCs have come to recognize that their individual political goals are frequently well served by the presidency-centered order. As a consequence, while MCs "as they should be" might cooperate to protect Congress' institutional standing, MCs "as they are," must see some benefit for doing so. Viewed together, the results

presented in this chapter and Chapter 3 aim to provide a systematic look at when conditions under which MCs will accrue the most benefit for reassertion. As expected, self-interest goes a long way toward explaining their behavior. This should not be a surprise, nor should it detract from the constitutional/democratic aims pursued by reassertion legislation. The link between self-promotion and system maintenance is a feature of our constitutional order, not a bug.

Finally, this chapter provides evidence to support the claim that on the issue of executive power, specifically, modern conservatism no longer resembles conservatism at mid-century. The "switch in time" illustrated above is a stark demonstration of what legal scholar Jack Balkin calls "ideological drift." According to Balkin (1993), "drift" occurs when the valence attending to theories of constitutional interpretation "shift as they are applied and understood repeatedly in new contexts and situations" (870). While it is not the focus of my analysis, this finding is significant because it helps to explain conservative governance in the post-Nixon era.

Appendix

Table A.4.1: Variables, Operationalization and Sources

Variable	Operationalization	Source
Success	Individual member votes for reassertion? yes=1, no=0	Constructed by author based on data set of reassertion legislation
President's Party	Individual member belongs to president's party? yes=1, no=0	Constructed by author using VoteView
Second Term	Chamber year falls during year 5, 6, 7, 8 of president's term? yes=1, no=0	*Historical Statistics of the United States*
Approval Rating	Annual average approval rating for a given year	Constructed by author using Gallup Presidential Job Approval Center
Unemployment Rate	Annual average unemployment rate for a given chamber year	Constructed by author using Labor Force Statistics from Current Population Survey at Bureau of Labor Statistics
Polarization	Polarization score by Congress	Constructed by author by calculating the difference in the DW-NOMINATE scores of the median members of the two parties in the House of Representatives
First/Second Dimension NOMINATE Score	Ideological score for each individual member	Constructed by author using VoteView
President's Vote Share	Proportion of votes won in each state by sitting president in most recent election	Constructed by author using *Statistics of the Presidential and Congressional Election* (various years)
Average Majority Party Size	Percent of Congress Controlled by Majority Party	Calculated by Author using *Historical Statistics of the United States* Table Eb296-308 "Political Party Affiliations in Congress and the Presidency"
Individual Cohesion	Absolute value of difference between individual member first dimension NOMINATE and median first dimension nominate score for each chamber	Constructed by author using VoteView and data on VoteView.com

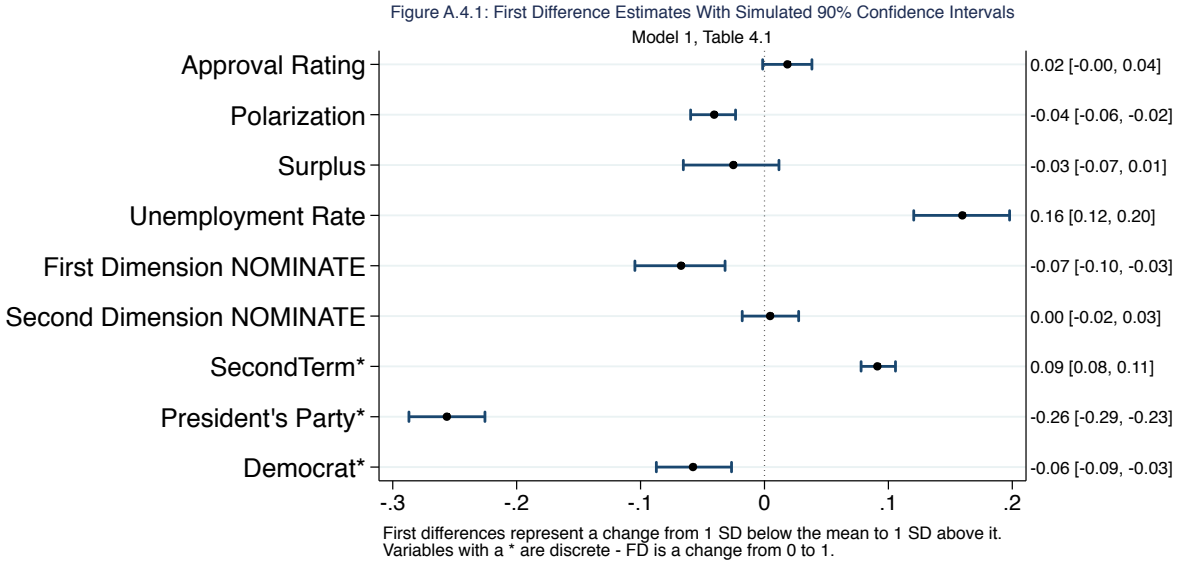


Figure A.4.2 plots the simulated first difference estimates for all covariates included in Table 4.2, Model 1

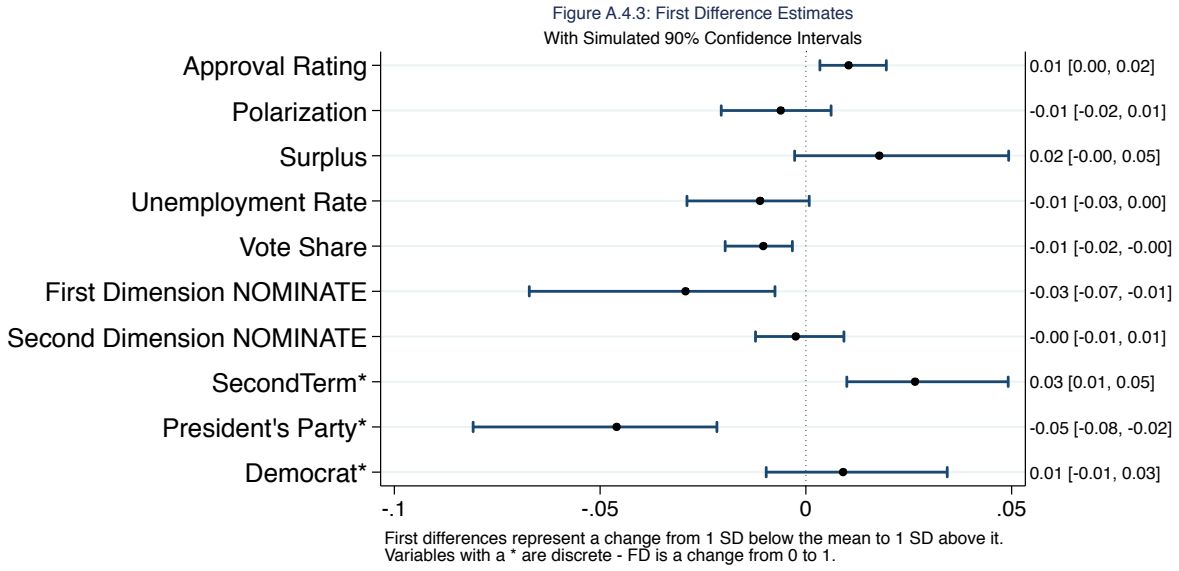


Figure A.4.3 plots the simulated first difference estimates for all covariates included in Table 4.3, Model 1.

CHAPTER 5
ATTEMPTED REASSERTION: THE BRICKER AMENDMENT

According to Ira Katznelson (2013), Harry Truman was the last "New Deal president." He was also the first modern president. The New Deal came to a close with Truman, but its end did not initiate a reversion of executive branch power to pre-war levels. Historically, presidential assertiveness during war receded once hostilities came to an end. Indeed, as I have already discussed, soon after hostilities ceased, Congress forced the presidency back into its "clerkship" role. In a departure from historical precedent, New Deal reforms institutionalized a new set of positive powers for the president.

Accordingly, when he took office in 1952, President Eisenhower inherited the powers and responsibilities tethered to the modern presidency. However, modes of governance aligned with the now displaced Congress-centered ordered were not simply erased by the emergence of the modern presidency. Indeed, "Old Guard" Republicans and ideological conservatives who retained their hold on seats in the Senate fought to restore the traditional balance of power between Congress and the executive branch. Throughout the tenure of President Truman, and even into the early years of the Eisenhower Administration, these conservatives instigated a series of inter-branch conflicts. In 1953, President Eisenhower walked into the middle of a protracted struggle between Congress and the presidency. As a consequence, the new president found himself almost immediately at odds with many of his co-partisans in the Senate. Throughout his first term Eisenhower had to "expend enormous energy […] to reassure Congress that the separation of power would be respected in foreign affairs" (Griffin 2013, 105).

The centerpiece of this chapter is a reassertion bill that would have empowered MCs to regulate executive agreements while also giving them increased authority over the treaty process. More specifically, it would have required any proposed treaty to be enforced by "implementing

authorization" in the form of a stand-alone bill, and it would have obligated the president to receive congressional authorization before entering into informal executive agreements with the leaders of foreign governments. Ohio's Republican Senator John Bricker led the effort to see this reassertion bill passed, but his effort was part of a wider push to reassert Congress' governing authority in the development and implementation of foreign policy. As I discussed in the previous chapter, conservatives at midcentury were more likely to support reassertion than their more liberal colleagues. Bricker himself was an "Old Guard Republican." Other Senate conservatives were responsible for introducing additional reassertion bills between 1949 and 1954, many of which never got a vote.

Insofar as it demonstrates how institutional development within the executive branch alters the behaviors of legislators, and influences the substance of the legislation pursued by Congress, the debate over Bricker's proposal also highlights the argument I have made so far. Bricker forced members of Congress to choose between bolstering the legislative branch's role in foreign policy, and deferring to presidential leadership. He also forced President Eisenhower to choose between supporting a legislative effort spearheaded by his co-partisans in Congress, or opposing it and defending the power of the executive branch. In the end, however, Bricker's reassertion bill failed. Importantly, it failed because it could not overcome the constraints on reassertion imposed by the presidency-centered order.

In particular, Bricker pursued his amendment at a time when President Eisenhower was both politically and institutionally strong. As a first term president, Eisenhower had a lot to lose from successful congressional reassertion, and his opposition to Bricker's proposal helps to illustrate the threat this bill posed. Aiding Eisenhower was the fact that he retained broad public support, as well as support from those within his own party. Finally, Bricker's proposal failed to satisfy the intra-congressional conditions I have identified. Majority party Republicans did not coalesce behind the

proposal, and it failed to win the support of a cross-ideological coalition. Even in failure, however, Bricker precipitated a "constitutional crisis" that captured the attention of the nation and the political elite. Additionally, the concerns he raised about Congress' role in foreign policy echo contemporary debates over similar national security issues.

According to historian Sir Lewis Namier, "the enduring achievement of historical study is a historical sense […] of how things do not happen." In the analysis to follow, I keep Namier in mind. Through a detailed case study that relies on the *Congressional Record*, Senate reports and contemporaneous news I examine a situation in which Congress *might have reasserted,* but did not. My intent is to further illuminate the conditions under which Congress successfully reasserts by examining the conditions that lead to failure. I argue that the way in which Bricker's Amendment failed makes clear how presidential strength and coalitional dynamics can work together to prevent reassertion.

I. The "Great Debate" as a Prelude to Reassertion

On March 29, 1951, Senator John Bricker announced to the Senate and the country that Congress was on the verge of committing "legislative suicide" (*CR*, 3.29.1951, 2967). In 1944, Bricker was the Republican Party's vice-presidential nominee. In 1951, he was an influential member of the bloc of "Old-Guard" Senate Republicans (Patterson 1972, 269). This was not a hyperbolic statement from a back-bench member seeking attention. Moreover, Bricker's claim echoed a concern voiced by many Senate conservatives. Like them, he worried that Congress was preparing to support a resolution signaling that the "balance of power between the president and the Congress […] cease[d] to exist" (*CR*, 3.29.1951, 2970).

This resolution dealt with President Truman's intention to deploy four divisions of American soldiers to Europe as a defense against Soviet expansion. The controversy arose over Truman's claim inherent presidential authority, and his obligation to uphold obligations under the

UN Charter and the Atlantic Pact, allowed for such deployments even without prior congressional authorization. Truman had said as much during a news conference held on January 11, 1951. When asked about the deployment, Truman responded that as President, he could legally "send troops anywhere in the world" without legislative approval (*Papers of Harry S. Truman*, Press Conference, 1.11.1951).[44] "I am polite," he continued, and "I usually consult them. I don't ask their permission, I just consult them" (*Papers of Harry S. Truman,* Press Conference, 1.1.1951).

For Bricker and his conservative colleagues, Truman's assertion generated significant concern. They feared the rise of an "imperial" presidency with the strength and constitutional authority to trample over the legislative branch's governing prerogatives. A State Department Memo drafted in 1951 seemed to validate these concerns. Congress had no power to "curb or cripple the powers of the President as Commander in Chief," it stipulated. Moreover, the President had "broad authority to 'execute' and carry out the purposes of treaties […] as he deemed appropriate, and without congressional authorization" (Stromseth 1993, 637). The Administration's broad assertions of executive branch power catalyzed a series of legislative efforts to contest presidential authority. Together, these inter-branch conflicts comprise what historians now refer to as the "Great Debate" of 1950-1951 (Zelizer 2010, 112-113; Griffin 2013, 65; Hogan 1998, 325-329; Carpenter 1986; Stromseth 1993, 637).

The "Great Debate" describes a series of skirmishes between Senate conservatives and the White House over early Cold War national security policy. Members of Congress who opposed the Administration argued that Truman's decision to deploy of troops signaled an emerging "garrison state" growing out of Truman's desire to "police the world." Truman's national security policies, they argued, were creating a situation in which "manpower would come under government control and every bit of extra income would be taken from the American family, from farms and factories,

[44] Truman's public papers are digitized and available at the American Presidency Project. They can be read here: http://www.presidency.ucsb.edu/ws/index.php?month=01&year=1951.

from schools and hospitals, until the 'American way of life' was finally destroyed" (Hogan 1998, 327). These conservatives believed themselves to be standing up for the nation's "traditional political identity" (Hogan 1998, 328). To contest the troop deployments, for example, Republicans in Congress introduced two non-binding resolutions stating that the president must request congressional approval for any future troop deployments.

The fact that these resolutions were non-binding displeased Senator Bricker. Without any legal power, Bricker claimed, they represented nothing more than a "pious" expression of "opinion," and a "hoax" upon those who believed that Congress was taking "substantive action" (*CR*, 3.29.1951, 2971-2972). He called upon Senators to instead support a motion that would recommit these resolutions to the Foreign Relations and Armed Services Committees. One or both committees could then report out a joint resolution legally obligating the president to receive congressional authorization before dispatching troops. According to administration officials even a "near-miss" in this "attack on the President's powers" would have a harmful political consequences for President Truman (*NYT*, 3.29.1951).

Illinois Republican Everett Dirksen attributed the rationale for a binding resolution to a lack of trust between Senate Republicans and the Truman Administration (*CR*, 3.29.1951, 2980). This mistrust grew from a perception among conservatives that Truman's decision to deploy troops violated promises made to Congress when it debated legislation concerning the Atlantic Pact and membership in the United Nations. The Atlantic Pact, approved by the Senate in July 1949, served a mutual defense treaty between the United States and European powers. United States' participation in the NATO alliance created by this pact represented a strike "at the heart of the traditional isolation doctrine […] which had guided US foreign policy for the first 150 years of the republic's existence" (Carpenter 1986, 389).

Now, two years later, Utah Republican Arthur Watkins accused the administration of going back on promises it had made during the debate over this treaty. As evidence, Watkins cited the testimony of John Foster Dulles. Arguing for ratification before the Senate Foreign Relations Committee, Dulles promised, "any future troop deployments would be subject to congressional authorization" (*CR*, 3.27.1951, 2916). Truman's actions suggested a "compete reversal of policy and assurances given by the president" (*CR*, 3.27.1951, 2912). Arkansas Democrat Senator John McClellan (D-AR) gave further voice to this argument in a detailed discussion of the Atlantic Pact. According to McClellan, the treaty's aim of providing collective self-defense did not imply that a military response by all signatories is preordained. Instead, he argued, "to each government is reserved the right of determining what action it shall take, and how it shall be taken" (*CR*, 3.29.1951, 2974). Worse still was the claim that presidents had the authority to could unilaterally enter into self-executing executive agreements. In that case, McClellan warned, Congress would have lost the power to even set the conditions under which international agreements could be invoked to justify executive branch unilateralism.

Conservative senators had also mounted strong opposition to American participation in the United Nations. They urged the Senate not to ratify the UN Charter on the grounds that it "overextended American power, made the Country more vulnerable, and fostered wasteful bureaucracies and a powerful military elite" (Hogan 1998, 182). Additionally, they believed that the UN Charter delegated Congress' war powers to the president and international institutions. During debate over the United Nations Participation Act, for example, Montana's Democratic Senator Burton Wheeler, offered an amendment stipulating that the president had no authority to make troops available to the United Nations unless Congress "has by appropriate act or joint resolution

authorized the president to make such forces available" (Stromseth 1993, 617).[45] Wheeler's amendment was defeated, but Senate conservatives viewed Truman's unilateralism as evidence for why it was needed.

These debates are relevant to my discussion of the Bricker amendment because conservative support for it grew from a long-standing belief that the treaty power, and the president's power to enter into executive agreements, afforded him too much discretionary authority. Here again, Truman's decision to deploy troops without congressional authorization proved to be a central point of contention. Relying simultaneously on claims of inherent authority and his responsibility to enforce the Atlantic Pact, Truman was validating long-standing conservative fears. In the words of Ohio Republican Senator Robert Taft the position "now being taken by the Administration…would practically destroy the power of Congress over foreign relations" (*CR*, 3.29.1951, 2994). For if mutual defense treaties like the Atlantic Pact were interpreted as "self-executing"—enforceable without congressional input or authorization—then Congress would forfeit its positive powers over the development and implementation of national security policy.

II. The Bricker Amendment As Reassertion

Senator Bricker's multi-year campaign to rein in the treaty power and the president's authority to enter into executive agreements began with Senate Resolution 177 (S. Res. 177). Introduced on July 17, 1951, S. Res. 177 stipulated that the United Nations' International Covenant on Human Rights jeopardized the individual liberties of the American people. According to Bricker, the Covenant proposed restrictions on American citizens that would otherwise have been deemed unconstitutional (*CR*, 7.17.1951, 8254). For example, the Covenant "qualified the freedom of the press with a host of vaguely defined duties and responsibilities enforceable by government" (*CR*, July 17, 1951, 8255).

[45] Debated 1945, this bill afforded the UN a small number of American troops to be used for the purpose of "keeping the peace" (Stromseth 1993, 617).

Bricker took this as an indication that the Covenant may subject the press to penalties if the president determined that particular stories put national security at risk. From Bricker's perspective, this aspect of the covenant reflected an outcome preferred by the Truman Administration. It would empower the president to protect his national security goals from what he unilaterally determined "to be irresponsible criticism" (*CR*, 7.17.1951, 8258).

Compared to the constitutional amendment that Bricker prepared to introduce, S. Res. 177 aimed to bring about a relatively minor policy outcome. It called on President Truman to make clear to the UN that the Covenant was unacceptable and "withdraw from further negotiations with respect to the Covenant on Human Rights" (*CR*, 7.17.1951, 8254). Bricker himself recognized this resolution's low aims. Even as he was fighting to see it passed, Bricker was quietly admitting to colleagues that it was "purely a stop-gap device without legal force or effect" (Tananbaum 1988, 31). In the end, S. Res. 177 failed. However, in proposing it, Bricker gave voice to an important preoccupation of Senate conservatives. They believed that in the aftermath of the war and the New Deal, the president had too much latitude to cooperate with international bodies. Once empowered, they argued, these organizations could promulgate and impose undesired rules on citizens of the United States (Richards 2006, 176).

Conservatives also worried that presidents could use executive agreements as a way of entering into international covenants without formal legislative authorization. President Roosevelt's reliance on executive agreements to "avoid congressional oversight of his wartime policy" generated these concerns (Nolan 1992, 339). From Bricker's perspective, the agreements concluded by President Roosevelt at Yalta, and President Truman at Potsdam, would never have won congressional imprimatur. As a result, these agreements served to substantiate Bricker's claim that executive agreements had "practically nullified" Congress' power to play a positive role in the development and implementation of foreign policy (*CR*, 7.17.1951, 8260). While executive

agreements were a particular area of interest and concern for Senator Bricker, he was not alone. Indeed, the 1948 Republican Party Platform stipulated that "under a Republican administration all foreign commitments shall be made public and subject to constitutional ratification" (UCSB Presidency Project).[46]

By September 1951, Bricker was ready to take concrete steps that would rein in the presidents capacity to invoke enacted treaties as justification for action not approved by Congress, as well as to unilaterally enter into executive agreements. On September 14, he took the floor to introduce Senate Joint Resolution 102 (S.J. Res. 102), a constitutional amendment directly addressing both of these issues. In a short speech introducing this amendment, Bricker argued,

> "much of the human sadness around the world brought by destruction and war, and much of the difficulty in which the United States at this hour finds itself, are the result of unauthorized […] unconstitutional, and illegal executive agreements […] entered into […] by the executive department […] without authorization by Congress and without ratification by the Senate of the United States" (*CR*, 9.14.1951, 11361).

If enacted, S.J. Res. 102 would have (1) stipulated that no treaty provision that violated the constitution would have any force or effect; (2) mandated that Congress pass constitutionally acceptable enacting legislation before any treaty could be enforced as domestic law; (3) reasserted legislative control over foreign policy by declaring that Congress had the power to "regulate all executive and other agreements with any foreign power or international organization" (Richards 2006, 178; Silverstein 1997, 76-78).

The three aims pursued by S.J. Res. 102 addressed a variety of concerns voiced by Bricker and his conservative colleagues. The first point addressed what they considered to be a loophole in Article VI, Clause 2 of the Constitution. Known generally as the "supremacy clause," it reads:

> "this Constitution and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the

[46] The American Presidency Project run by UCSB has digitized versions of Party Platforms. The Republican Party's Platform for 1948 can be read here: http://www.presidency.ucsb.edu/ws/?pid=25836.

> Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

Senate conservatives read this clause to imply that the Constitution allowed MCs to ratify treaties that would be considered unconstitutional if introduced as stand-alone legislation (Garrett 1972, 191). John Foster Dulles—President Eisenhower's Secretary of State—described this concern in a 1952 speech. "The treaty-making power is an extraordinary power, liable to abuse," he argued,

> "[t]reaties make international law and also they make domestic law. Under our Constitution, treaties become the supreme law of the land. They are, indeed, more supreme than ordinary laws, for congressional laws are invalid if they do not conform to the Constitution, whereas treaty law can override the Constitution. Treaties, for example, can take powers away from the Congress and give them to the President; they can take powers from the States and give them to the Federal government or to some international body; and they can cut across the rights given the people by their constitutional Bill of Rights" (Quoted in Bricker 1954, 530-531).

Bricker frequently invoked this speech when advocating passage of his amendment because it validated his belief that the treaty power posed a potential threat to the liberties of American citizens.

As he pressed the Senate to enact S.J. Res. 102, Bricker also frequently invoked the 1920 Supreme Court decision *Missouri v. Holland* (1920). In this case, the Court upheld the constitutionality of a law passed by Congress specifically because it implemented the Migratory Bird Treaty. This agreement between the United States and Canada aimed to protect birds passing through the United States by regulating hunting season within the states. To implement the treaty, Congress passed the Migratory Bird Treaty Implementing Act of 1918. In so doing, Congress turned a state issue—regulations on the hunting season—into a federal issue. Two state supreme courts and one federal district court ruled the law unconstitutional because it empowered the federal government to take action "outside of [its] enumerated powers" (Richards 2006, 182). The Supreme Court, however, upheld the law specifically because it implemented a treaty. Writing for a unanimous majority, Justice Oliver Wendell Holmes argued that the treaty overruled states rights because it represented a

"national interest of very nearly the first magnitude"(Quoted in Richards 2006, 183). Senator Bricker took this ruling to suggest that constitutional law is subordinate to a "higher treaty law," thus putting the former at risk in pursuit of the latter (Bricker 1954, 535-536).

Viewed together, conservative opposition to international agreements, international institutions and federal regulation of state power, each comport well with a broader commitment to "states rights." As supporter of states rights ideology, Bricker worried that New Deal liberals would use executive agreements with the force of treaty law to implement of liberal policies. For example, Bricker worried that international agreements would justify implementation of civil rights initiatives that he opposed on "states rights" grounds (Nolan 1992, 339). Frank Holman, head of the American Bar Association—an organization strongly supporting Bricker's efforts—gave voice to this argument. "Through executive fiat," Holman claimed in a 1948 speech, "the forces of autocracy and bureaucracy [are] moving toward a centralized government so powerful as to destroy […] the rights of states, and the right to local self-government (Quoted in Tananbaum 1988, 9). The American Bar Association called on Congress to ensure that "ratified treaties would *not* be part of the supreme law of the land and that Congress would *not* use its authority to implement such compacts to invade the reserved powers of the states" (Quoted in Tananbaum 1988, 15; italics in original).

More important than the restriction on the treaty power, however, is Section Three of Bricker's amendment. As he wrote in a 1953 article for the *Annals of the American Academy of Political and Social Science*, Bricker intended this part of his bill to "regulate the making of executive and other agreements." Here again, Bricker believed that prior Supreme Court rulings made clear the need for this amendment. In two cases, *U.S. v. Belmont* (1937) and *U.S. v. Pink* (1942), the Court found that executive agreements had the same constitutional standing as formal treaties (Garrett 1972, 193; Tananbaum 1988, 169-171). In the *Pink* case, the Supreme Court held that an executive agreement between President Franklin Roosevelt and Soviet Ambassador Litvinov "superseded New York

State's policy for distributing the assets of a Russian insurance company that had been nationalized by the Soviet government" (Tananbaum 1988, 169; Senate Report 83-412 1953, 31).

Senate Report Senate Report 83-412 (1953) published by the Senate Judiciary Committee also argues that the *Pink* case sets a precedent "by which any president, merely by making an executive agreement with the head of any other government, could invade vital state functions and prerogatives" (Senate Report 83-412 1953, 31). As evidence for this claim, Bricker often cited a memoir written by Dr. Wallace McClure, one-time chief of the State Department's treaty division. In his book, McClure claims, "for controversial international acts the Senate method [formal treaty ratification] may well be quietly abandoned, and the instruments handled as executive agreements" (Quoted in Bricker 1954, 546). Bricker's amendment aimed to reassert congressional authority by setting out a formal statutory process for enacting treaties and executive agreements. This amendment also delimited the president's discretionary authority to invoke prior treaties as justification for present decisions.

Having described Bricker's amendment, I will now turn to the debate over its ratification. Here I focus specifically on the arguments on behalf of Bricker's amendment by Senate conservatives, as well as the opposition mounted by the Truman Administration. In reconstructing this debate, I am to demonstrate how Bricker's amendment would have subverted the presidency-centered order, as well as how the prevailing political conditions prevented him from being successful.

III. The Bricker Amendment Debate

Congress took no action on S.J. Res. 102 in 1951, but this did not deter Senator Bricker. On February 7, 1952 he introduced an updated version of this proposal, S.J. Res. 130. Substantively, S.J. Res. 130 differed from S.J. Res 102 only by providing that "treaties and executive agreements would not alter or abridge state laws unless Congress so decreed in subsequent legislation." According to

Tananbaum (1988), this provision simply made clear that only those compacts conflicting with preexisting state law would not be self-executing (44). Politically, however, this version differed significantly from the bill Bricker introduced in 1951 because in 1952 he also had the support of 58 co-sponsors: 14 Democrats and all but one Senate Republican (*CR*, 2.7.1952, 907).

Unsurprisingly, the Truman Administration opposed Bricker's proposal. Following the introduction of S.J. Res. 130, Truman requested that the heads of executive branch agencies and departments compose reports detailing how its enactment would negatively "affect their operations." In addition, he called on these officials to testify during the Senate Judiciary Committee's hearings on the bill. It was "vital that Congress kno[w] the views of the executive branch" on this amendment, Truman argued. Any agency head believing that he was not "affected directly enough to warrant presentation," he wrote in the same May 1952 memo, was to reply with, "reasons for not seeking to testify" (*Papers of Harry S. Truman*, Memo, May 23, 1952, 367). "The importance of the issues raised [by Bricker's amendment] cannot be over-stated," Truman warned (*Papers of Harry S. Truman*, Memo, May 23, 1952, 367).

In May and June 1952, the Senate Judiciary Committee held five days of hearings to discuss Bricker's proposal. These hearings occurred at a particularly difficult time for the Administration. In April 1952, President Truman sparked outrage after invoking "inherent powers" to justify seizing of America's steel mills. This decision would be reversed in the Supreme Court's famous *Youngstown* decision. To make matters worse, when asked during a press conference that month if he had the inherent authority to "take over the nation's newspapers and radio stations," Truman did not say "no." Instead, he claimed, "the President of the United States has to act for whatever is for the best of the country" (*NYT*, 4.18.1952). Truman also continued to face criticism for his decision to fire General Douglas MacArthur, for sending four divisions of troops to Europe without congressional authorization, and for refusing to disclose the content of private agreements he had made with

British Prime Minister Winston Churchill (Kyvig 1996, 339-343). Viewed together, these decisions illustrate the new positive powers available to modern presidents. At the same time, they helped to substantiate Bricker's claim that reassertion was needed in order to rein in an increasingly "imperial" presidency.

During the hearings in May and June, Bricker pointed to presidential "usurp[ation]" of the foreign policy power as justification for this S.J. Res. 130. Further, he argued, "because foreign policy does have unprecedented effect on all phases of domestic policy, it should be made subject to the same checks and balances" (Hearings 1952, 30). Bricker also invoked State Department officials in both the Truman and Roosevelt administrations who had presented "treaties and executive or other agreements are completely interchangeable" (Hearings 1952, 29). Accordingly, S.J. Res. 130 aimed to "prohibit the use of the treaty power as an instrument of domestic legislation" (Hearings 1952, 21). If Congress did not also regulate the use of executive agreements, Bricker argued, then Congress would simply provide an incentive for the president to "evade constitutional powers relative to the making of treaties" by resorting to this tool (Hearings 1952, 30)

Speaking for the Administration was Undersecretary of State David Bruce. In a line that emerges repeatedly throughout this analysis, the Administration claimed that Bricker's would "prohibit the president from exercising his historic constitutional powers to conduct the foreign relations of the United States" (Hearings 1952, 196). To demonstrate his argument, Bruce cited the 1900 Boxer Rebellion. In this case, the president signed a final protocol without first submitting it to the Senate. From the Administration's perspective, prior Senate approval in this case would have suggested the need for legislative participation in in functions which the "Framers thought should be vested exclusively in the Executive Branch of government" (Hearings 1952, 196). Congress, he claimed, was not "equipped" to discharge such powers. In the atomic age, Bruce argued, the

president "more urgently than ever" must be empowered to act independent of explicit congressional authorization.

Bruce's testimony develops many of the arguments that re-emerge thought this debate, and future debates, over reassertion legislation. First, external conditions make a more assertive president necessary. He must have the authority needed to act without prior authorization in order to satisfy his new responsibilities. Next, while Congress may have taken the lead in prior years, it was no longer equipped to adequately fulfill the United State's new leadership obligations in the world. And most importantly, any reassertion effort would alter the separation of powers such that it imposes "serious handicaps" upon the presidency (Hearings 1952, 196).

These hearings fell only months before the presidential election of 1952, and many of the issues raised by Bricker would appear during the campaign between Stevenson and Dwight Eisenhower. The 1952 Republican Party platform, for example, condemned agreements reached at Tehran, Yalta, and Potsdam, because they were made without the "knowledge or consent of Congress" ("Republican Party Platform of 1952," UCSB Presidency Project). Further, the Republicans repudiated "all commitments" made through these "secret understandings," while promising that a Republican Administration would "see to it that no treaty or agreement with other countries deprives our citizens of the rights guaranteed them by the federal constitution" ("Republican Party Platform of 1952," UCSB Presidency Project). Notably, Eisenhower never explicitly endorsed Bricker's proposal during the campaign. However, one Truman aide suggested that his condemnation of the Yalta agreements suggested that Eisenhower was engaging in "double talk in support of the Bricker Resolution" (Quoted in Tananbaum 1988, 64).

The 1952 election resulted in a stunning Republican victory. Eisenhower defeated Truman, and congressional Republicans captured a majority in both houses of Congress for the first time since 1946. Bricker also comfortably won his own reelection campaign by nearly 300,000 votes

(Tananbaum 1988, 64). Under these circumstances, and keeping in mind his long list of co-sponsors who supported Bricker's amendment before this overwhelming victory, Bricker likely saw 1953 as the year his proposal would finally pass. Indeed, he made clear to a colleague that he intended to "move promptly on the matter" when the 83rd Congress convened (Quoted in Tananbaum 1988, 68). Bricker lived up to his word, and in so doing, he challenged a first-term president unwilling to relinquish power. In the end, Eisenhower's political strength and widespread acceptance of the presidency-centered order among MCs helped ensure the defeat of Bricker's proposal.

IV. Defeating the Bricker Amendment

On January 7, 1953, Bricker introduced yet another version of his amendment—Senate Joint Resolution 1 (S.J. Res. 1). By 1953, he had won the support of sixty one co-sponsors (*CR*, 1.7.1953, 160). Similar to its prior iterations, S.J. Res. 1 declared that any treaty provision violating the rights "enumerated in this Constitution shall not be of any force or effect;" prohibited international agencies from exercising authority over matters within "the domestic jurisdiction of the United States;" declared that treaties would only "become effective as internal law […] only through the enactment of appropriate legislation by the Congress; and reasserted Congress' power to regulate executive agreements (Hearings 1953, 1).

Bricker's speech introducing S.J. Res. 1 testifies to his confidence that it would be enacted. Invoking "overwhelming public support for amending the treaty power," he even argued that its mass appeal "made multiple sponsorship no longer necessary" (*CR*, 1.7.1953, 161). The internal support he did have, argues Tananbaum (1988), is attributable to numerous factors. These include a desire among MCs to state explicitly that treaties and executive agreements are subordinate to the Constitution, to express displeasure with the foreign policy of the Roosevelt and Truman Administrations and to make their public skepticism about United States' participation in the United

Nations (70). Most importantly, however, Senators also signed onto S.J. Res. 1 due to a widespread belief in the need for new legislative restrictions on the executive branch (Tananbaum 1988, 70).

Bricker's proposal created an immediate dilemma for the newly inaugurated President Eisenhower. Eisenhower believed that enacting Bricker's proposal would "cripple the executive power to the point that we become hopeless in world affairs" (Quoted in Tananbaum 1988, 72). However, he was worried about declaring himself opposed to the bill. It was supported by a large number of Senate Republicans, Secretary of State Dulles had previously expressed sympathy for its aims and the Republican Party had publicly pledged to protect Americans from unconstitutional treaties and secret executive agreements. Initially, Eisenhower cautiously opposed the bill.

During a March 1953 press conference, for example, he argued that Bricker's amendment would make it "impossible for the president to work with the flexibility he needs" in a "highly complicated" and "difficult" post-war world. Yet, in recognition of the support this amendment had among Senate Republicans, Eisenhower also made sure to point out that Bricker and his supporters did not "intend" to sabotage the executive branch. They were convinced that it would "work only to the good of the United States and protect the individual rights of citizens" (*Papers of President Dwight D. Eisenhower,* Press Conference, 3.19.1953). Here we see the political dilemma Eisenhower faced as he tried to oppose the amendment. He had to make clear that it was unacceptable without alienating members of his own party. Invoking the noble motivations of those supporting the amendment, however, did not keep Eisenhower from utilizing "hidden-hand" tactics to bring down the bill (Greenstein 1984).

In early February 1953, Eisenhower dispatched Attorney General Herbert Brownwell to a meeting with Bricker in order to request that he not pursue quick action on S.J. Res. 1. Bricker refused (Tananbaum 1988, 73). Then, during a cabinet meeting held on February 20th, Secretary of State Dulles warned Eisenhower that the amendment would "seriously limit executive authority and

make impossible effective conduct of foreign affairs" (*HFRUS,* 2.20.1953, 1782). A February 1953 memo from Eisenhower to the Heads of Executive Departments and Agencies makes illustrates his agreement Dulles' perspective. "The constitutional amendment proposed in S.J. Res. 1 would not only impose constraints upon the president or agencies of the executive branch," he writes, "but would affect the powers of the federal government as a whole" (*HFRUS,* Memo, 2.25.1953, 1783). Like Truman before him, Eisenhower requested that the head of "each department and agency […] examine the effects" that adoption would have upon agency operations, and "prepare an official statement of views concerning them." Also like Truman, he called on agency heads to appear at the next round of Judiciary Committee hearings on the bill to argue against S.J. Res. 1.

Between February and April 1953, the Senate Judiciary Committee held 13 days of hearings on S.J. Res. 1. Testifying once again on behalf of his own proposal, Bricker repeated much of what he told the committee in 1952. He also speculated about why S.J. Res. 1 had attracted such widespread support: "[t]he American people want to make certain that no treaty or executive agreement will […] deny or abridge their fundamental rights [and] because they do not want their basic human rights to be supervised or controlled by international agencies over which they have no control" (Hearings 1953, 3). Similar to the hearings held in 1952, Senators also heard testimony from academics and outside advocacy organizations. For example, Alfred J. Schweppe, Chairman of the American Bar Association's Committee on Peace and law testified that the "executive agreement problem was not a serious problem until relatively recent times," but that such agreements raise the threat of "one man government." Accordingly, they "should be controlled by Congress" (Hearings 1953, 65). Everett Dirksen (R-IL), meanwhile, described the harmful consequences of unauthorized executive agreements. Congressional authorization, he claimed, would have prevented the agreement forged at Yalta, as well as the Korean War (Hearings 1953, 225).

Arguing against the amendment were Democrats and Eisenhower administration officials. As he often did, Secretary of State John Foster Dulles provided the Administration's rationale for choosing not to support Bricker's amendment. Dulles argued that the Administration did not believe that treaties could be used to "circumvent the constitutional procedures established in relation to what are essentially matters of domestic concern" (Hearings 1953, 825). Acknowledging his own favorable statements about the goals pursued by S.J. Res. 1, Dulles conceded that he had "now come to the conclusion that [the pending resolution] may seriously weaken our Government in the field of foreign relations" (Hearings 1953, 826). In particular, S.J. Res. 1 would "embarrass the President and […] so detract from the authority of the office of the President of the United States that his capacity to deal currently with international affairs would be greatly impaired" (Hearings 1953, 828). Attorney General Brownell supported Dulles' claims through a detailed discussion of the various ways in which constraints upon the president's power to engage in executive agreements would undermine American foreign policy (Hearings 1953, 914-917).

Despite Administration opposition, the Senate Judiciary Committee approved a slightly amended version of the Bricker Amendment by a vote of 8-4, on June 4, 1953. The coalition voting for approval included five out of eight committee Republicans, and three Southern Democrats. Opposing the resolution were two Democrats and two Republicans. On June 15, the committee released its report on the resolution, as S.J. Res. 1 moved to the floor for consideration by the full Senate. "Inasmuch as there appears to be some doubt concerning the power of Congress to regulate the making of executive agreements," the report states, "it is appropriate for Congress to dispel this doubt" (Senate Report 83-412 1953, 25). More specifically, this amendment preserved the president's role as the "sole negotiator" of international agreements, but it empowered Congress to "fix conditions which particular types of agreements must satisfy in order to be valid and binding upon the United States" (Senate Report 83-412 1953, 29). The report goes on to make clear that

following adoption, all future executive agreements "shall be subject to the limitations imposed on treaties" (Senate Report 83-412 1953, 30). Once enacted, Bricker's amendment would bolster Congress' power to set and regulate foreign policy; it would also prevent "complete and exclusive executive direction of American foreign policy" (Senate Report 83-412 1953, 33).

Ten days after the committee vote, and one day prior to publication of Senate Report 83-412 1953, Secretary of State Dulles provided Eisenhower with a memo warning him about the consequences of this amendment. The majority of his memo concerned the "fundamental constitutional change" wrought by congressional regulation of executive agreements. "The proposed amendment would transfer [power over the conduct of foreign affairs] to the Congress," Dulles warned. He concluded, ominously, with the following reflection: "I can think of few constitutional changes which would render or nation more incapable for taking care of itself *in the world of today* (*HFRUS,* Memo, 6.14.1953 [italics mine]). Dulles' formulation is particularly important because it highlights the burden of responsibility faced by the modern president, and suggests that congressional reassertion directly erodes the president's capacity to meet these new obligations.

In a statement released on July 22, 1953, Eisenhower echoed this sentiment by declaring himself "unalterably opposed to any amendment […] which would hamper the president in his constitutional authority to conduct foreign affairs." "Today, probably as never before in our history," he added, "it is essential that our country be able effectively into agreements with other nations" (*Public Papers of Dwight D. Eisenhower*, Statement, July 22, 1953, 510). Bricker had presented Eisenhower with a choice: support his co-partisans in Congress, or defend executive branch authority. As a first-term president, Eisenhower's chose the latter. To defend the powers passed onto him by Roosevelt and Truman, he chose to wage political battle against his own party. To win this battle, he effectively split the Republicans while also relying on Senate Democrats who supported presidential primacy.

In August 1953, the Senate adjourned without taking action on S.J. Res. 1, and it was not until 1954 that floor debate began. In the interim, the Eisenhower administration worked hard against its adoption. First, they convinced the Senate Majority Leader—California Republican William Knowland—to introduce a substitute proposal drafted by Attorney General Brownell and Secretary of State Dulles. Knowland's substitute left untouched the president's power to enter into executive agreements (Tananbaum 1988, 109). Meanwhile, Administration officials continued to meet with Bricker himself in an effort to work out compromise language. In January 1954, however, these efforts broke down (Tananbaum 1988, 137). During a January 13 press conference, Eisenhower argued that should the Senate adopt Bricker's proposal, it would reinstate "the general system that prevailed before our constitution was adopted" (*Public Papers of Dwight D. Eisenhower,* Press Conference, 1.13.1954). Bricker responded with a press release challenging the Administration to support a vote on the measure, and to "accept in good grace the Senate's decision" (Quoted in Tananbaum 1988, 137). Eisenhower's response was to promise public denunciations of the amendment as a "stupid, blind violation of the constitution by stupid, blind isolationists" (Quoted in Tananbaum 1988, 138).

Eisenhower's public opposition to S.J. Res. 1 forced members of Congress to confront the contradictory imperatives generated by Bricker's proposal. A vote for the proposal would bolster Congress' positive, autonomous power to set and regulate foreign policy; it would also inflict political damage upon Eisenhower by repudiating his public opposition to the amendment. At the time, Republicans stood to gain little by challenging Eisenhower. Between 1953 and February 1954, Eisenhower's approval rating had never dropped below 57 percent. Among Republicans, Eisenhower's approval rating never dropped below 84 percent (Lebo and Cassino 2007). Eisenhower's strong opposition to the measure also suggested to MCs that their efforts were likely to be met with a veto.

Contemporaneous news accounts illustrate how Eisenhower's political strength led some Republicans to repudiate prior support for S.J. Res. 1. "Bricker Treaty Plan in Doubt as Support Ebbs," read the headline of a January 20, 1954 article in the *New York Times*. Two days later, the *Times* published a story highlighting Senator Prescott Bush's (R-CT) decision to rescind support for Bricker's proposal. According to Bush, "in this atomic age […] such a policy would be a perilous handicap in our relations with other nations" (*NYT*, 1.21.1954). Yet, even as Eisenhower's public opposition to S.J. Res. 1 generated new opposition among Senate Republicans, it was the Democrats who would prove pivotal in this debate by helping Eisenhower fend off a reassertion effort pursued by Senate co-partisans.

In the course of the debate, a coalition of Northern Democrats and "Eisenhower" Republicans emerged to oppose Bricker's proposal. This anti-Bricker bloc was comprised of members who sought to protect the powers of the modern presidency, as well as those working to protect Eisenhower from deep political embarrassment. Those opposing Bricker out of deference to the modern presidency adopted the perspective of Missouri Democratic Thomas Hennings (MO). "There can be no doubt that […] the Bricker amendment and its substitutes would simply make it harder or more difficult for the President in a grave emergency to take action which might be immediately necessary to safeguard the lives of our people," he argued (*CR*, 2.11.1954, 1657). Tennessee Democrat Estes Kefauver echoed this sentiment when he claimed that the "present and troublous times…do not constitute a reason for retreat into isolationism. Instead, they are a challenge to world leadership" (*CR*, 1.28.1954, 948). Those supporting the Bricker amendment, he claimed, sought retreat into "fortress America" (*CR*, 1.28.1954, 952).

Some of Bricker's opponents also appealed to the political damage that would be done to President Eisenhower if the Senate adopted S.J. Res. 1. On February 17, 1954, for example, Michigan Republican Homer Ferguson (R-MI) declared that he did "not believe the people of the

United States, when they elected President Eisenhower […] intended that the Congress should, after he has been in office a little more than a year, undertake to delimit and restrict him" (*CR*, 2.17.1954, 1893). Appeals to Eisenhower's political survival were not limited to members of his own party. On February 26, Hennings took the floor once more to argue that by voting for Bricker's proposal, Republicans would "not only repudiate the position of the President of the United States but, I believe, will be casting a clear vote of lack of confidence in the head of their own party" (*CR*, 2.26. 1954, 2356). Hennings went on to make an observation that would prove important when it came time to vote on Bricker's proposal: "there appears to be considerable doubt as to whether what we call the Republican Party is really one party or two—the President's party and the party of his opponents […] it finally appears that there are two Republican Parties locked in a deadly combat over whether the President or the Congress shall be supreme in matters of foreign policy" (*CR*, 2.26. 1954, 2357). This assessment would prove true, thus helping to explain why S.J. Res. 1 failed.

Meanwhile, Bricker and those who supported his amendment advocated for S.J. Res. 1 by appealing to members' non-partisan, institutional interests. On January 28, 1954, Bricker took the floor and declared that on this issue "political expediency and party loyalty" must be set aside. "The Constitution of the United States and the rights it guarantees," he went on, "are more important than the political fortunes of any person or any party" (*CR*, 1.28.1954, 938). Supporters of this proposal believed, in the words of Everett Dirksen (R-IL) that "under his constitutional power the Executive may enter into an executive agreement without the knowledge of the Senate or House and the agreement may upset federal or state law" (*CR*, 2.17.1954, 1904). Similarly, Senator Walter George (D-GA) argued that

> "There is no possible safeguard for the American people against an executive agreement made by a President which cuts across the laws of the State and invalidates what would otherwise be a good law in the State, unless we say that at least we will not leave that question to the uncontrolled discretion of the President, but will ask him to send the agreement to the Congress and let the Congress vote

> upon it. If the majority of Congress votes upon it, that is infinitely better than having the President himself decide the question" (*CR*, February 11, 1954, 1666).

The coalition supporting Bricker's proposal asked MCs to set aside political self-interest instead work on behalf of the institution. Such appeals are likely to fail as long as the president retains wide popular support.

After years of debate, Bricker's proposal finally came up for a vote on February 25, 1954. Over the preceding days, Eisenhower supporters in the Senate orchestrated a series of successful votes on amendments replacing original Bricker's proposal with language that could win the support of the Administration (Grant 1985, 575-588). As a consequence, Bricker was forced to reintroduce his original language as an amendment to the compromise proposal. It failed 50-42 (*CR*, 2.25.1954, 2262).

V. DISCUSSION

Bricker's failure is illustrative because it highlights the joint effects of presidential strength and coalition weakness on fate of reassertion bills. Senate Republicans embraced Bricker's proposal until they were forced to choose between Congress' institutional prerogatives and the benefits accruing to them from Eisenhower's popularity. With Eisenhower's public approval rating at over 70 percent only one month prior to the vote, Republican Senators had little to gain by challenging his institutional status (Lebo and Cassino 2007). Stated differently, they had no reason to "position-take" against Eisenhower. Table 5.1 further illustrates this point. As we can see, Bricker's proposal split the Republican Party. Here it is worth remembering that at the beginning of the 83rd Congress—only one year earlier—Bricker had the support of all but one Senate Republican.

Table 5.1: The Bricker Amendment - Final Votes

Vote	Yea	Nay
Democrat	13	32
Southern Democrat	10	14
Northern Democrat	3	18
Republican	29	17
Independent	0	1
Total	42	50

Table 5.2 provides a different perspective on the impact of coalition weakness. Using logistic regression, I identify how party and ideology influenced vote choice. Here we see that the coefficient on the first- and second-dimension NOMINATE score variables is positive and significant. Substantively, this finding indicates that ideological conservatives were systematically more likely to vote for Bricker's proposal than were their more liberal colleagues. Republicans held a majority of Senate seats in the 83rd Congress. With the support of conservative southern Democrats, an ideologically cohesive bloc could have successfully passed Bricker's proposal without the support of those Senators who were more ideologically liberal. With the Republicans split, however, a bill that could only win conservatives had no chance.

Table 5.2: Logit Estimation - Votes for the Bricker Amendment

Variable	
	(β\SE)
Majority Party	3.46*
	(1.85)
First Dimension NOMINATE	4.63***
	(1.72)
Second Dimension NOMINATE	3.67***
	(1.04)
President's Vote Share	6.44
	(3.92)
	$R^2 = 0.46$
	N=88

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: "Yea" Vote on Bricker Amendment

Robust standard errors reported in parenthesis

CHAPTER 6
SUCCESSFUL REASSERTION: THE WAR POWERS RESOLUTION

The Bricker Amendment was Congress' first *attempt* to reassert authority over the modern president's foreign policy power. It was not until twenty years later that Congress *successfully* reasserted itself by passing the War Powers Resolution (WPR).[47] During the protracted inter-branch struggle that culminated with passage of the WPR, MCs and executive branch officials invoked many of the same arguments heard during the debate over Bricker's proposal. In 1951, for example, Bricker claimed that the "Senate's power to advise the President in treaty negotiations disappeared through nonuse" (*CR*, 3.29.51, 2970). In 1971, Arkansas' Democrat Senator William Fulbright described the Senate's "advice and consent" powers as "so diminished that the Executive takes little or no cognizance of the Senate's counsel, while the term 'consultation' is a misnomer for ceremonial briefings regarding decisions which have already been made" (Fulbright 1971, 74). With enough time (and motivation), one could find a number of quotes from MCs condemning executive aggrandizement, as well as responses from executive branch officials.

Similarities between these the Bricker and WPR episodes do not end at the level political rhetoric. The vote on Bricker's proposal fell only eight months after the Korean Armistice agreement. Signed by the Commander-in-Chief of United Nations Command, the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's volunteers in in July 1953, the armistice ended hostilities in Korea and created the Korean Demilitarized Zone.[48] In so doing, it brought to a close the deeply unpopular war initiated at the behest of President Truman, and justified by appeals to his inherent powers. Congress enacted the WPR approximately nine months after the United States signed the Paris Peace Accords which ended the United States' direct military involvement in Vietnam. In so doing, they helped bring to a close a

[47] P.L. 93-148
[48] The Korean Armistice Agreement is here: http://news.findlaw.com/cnn/docs/korea/kwarmagr072753.html.

different, deeply unpopular war also defended by appeals to inherent presidential power. In this chapter, I use the theory developed so far to explain why Bricker's effort failed while the WPR succeeded.

The argument I make to explain how the 93rd Congress successfully reasserted while the 83rd Congress failed to do so is grounded in the causal mechanisms identified in Chapters 3 and 4: presidential weakness, majority party size/cohesion and bipartisanship. More specifically, Senator Bricker pushed a reassertion effort during Eisenhower's first term and at a moment of relative political strength. In addition, Bricker's proposal split the Republicans and failed to attract a bipartisan coalition. Eisenhower's political strength and the weakness of Bricker's coalition combined to kill Bricker's proposal. The WPR, on the other hand, passed during Nixon's second term and at a point in time when he was deeply unpopular. Majority party Democrats coalesced behind a specific approach for reining in the president's war powers. Their approach also won the support of enough Republicans to pass through both houses of Congress, and even overcome a presidential veto.

Important as they are, these factors alone cannot wholly explain why the Bricker Amendment failed where the WPR did not. Truman's decisions as president did not spark sustained and violent protests, Vietnam did. Eisenhower was not beset by political scandal, Nixon was. In this chapter I will highlight the political conflict over Vietnam and Watergate, as well as the arguments defending executive branch power offered by the Johnson and Nixon Administration's. My discussion will make clear how political conditions beyond the halls of Congress worked in concert with the explanatory factors I have identified to help ensure the success of the WPR.

The primary aim of this chapter is, therefore, to contest the idea that factors external to Congress are sufficient evidence to explain why the WPR passed when it did. MCs condemned unpopular military campaigns, and they introduced legislation that aimed to rein in the modern

president, before 1973. Presidents before Nixon waged unpopular military campaigns and they, too, appealed to the president's "inherent powers" to justify their decisions. Congress did not reassert its positive, autonomous authority to determine when and where American troops can be deployed until 1973 because the incentives and capacity for reassertion did not converge until then. Conditions not explicitly captured by the presidential weakness and intra-congressional factors I measure and test played a role in bringing incentives and capacity together. These conditions alone, however, cannot sufficiently explain why the WPR passed when it did.

Before getting into the details of this case study, it is important to note that Vietnam and the WPR are the focus of many legal, historical and political analyses. In this chapter I will not provide a comprehensive historical account of the war or an examination of the WPR's constitutionality. Instead, my aim is to convincingly substantiate the claims that I have made above: firstly, that the behaviors and incentives generated by the presidency centered order constrain the decisions of those in Congress; secondly, that we can see evidence of these constraints by looking at the debate over this bill; thirdly, that the causal mechanisms I have identified provide a convincing argument to explain why the WPR passed when it did. These goals help to explain the structure of the chapter. Rather than proceeding chronologically, I first identify how the actions and arguments of Lyndon Johnson and Richard Nixon both reflect norms of governance characterizing the presidency-centered order. Then I loop back to the end of the Johnson Administration in order to provide a complete explanation of the legislative wrangling that preceded passage of the WPR. I conclude with an examination of the specific conditions under which the WPR passed.

I. JOHNSON, NIXON, AND THE PRESIDENCY-CENTERED ORDER

By the time Lyndon Johnson moved into the White House, MCs and the public had largely accepted presidential predominance in foreign policy. On account of its pre-World War II isolationism, many continued to see Congress as "remarkably ill-suited to exercise a wise control over the nation's

foreign policy" (Dahl 1950, 3). A report published by the Senate Foreign Relations Committee in 1967 echoes Dahl when it argues, "Congress has been doing a kind of penance for its prewar isolationism." "That penance," it goes on, "has sometimes taken the form of overly hasty acquiescence" to presidential authority (Senate Report 91-129 1967, 16). In accepting their penance, MCs contributed to one central pillar of the presidency-centered order: a shared belief that the president, not Congress, should take the lead in developing and implementing policy.

This Senate report also attributed congressional acquiescence to a perspective depicting foreign policy appears as an "occult science which ordinary citizens, including Members of Congress, are simply too stupid to grasp" (Senate Report 91-129 1967, 16). With a phalanx of military and foreign policy "professionals" at his disposal, the president could master this science even if Congress could not. One consequence of this view, argued Senator William Fulbright, was that MCs became "overawed by the cult of Executive expertise" (Fulbright 1971, 78). By adopting an "administrative" perspective on foreign policy—one that ruled out public debate or participation on matters related to foreign policy—MCs demonstrated their commitment to the presidency-centered order. Georgia's Democratic Senator Richard Russell gave voice to this sentiment when, in 1956, he argued that on matters of foreign policy and national security, MCs must "take some matters on faith" (Quoted in Smist 1994, 6).

Congressional acquiescence also reflected the reciprocal relationship existing between Congress and the president from 1947 until the early 1970s. "For the latter half of the twentieth century," argues Ely (1990), "a tacit deal has existed between the President and Congress: He'll take responsibility as long as he can make the decisions, and it will live with a lack of power as long as it doesn't have to be held accountable" (1123). As I argue above, the benefits accruing to MCs from this "tacit deal" helped to dissuade them working to replace discretionary presidential power with articulated governance. It made little sense for legislators who recognized that the public expected

presidential predominance, and who believed themselves to be amateurs on matters of foreign policy, to fight for policy development and implementation responsibilities.

When Lyndon Johnson entered the White House, he inherited the reciprocal relationship existing between Congress and the executive branch in the presidency-centered order, as well as the conflict in Vietnam. Between 1961-1963, President Kennedy deployed more than 12,000 military advisers to South Vietnam in order to help train domestic military forces. Then, three weeks before Kennedy's assassination, the South Korean government headed by President Diem fell in a coup (Zelizer 2010, 175). In late 1963, the situation in Vietnam was deteriorating and the newly inaugurated President Johnson was concerned about being the president who "saw Southeast Asia go the way China went" (Quoted in Zelizer 2010, 185). In 1964, following reports of an attack on a U.S. ship patrolling waters off the coast of Vietnam, Johnson convinced Congress to pass the Tonkin Gulf Resolution. This resolution is widely viewed as the beginning of the war.[49]

The Gulf of Tonkin Resolution passed on August 7, 1964, with only two dissenting votes. By agreeing to it, MCs subordinated themselves to the president. The text itself stipulates that it shall be "the *determination of the president*, as Commander in Chief, to take all necessary measures to repel any armed attack" against the United States" (P.L. 88-408, [italics mine]). This vote, in the words of Griffin (2013, 130), showed Congress accepting a position as the president's "junior partner." Similarly, legal scholar Alexander Bickel argues that the Gulf of Tonkin Resolution "amounted to an all but explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the president" (Bickel 1971, 134).

A brief look at the congressional debate over this measure confirms the assessments of Griffin and Bickel. MCs did not push for the positive, autonomous authority to determine when and where troops would be deployed. Instead, they passed a resolution declaring the United States was

[49] Public Law (P.L.) 88-408, August 10, 1964.

prepared "as the *president* determines, to take all necessary steps, including the use of armed force" to defend those countries who had signed the Southeast Asia Collective Defense Treaty (SEATO). Additionally, during floor debate over the measure in the Senate, Wisconsin Democrat Gaylord Nelson asked Senator Fulbright the following question:

> "Am I to understand that it is the sense of Congress that we are saying to the executive branch: 'If it becomes necessary to prevent future aggression, we agree now, in advance, that you may land as many divisions as deemed necessary, and engage in a direct military assault on North Vietnam, if it becomes the judgment of the Executive, the Commander in Chief, that this is the only way to prevent further aggression'?"

Fulbright did not respond with a detailed list of the ways in which Congress would play an active, autonomous role in the design and implementation of military plans. Instead, he conceded that he did "not know how to answer the Senator's question and give him absolute assurance that large numbers of troops would not be put ashore" (Both Quotes come from in Ely 1990, 886)

On the day that Congress passed the Tonkin Resolution, Senator Nelson offered an amendment aiming to protect Congress' role in determining when and where to deploy American troops. The resolution also stipulated that the United States should "avoid a direct military involvement" in Vietnam (Ely 1990, 887). Senator Fulbright would not allow it to be voted on. In sum, while debate continues on the question of whether the Gulf of Tonkin represented a declaration of war, what is not debatable is the fact that Congress used the resolution as a mechanism to defer to the expertise of executive branch officials in the design and management of military decisions.

While the Gulf of Tonkin Resolution is an important signal of congressional acquiescence to the executive, the extent to which Congress did or did not sacrifice its authority is less important than the Administration's view that it did not actually need congressional authorization to wage war. According to Nicholas Katzenbach—Under Secretary of State in 1964—President Johnson believed himself to retain all the constitutional authority required to initiate hostilities. From the

Administration's perspective, the Gulf of Tonkin resolution served only to affirm a decision that the Administration believed to be the president's alone (Hearings 1967, 131). The Johnson Administration saw congressional support for military action as a purely political matter. Johnson believed that President Truman had erred by failing to put Congress on the record in support of the American incursion into Korea, and he aimed to avoid a similar mistake (Sullivan 1982, 2; Griffin 2013, 123). Accordingly, he did not seek Congressional authorization for the war itself, but instead a resounding statement in support of Johnson's authority to act as he saw fit.

In making this argument, members of the administration invoked claims reminiscent of those similar to those heard during the debate over Bricker's proposal. For example, a 1966 memo prepared by the Leonard Meeker—a State Department legal adviser—argues, "[i]f the President could act in Korea without a declaration of war, *a fortiori* he is empowered to do so now in Vietnam" ("U.S. Participation in Vietnam," 3.4.1966, 488).[50] At the same time that they were invoking the modern president's inherent power, however, representatives of the Johnson Administration were also appealing to our legal obligations under the South East Asia Treaty Organization (SEATO,) created by the Southeast Asia Collective Defense Treaty, signed in 1954. Whether validated by inherent powers, the Korean precedent, or SEATO, Johnson believed himself to be "solely" responsible for foreign policy and national security policy (Griffin 2013, 49). In 1964, MCs gave him no reason to think otherwise.

President Johnson matched his belief in the president's sole responsibility for military decisions with action. Griffin (2013) reports the following list of decisions made by the Administration, but not disclosed to Congress:

- Covert actions were under way in 1964 prior to the Tonkin Gulf incident.
- Key decisions to escalate the war were made in early 1965.

[50] A digitized version of this memo can be read here: http://www.calhum.org/files/uploads/program_related/TD_US_Participation_in_VN.pdf.

- Substantial forces would be required in addition to those President Johnson announced in July 1965.
- The U.S. was in a war by fall 1965 in which success might take years and thousands of American lives.
- The war would cost billions of dollars, requiring a tax increase at minimum (135).

Through their penchant for secrecy, policymakers in the White House guaranteed that Congress would play no part in the development or implementation of war plans. Their belief that decisions about military policy were no longer the province of the legislature, or subject to approval by the public, is perfectly in keeping with the presidency-centered order's commitment to management and administration. War was "another instrument in the conduct of foreign policy" and foreign policy was, in turn, a subject best left to experts in the executive branch bureaucracy (Griffin 2013, 170).

Little changed once Richard Nixon took office in 1969. By the time Nixon entered the White House, the United States had over 500,000 troops stationed in Vietnam. Nixon aimed to prevent Congress from exerting influence over how they would be used or how long they would stay. His approach to the war fits with his general attitude toward Congress. He viewed the legislature as an obstacle to be avoided.

When he decided to widen the war by bombing North Vietnamese military targets in Cambodia (a decision I will discuss more below), President Nixon notified fewer than ten officials (Griffin 2013, 140). His secrecy was intentional. In an April 1970 conversation with Mississippi's Democratic Senator John Stennis, Nixon called his plan to move into Cambodia "the best kept secret of the war" (*HFRUS*, 4.26.70, 877). A White House Diary entry from June 9, 1970 recounts Nixon announcing that "to have told the Senate and Fulbright and Mansfield might have jeopardized 2,000 American lives" (*National Security Archive*, "Diary of White House Leadership Meetings," 6.9.1970). Separately, Henry Kissinger told two biographers that Nixon kept the bombing secret because "if it became known that the United States was widening the war geographically […] this would prompt a wave of angry denunciations from an increasingly

disillusioned Congress" (Ely 1990[2], 1145). In short, Nixon did not believe that military decisions should be subject to potentially contentious political debates. As Commander-in-Chief, such decisions were his to make and Congress had "no right or need to know" his military plans (Ely 1990[2], 1139).

Nixon's views are further explicated in a memo drafted by William Rehnquist –then head of the Department of Justice's Office of Legal Counsel (OLC). In this memo Rehnquist, too, uses the Korean precedent as support for Nixon's decisions. In keeping with the "administrative" nature of the executive branch in the presidency-centered order, he also concludes by arguing that the invasion of Cambodia represented "the sort of tactical decision traditionally confided to the Commander-in-Chief" (Rehnquist Memo 1970, 17). Here again, we see explicated the view that decisions about when and where to launch military campaigns should be left to "experts" operating within the executive branch. They should not be subjected to public debate by citizen legislators. Nixon, like all modern presidents before him, adopted an "administrative" approach to military decisions.

II. A Restive Congress and Pre-Reassertion Skirmishing

Up to this point I have focused upon legislative *deference* in order to make clear that MCs and the president had come to accept the imperatives of the presidency-centered order. Now we will see what happens when MCs decide to try and rise above the position of "junior partner." In the process, I will highlight the political battles preceding passage of the WPR because I want to make clear that this reassertion bill passed *when it did* and *in the form that it did* for specific reasons: due to Nixon's diminishing popularity and his second-term status, because majority party Democrats agreed upon a future direction for Congress' role in military decisions and because Republicans were willing to work against a president of their own party to bolster Congress institutional capacity. Mansfield (1989) argues that "legislative independence is greatly restricted by party discipline" but

that it can "be sustained by the responsibility to call the strong president to account, a responsibility that cuts across party lines (17). I aim to show that this is the case. Absent the president's political weakness and bipartisan agreement on the future course of future policy, however, reassertion is unlikely to succeed.

The WPR passed in 1973, but MCs began to chafe at their junior partner status well before Nixon's second term began. On July 31, 1967, Fulbright and Georgia's Democratic Senator Richard Russell introduced Senate Resolution 151 (S. Res. 151), National Commitments Resolution (Sullivan 1982, 17). Both Senators shared a belief that presidents too frequently justified troop deployments through "dubious references to equally dubious prior commitments" (*CR,* 7.31.67, 20702). S. Res. 151 stipulated that it was the "sense of the Senate" that a "national commitment" can only be made by an affirmative act of both Congress and the President (Sullivan 1982, 17; Garrett 1972, 187).[51] Senator Fulbright characterized S. Res. 151 as a "modest action" toward the goal of ending the "gradual erosion of the role of Congress […] in the determination of national security policy" (*CR*, 7.31.1967, 20702). Echoing Fulbright, Wisconsin's Republican Senator Wayne Morse voiced support for the measures because, he argued, the Senate had "permitted the office of the presidency to usurp" its constitutional powers (*CR,* 7.31.67, 20711).

Between August 16 and September 19, 1967, the Senate Foreign Relations Committee held five days of hearings on S. Res. 151. These hearings were the first since the war started in which the Senate explicitly considered its own foreign policy responsibilities (Sullivan 1982, 17). The committee report published after these hearings reiterated many points made by witness testimony. It proclaimed that the resolution represented "an assertion of Congressional responsibility in any decision to initiate war;" it argued that the country faced a situation in which "the real power to commit the country to war is now in the hands of the president;" and it presented S. Res. 151 as an

[51] The resolution defines a commitment as "the use of or promise to a foreign state or people to use, the armed forces of the United States either immediately or upon the happening of certain events" (CRS Report 70-112 1970, 3).

effort to restore the balance between Congress and the president that is "essential to the purposes of democracy" (Senate Report 90-797 1967, 7-8).

As a non-binding resolution, this bill does not qualify for inclusion in my data set. Yet, like the legally binding reassertion bills that I do analyze, it pursues "democratic" and "constitutional" ends. The Foreign Relations Committee Report on S. Res. 151 asserts that when it comes to foreign/military policy, the president holds "plenary power" over the "life or death of every living American" (Senate Report 90-797 1967, 26-27).[52] Such vast authority, the report goes on to claim, violates a long-standing constitutional principle: neither "one man," nor "one institution" should hold unchecked power over the other two. In addition, the report asserts that we "conduct foreign policy…for the purpose of security democratic values in our own country" (Senate Report 90-797 1967, 7). The president's unarticulated, discretionary authority to make binding "commitments" sacrifices the very democratic mechanisms that foreign policy aims to preserve.

Even though S. Res. 151 was only a sense of the Senate resolution some members of the Committee believed that it would "unduly restrict the president in the conduct of the Nation's foreign affairs" (Senate Report 90-797, 28). Speaking for the Administration, Katzenbach argued that in foreign policy, "the voice of policy is the voice of the Presidency." With this in mind, he went on, the Administration opposed the resolution because it resolution seeks to "join the Congress with the president on those matters which […] the president, in his capacity of conducting foreign relations of the United States, has the constitutional authority to do" (Hearings 1967, 77). Katzenbach also argued that the resolution would unnecessarily delineate and regulate the distribution of powers between Congress and the presidency. For "almost 200 years," he claimed, the distribution of responsibilities between Congress and the presidency had been worked out in

[52] If power is plenary, it is "unqualified" or "absolute."

practice. The Administration opposed any attempt to depart from this practice. Ambiguity on the issue of presidential powers, in other words, is precisely what the administration desired.

The Committee unanimously voted to approve an amended version of the resolution in September 1967. On November 20, 1967, the newly named S. Res. 187 was reported out of committee on a 16-0 vote. Despite unanimous support from the committee, being voted out of the and despite support from Senate leaders like Fulbright and Russell, the resolution did not get a vote in 1967. Yet Fulbright did not give up on the bill. On February 4, 1969, he reintroduced the proposal in its original language as S. Res. 85. By April, the Senate Foreign Relations Committee had reported it to the floor and in June it passed 70-16.

In response, President Nixon's Assistant Secretary of State for Congressional Relations wrote to the committee that the Administration opposed any effort to "fix by resolution precise rules codifying the relationship between the executive and legislative branches" (Senate Report 91-129 1969, 35). Here again, we see how the constitutional and democratic aims pursued by reassertion run counter to the president's institutional preferences. Though Johnson and Nixon came from different parties, they shared the view that a vital component of presidential power is its ambiguity. Huntington (1981) argues, "[p]ower revealed is power reduced; power concealed is power enhanced" (77). Conflicts between Congress and the President validate this claim insofar as they demonstrate how discretionary presidential power is diminished once it is identified and regulated.

When they passed the National Commitments Resolution, MCs signaled their desire to play a more positive role in foreign policy, as well as a newfound skepticism toward broad claims of executive branch power. However, it was a signal that the Nixon Administration ignored almost immediately. In late April 1970, having alerted only Mississippi's Democratic Senator John Stennis, President Nixon ordered attacks on North Korean targets inside of Cambodia (Zeisberg 2013, 152; Ely 1990, 902). He also secretly authorized incursions into Cambodia by American ground forces

(Zeisberg 2013, 152). As the Nixon Administration was unilaterally broadening the war, MCs were working to rein it in. An April 27 article in the *New York Times*, for example, reports "virtually unanimous" opposition to the provision of military aid to Cambodia (*NYT* 4.27.30). South Carolina's Republican Senator George D. Aiken told the *Times* he hopes "the President will take into earnest consideration the views of this committee" (*NYT* 4.27.30).

In a nationally televised speech on April 30, 1970, President Nixon made public his decision to bomb Cambodia. The secrecy surrounding this decision ensured that that MCs learned of the invasion on television rather than from White House consultation prior to its commencement. The decision came as a shock to the public and it catalyzed a broad and explosive reaction. In early May, protests at Kent State University in Ohio turned violent as National Guard Troops shot and killed 4 students (*NYT* 5.4.70). Less than one week later, 75,000-100,000 protestors arrived in Washington in order to demand that the United States withdraw its military forces from Cambodia, Laos and Vietnam (*NYT* 5.10.70). According to *New York Times* reporter Max Frankel, these events generated a palpable sense of fear within the Administration. President Nixon and his advisers no longer believed that they could "ride out the protest with appeals to patriotism, the President's duty as Commander-in-Chief and the long range benefit of his decision" (*NYT* 5.8.70)

Making matters worse for the administration, members of Congress from both parties had begun to channel public opposition. In particular, they were upset by the administration's failure to inform Congress of its plans. On April 27, 1970—three days before Nixon announced his decision—Secretary of State William Rogers met with the Senate Foreign Relations Committee. According to Senator Fulbright, Rogers "failed to give the Committee any indication of the pending military operation" ("Documents Related to War Power" 1970, 42). Fulbright was particularly incensed by Rogers' unwillingness to notify Congress. He responded by condemning the attack and the Nixon Administration's decision not to notify Congress. In June 1970 he chastised the

Administration for disregarding "not only the National Commitments Resolution, but the constitutional principles in which that resolution is rooted" ("Documents Related to War Power" 1970, 41). He then went on to accuse the Administration of conducting a "constitutionally unauthorized, presidential war in Indochina." The Administration, he claimed, "evinces a conviction […] that it is at liberty to ignore the National Commitments Resolution and to take over both the war and treaty powers of Congress" ("Documents Related to War Power" 1970, 41).

Fulbright was not alone with his outrage. New Hampshire's Republican Senator Norris Cotton told the *New York Times* that he was "shocked and dismayed" by the announcement. Senator Aiken publicly lamented the fact that he "did not think that the President would do what he reportedly has done" (*NYT* 4.30.70). More important than the rhetoric it engendered, however, Nixon's decision also motivated a series of legislative actions all aimed at ending the war.

Congress responded to Nixon's invasion of Cambodia in four different ways. First, it passed the Cooper-Church Amendment to the foreign military sales authorization bill. This amendment Cooper-Church Amendment cut off funds for the war after July 1, 1971, thereby allowing Nixon time to organize the American withdrawal (Sullivan 1982, 31). On January 12, 1971, Congress repealed the Gulf of Tonkin Resolution. Next came a vote on the McGovern-Hatfield Amendment. This provision aimed to bring an end to the war by mandating a complete withdrawal of American troops from Southeast Asia by December 1971. It failed three times: twice in the Senate (55-39 on September 1, 1970 and 55-42 on June 16, 1971) and once in the House of Representative (237-147 on June 17, 1971).[53] These bills are important because they demonstrate increasing legislative branch opposition to the war in Vietnam. Yet they did not aim to bolster's Congress' capacity to develop and implement national security policy into the future.

[53] For detailed information on this legislation see: (Sullivan 1982, 31-41).

Concomitant with these legislative efforts to end the war, some MCs moved to begin a broader debate over the president's war-making power writ large. Three bills introduced between May-August 1970 in the House of Representatives initiated the protracted struggle that would culminate in the WPR: House Resolution 17598 (H.R. 17598) introduced by Florida Democrat Dante Fascell, H.R. 18205 introduced by Illinois Republican Paul Findley and H.R. 18539 introduced by New York Democrat Jonathan Bingham. Fascell's bill, the first "war powers" bill to be introduced in either the House or the Senate stipulated explicit conditions under which the president could deploy troops without congressional authoritzation (*CR*, 5.13.70, 4397; Sullivan 1982, 49). Findley's bill was a replica of the proposal I discussed above introduced in the Senate by Jacob Javits (Hearings 1970, 393). Finally, Bingham's bill would have introduced a "one-house veto" over any military decision made by the president not first authorized by Congress. The Bingham bill would prove particularly important because it was the first to propose that Congress should be able to end U.S. military action "simply by passing a resolution which could not be vetoed" (Sullivan 1982, 54).

On the Senate side, New York Republican Jacob Javits emerged as the leading advocate for a war powers bill. In a January 1970 article published in *Foreign Affairs*, Javits gave notice that he intended to spearhead a reassertion effort. "We in the Congress," he argues,

> "must […] exercise vigilance to assure that foreign policy is not being made for us in the Defense Department, the intelligence agencies, or elsewhere by such faits accomplis as contingency plans, the deployment of forces or the location of bases, which deprive us effectively of our voice in foreign policy" (Javits 1970, 228-229)

Demonstrating that this was not just bluster, Javits introduced his own war powers bill, S. 3964, on June 15, 1970. The language Javits used when explaining why he was pushing this proposal should now sound familiar: "The process of abdication of congressional power and unilateral expansion of Presidential power in war-making has now reached dangerous limits," he claimed. "It has reached the point where any effort to simply check the expansion of Presidential power is regarded by some

defenders of the Presidency as an encroachment on the Office of the President" (*CR*, 6.15.70, 19657).

Accordingly, S. 3964 aimed to delineate the specific circumstances under which the president could deploy troops without formal congressional authorization. Under his proposal, the president would retain the authority to unilaterally deploy troops in order to (a) repulse a sudden attack against the United States or its "territories and possessions;" (b) repulse a sudden attack against U.S. forces on the "high seas or lawfully stationed on a foreign territories;" (c) to protect the "lives and property" of U.S. nationals abroad; and (d) to comply with a "national commitment affirmatively undertaken by Congress and the president." Most importantly, the proposal stipulated that "such military hostilities, in the absence of a declaration of war, may not be sustained beyond 30 days from the day they were initiated" unless Congress votes to approve an extension" (*CR*, 6.15.70, 19658). Once enacted, Javits claimed his proposal would provide a "clear code and procedure" to guide future decisions about war making (*CR*, 6.15.70, 19658). By forcing Congress to take action—either by authorizing or denying authorization of troop deployments—this bill would reassert Congress' positive authority over troop deployments and the initiation of armed conflict.

Meanwhile in the House of Representatives, the Subcommittee on National Security Policy and Scientific Developments met 11 times between June and August 1970 in order to discuss the merits various war powers proposals. The committee's chairman, Wisconsin Democrat Clement Zablocki set the tone of these hearings by declaring himself a "legislative pragmatist." "The subcommittee would like to report some legislation," he argued, that would not only pass through both houses of Congress but which would also have "if not direct approval, at least tacit approval or permission of the President. No veto" (Hearings 1970, 3980). His goal was to "define arrangements which will allow the President and the Congress to work together in mutual respect and maximum harmony" (Hearings 1970, 1). Many of the witnesses echoed this sentiment by in their testimony

when they opposed the Javits proposal and instead argued that modern presidents needed the "flexibility" that could only come from informal, inter-branch cooperation.

For example, McGeorge Bundy—National Security Adviser to Presidents Kennedy and Johnson—argued that "when you establish statutory or even constitutional limitations upon the powers of the President, and you are confronted with a situation where you must take instantaneous action in defense of the country, you can't wait until 535 so-called generals in Congress decide what to do" (Hearings 1970, 13). Bundy instead urged "consultation," because every military action could not be preceded by a "full-fledged vote of the Senate and of the House of Representatives" (Hearings 1970*,* 14). Similarly, Professor James MacGregor Burns argued that enabling Congress "in a fast moving international situation to block or, within a few days or a few weeks, to repeal a Presidential action" would introduce a harmful amount of uncertainty into American foreign relations (Hearings 1970*,* 85).

Here we see some agreement between witnesses and the Nixon Administration. John R. Stevenson—a legal adviser in the State Department—stipulated that the administration would oppose any effort to "define in advance the precise limits of the president's constitutional authority" to take military action (Hearings 1970, 208). Instead, the process by which troops are sent abroad "must be worked out in practice and changed as practice warrants" (Hearings 1970, 210). Echoing Stevenson, Assistant Attorney General William Rehnquist condemned legislation that would "lay down specific guidelines as to the respective constitutional roles of the president and Congress." Such guidelines violated the constitutional commitment to "flexibility" (on the part of the president) and "joint responsibility" (between the president and Congress) (Hearings 1970, 216).

Senator Javits' testimony challenged Rehnquist's claims and, in so doing, aimed to quell the concerns of those MCs who believed that his proposal was unconstitutional. According to Javits, the Nixon Administration's opposition to his measure was not grounded in legality. Instead, he argued,

the Administration challenged "very seriously the practicality and desirability of this kind of a statutory clarification of the division of war powers" (Hearings 1970, 399). The debate over potential war powers legislation, in other words, was political. If enough MCs chose to support his legislation, Javits was saying, a legal challenge or a court ruling would not invalidate their work. For advocates of a more restrictive war powers bill like the one Javits was proposing, success or failure hinged only their ability to convince MCs that reassertion was necessary and in their own best interests.

On August 13, 1970, Zablocki introduced House Joint Resolution 1355 (H.J.Res. 1355), a compromise measure forged from the various proposals considered throughout the summer of 1970. Introducing the bill, he called it a "reaffirmation" of Congress' power to declare war, even though it did not formally constrain the president. H.J. Res. 1355 neither "increases nor diminishes the existing war powers of Congress and the president," Zablocki argued (*CR,* 11.16.70, 37398). Instead, it requested that the president, "to the maximum extent possible, consult Congress before sending troops abroad" (*CR,* 11.16.70, 37398). The Zablocki compromise bill did stipulate new reporting requirements in order to keep future presidents from taking advantage of ambiguous phrasing. It also required the president to "promptly present to Congress a formal, written explanation" for any troop deployments even though it did not define "prompt" (*CR,* 11.16.70, 37398).

One claim that proved central to Zablocki's argument for passing H.J.Res. 1355 was the absence of any meaningful opposition from the Nixon Administration (*CR,* 11.16.70, 37398). A memo from President Nixon's Assistant Secretary of State for Congressional Relations to his White House counsel identifies the reason why. "The Zablocki Resolution […] has only one operative provision," this memo argues. "The Resolution would require the President to report promptly to the Congress whenever, without prior specific congressional authorization, he commits military

forces to armed conflict."[54] Even though the Administration did not oppose this requirement, the memo points out that Zablocki's legislation is "geared to a standard of 'prompt' reporting, rather than a specific number of house and, therefore, would not impose an unreasonable burden upon the executive" (*HFRUS*, 8.3.1971, 841). As California Democrat Jeffrey Cohelan pointed out prior to the vote, the Administration's support signaled that the measure simply "describes the status quo" (*CR*, 11.16.70, 37407). Nonetheless, the House passed H.J. Res. 1355 by a vote of 289-39 in November 1970.

Despite its broad bipartisan support among members of the House, H.J. Res. 1355 died in the Senate. Unlike their House counterparts, advocates for new legislation had not yet agreed that Zablocki's approach represented the best possible course of action. Indeed, those within the Senate who supported reassertion backed the Javits approach because it placed more significant constraints upon the executive branch. Despite Senate opposition, Zablocki would go on to oversee passage war powers legislation identical to H.J. Res. 1355 two more times before a House-Senate compromise would emerge.[55] Like the language of his proposal, Zablocki's rationale for pursuing a more conciliatory bill also remained consistent. "We could have very strong in a resolution which would not become law. Or we could attempt to pass a resolution seeking cooperation between the executive and the legislative" branches (Sullivan 1982, 93)

Representative Zablocki's belief that a formal reassertion of legislative authority over military deployments would never become law highlights one central challenge facing MCs as they consider bills of this kind. They cannot focus only on how to craft the best possible policy to replace discretionary power with articulated governance. Any legislation they craft must also win executive

[54] This memo is written in response to the enactment of H.J. Res. 1 (1971). H.J. Res 1 was an identical version of H.J. Res. 1355.

[55] The House of Representatives passed H.J. Res. 1 by voice vote on August 2, 1971 (*CR*, 8.2.71, 7612). According to Sullivan (1982), Zablocki also brought the bill before the Foreign Affairs Committee in early 1972. He then replaced the text of the Senate bill with the text of the twice-passed House measure. On April 14, 1972—one day after the Senate passed S. 2956—Zablocki arranged for his substitute bill to receive a recorded vote. It passed by a vote of 344-13 (98-99).

branch support, a veto-proof majority, or both. My discussion of the failed Bricker Amendment, for example, demonstrates the influence of the president's attitude toward reassertion on the thinking of individual MCs.

For this reason, the Senate's rejection of a House bill that passed multiple times, and that would not immediately face a veto, is particularly important. Despite the increasing unpopularity of the war, there existed no guarantee that *any* war powers bill would pass. Nixon won a landslide victory in 1972 and the political momentum he carried into office threatened to once again keep Congress from acting. Political scientist Jack Schick's article in the winter edition of *Foreign Policy* magazine attests to the significance of this threat (Sullivan 1982, 117). "Will there be a bill," he asked "or will we in the audience be left with just another rhetorical exercise which too frequently covers Congress' failure to act?"

Having described the position staked out by members of the House, I turn now to the Senate. Between 1971 and 1973, Javits and small group of others crafted the bill that would eventually come to be known as the War Powers Resolution. Before the Senate approach could be accepted, however, its advocates needed to convince a critical mass of House and Senate Democrats to accept formal reassertion instead of legislation that requested "prompt consultation," but which left the president's discretionary power unaltered. In short, Javits and his supporters needed to convince Republicans to forego the political benefits accruing to them through their deference to Nixon. They also needed to convince Democrats to accept legislation that would enhance the legislative branch's positive authority instead of a bill that served partisan political ends by simply impugning Nixon's policy in Vietnam. Stated in the words I use above, these members awaited Nixon's political/institutional weakness. Watergate and Nixon's reelection provided both. In 1973, the presidential weakness and intra-congressional factors converged in a way that made reassertion possible.

III. Passing the War Powers Resolution

As I stated at the outset of this chapter, events outside of Congress helped to catalyze this reassertion effort. In June 1971, the *New York Times* began publishing the documents that would eventually become known as the "Pentagon Papers." These classified reports documented how the Kennedy and Johnson Administrations' planned and implemented war policy in Southeast Asia. They also made clear the extent to which both administrations ignored Congress and subverted the system of checks and balances. Unfortunately for the Nixon Administration, publication coincided with hearings in the Senate Foreign Relations Committee devoted to an examination of three different war powers proposals. These hearings first commenced in early March, but the Committee met through the spring and summer of 1971.

As I described above, the hearings chaired by Representative Zablocki in 1970 stressed, cooperation and importance of pursuing legislation that won at least "tacit support" from the White House. That spirit was missing in the Senate. Chairman Fulbright allowed Senator Javits to choose witnesses who supported war powers legislation stronger than the Zablocki bill. Additionally, in April 1971, the *New York Times* covered a lecture given by Fulbright at Yale University. His speech warned of "presidential dictatorship in foreign affairs" and called on the citizenry to "recover our mistrust of the power in the presidency" (*NYT*, 4.4.71). Senator Javits, meanwhile, opened the hearings by describing the political crisis Vietnam had generated as "perhaps the greatest […] since 1865" (Hearings 1971, 126). Javits and Fulbright were attempting to win the support of skeptical MCs by demonstrating that the problem Congress faced required more than another request for consultation.

At the center of these hearings were a number of different war powers proposals. According to the hearing transcripts, the list of potential legislation included S. 2956 introduced by Senator

Javits (identical to S. 3964 discussed above); Senate Joint Resolution 59 (S.J. Res. 59) introduced by Missouri Democrat Eagleton; S.J. Res. 18 introduced by Ohio Republican Robert Taft Jr., S. 1880 introduced by Texas Democrat Lloyd Bentsen; S.J. Res. 95 introduced by Mississippi Democrat John Stennis; and the House-passed Zablocki bill (Hearings 1971, 111). In the Appendix to this chapter I have included a comparison of these measures produced by the Committee. Accordingly, rather than provide a point-by-point comparison of each, I will focus on how they depart from the weaker Zablocki measure.

The two points on which all of these bills agreed, and which qualify them as reassertion bills, are these: (1) they provided an explicit discussion of the circumstances under which the president was allowed to deploy troops; and (2) they included a provision that would mandate an end to any hostilities initiated by the president after a certain number of days in the absence of congressional authorization. In keeping with my definition of reassertion legislation, these bills sought to delineate and regulate what was—to that point—the president's discretionary authority to wage war without consent from the legislative branch. They also intended to bolster Congress' positive, autonomous authority. These bills legislated into existence a process by which MCs could make independent judgments about if and where troops should be deployed, and they insured that such judgments would have meaningful effects.

The Nixon Administration's response was predictable. Secretary of State William Rogers told the panel that the Administration would oppose any bill intended to "freeze the allocation of war power between the President and Congress" (Hearings 1971, 498). Like his predecessors, Rogers appealed to the "political process" as a solution to any conflicts arising between Congress and the president on war powers issues (Hearings 1971, 498). Recognizing the advantages that unarticulated power afforded the president, New Jersey's Republican Senator Case expressed skepticism about the benefits of the "flexibility" it provided. From his perspective, flexibility allowed the president to "act

without prior publicity," thereby intruding on the "public's right to know" (Hearings 1971, 516). Javits also directed attention to the dilemma resulting from the president's advantage as a "first-mover" on matters of foreign policy. In a colloquy with Professor Henry Steele Commager, Javits made clear that the only way to ensure congressional participation in this area was for members to exercise the legislative branch's "statutory authority." More specifically, if MCs were agree to legislation creating a formal process by which Congress could influence policy implementation Javits believed that they would prevent future arrogation of power by the president. Stated differently, Javits and others recognized that "it is far more difficult to reassert a power which has been permitted to atrophy than to defend one which has been habitually used" (Senate Report 92-606 1972, 18).

Despite the Nixon Administration's stated opposition to any reassertion legislation, out of these hearings a series of negotiations between the authors of these various bills grew a compromise proposal. Introduced December 4, 1971, S. 2956 was co-sponsored by a bipartisan group of Senators that included Javits, Stennis, Eagleton, Bentsen, Taft, and Spong The committee report accompanying S. 2956 makes clear that reassertion is its primary goal. "The essential purpose of the bill," argues the report, "is to reconfirm and define with precision the Constitutional authority of Congress to exercise its constitutional war powers" (Senate Report 92-606 1972, 2).

In order to accomplish this end, the bill stipulates the circumstances under which the president is allowed to deploy troops and initiate hostilities without prior legislative authorization: (a) in response to the threat of an imminent attack on the United States and/or its territories and possessions or to forestall such an attack; (b) to prevent an attack on armed forces stationed overseas; (c) to rescue any citizens living overseas whose lives are in danger (Senate Report 92-606, 2). In addition, the bill stipulates that the president cannot use any "treaty or provision of law" to infer the authority for troop deployments, it imposed a 30-day cut off on deployments that had not

received congressional authorization, it imposed new reporting requirements on the president following deployment, and it set out rules that would allow Congress to consider force authorization legislation without the threat of a filibuster (Sullivan 1982, 83).

On March 29, 1972, the Senate began debate on S. 2965. As floor manager, Senator Javits introduced the bill as "one of the most important pieces of legislation in the national security field that has come before the Senate in this century" (*CR*, 3.29.1971, 11021). Following an extended examination of the bills' content, Javits made an argument for its enactment that is directly relevant to this analysis. "If Congress chooses to exercise its power under the 'necessary and proper clause,'" then it can "*define by law* the president's and its own role in going to war" (*CR*, 3.29.1972, 11026). Beyond narrowing the president's discretionary power to wage war and bolstering its own capacity for making independent decisions about military action, this bill aimed to impose Congress' institutional strengths—openness, debate and deliberation—on the executive branch.

After more than two years of debate on various war powers measures, it took the Senate only two weeks to move from floor debate to a final passage vote. On April 13, 1972, the Senate passed S. 2956 by a vote of 68-16. Despite the lopsided vote, enactment still remained from certain.

Only two days after it passed, the *New York Times* reported that the "more conservative, less assertive" members of the House Foreign Relations Committee regarded the measure as an "undesirable, if not unconstitutional, encroachment upon the President's powers" (*NYT*, 4.16.1972). Recognizing this reticence, Nixon's aides expressed hope that the House would prevent passage of the Senate measure. In a memo dated April 13, 1972, Nixon's Deputy Assistant for Congressional Relations informed the president that their "best chance of beating the bill is in the House […] The long debate, amendments and parliamentary maneuvering in the Senate should show the House that there is controversy and hopefully the bill will die in Committee" (*HFRUS*, 4.13.1972, 845). If that plan failed, Nixon could also exercise his veto power. During the Senate's hearing in 1971, Senator

Fulbright had even declared himself "not very optimistic" that any potential bill would garner enough support to overcome a veto (Hearings 1971).

In April 1972, the House and the Senate were at an impasse. Zablocki's supporters opposed the Javits proposal and vice versa. As a consequence, the 92nd Congress closed without enactment of a single war powers measure. When the 93rd Congress opened in January 1973, it was in the aftermath of Nixon's landslide victory in November 1972. Despite social unrest and the unpopularity of the war in Vietnam, Nixon won 520 electoral votes and more than 60 percent of the popular vote (Zelizer 2010, 234). Under such circumstances, it is hard to imagine MCs challenging Nixon's institutional status. Yet, as I demonstrated in Chapters 3 and 4, the probability of successful reassertion increases markedly when a president enters his second term. Additionally, as we will see, Nixon's political support would soon plummet among those in each of the categories I test in Chapter 3. In 1973, institutional weakness and political weakness converged in a way that made reassertion possible. Majority party Democrats finally coalesced behind a plan that could also win the support of enough Republican MCs to pass.

Just as they had at the beginning of the 91st and 92nd Congresses, Senator Javits and Representative Zablocki introduced war powers measures. In the Senate, Javits introduced S. 440—and exact replica of the bill that passed in April 1972—on January 18, 1973. In the House of Representatives, Clement Zablocki introcued H.J. Res. 2, a near replica of the bill that he had written and helped to pass on three separate occasions. Between March 7 and March 20, Zablocki also chaired six more days of hearings in the Subcommittee on National Security Policy and Scientific Developments. And, once more, Zablocki put the following question to Senator Javits during his testimony: "In your opinion, Senator, would the President veto S. 440?" Before allowing Javits to reply, Zablocki explained that he did not believe Javits' proposal had the support to overcome a filibuster. As a consequence, going through the effort to pass S. 440 would be an "exercise in

futility" (Hearings 1973[1], 11). In response, Javits claimed to have the requisite support for a veto override. More importantly, however, he described the effort to pass a bill as a "struggle between Congress and the president." In such a struggle, he went on, MCs must demonstrate the "character" to "take responsibility for [matters of war] as the Constitution says we must" (Hearings 1973[1], 12).

In 1973, it was easier for MCs to express character of this sort than it had been in prior years. In the seven months between Nixon's inauguration and September 1973, his overall approval rating fell from 67 percent to 34 percent; among Republicans, it fell from 89 percent to 63 percent; and among Democrats it fell from 51 percent to 17 percent (Lebo and Cassino 2007). Concomitant with Nixon's declining public support, MCs and the scholars who testified before them began to make explicit claims about the importance of congressional action now that President Nixon was in his second term. During the Senate's hearings on S. 440 in April 1973, for example, Professor Alexander Bickel argued that if "Congress is again silent, the presidential adviser, indeed the constitutional scholar of 10, 20 years from now will say, here is what President's have claimed" (1973 Hearings[2], 29). Similarly, Profesor Raoul Berger called congressional inaction a "very dangerous thing" because "it is just like the preemption of land: after a while Presidential claims tend to become irreversible" (1973 Hearings[2], 30). Finally, Senator Javits proclaimed to the witnesses that "we do not dare keep silent now, we cannot keep silent now, if this is not to be the final act of surrender" (1973 Hearings[2], 29).

It is of course true that Nixon's status as a second term president was not the only factor to have changed between 1972 and 1973. Over the first half of 1973, MCs and the public continue to learn about Nixon's involvement in the Watergate scandal. Additionally, in February 1973, the Administration launched a secret bombing campaign in Cambodia. Once again, Nixon decided to keep Congress in the dark, and once again MCs were outraged by the lack of notification (Sullivan 1982, 108). Cumulatively, these factors convinced Representative Zablocki to embrace a bill that

more closely resembled the Javits proposal than his own. In May 1973, Zablocki introduced H.J. Res. 542, a new war powers proposal that almost mirrored the Javits bill. Like prior Senate measures, Zablocki's new bill included a provision that would result in the automatic termination of hostilities waged without congressional authorization. Unlike prior Senate bills, Zablocki's new bill provided two ways for Congress to dictate policy. First, if Congress did not act affirmatively to authorize deployments after 120 days, the president would be required to bring the troops home. Congress could also end hostilities by passing a concurrent resolution 120 days after troops were first deployed.

The debate on H.J. Res. 542 began on June 25, 1973. By that time, the House Foreign Affairs Committee had endorsed the bill in a 31-4 vote. And in a testament to Zablocki's movement toward Javits' Senate proposal, the Nixon Administration's acting State Department Legal Adviser, Charles Brower, appeared before the Committee to repeat many of the same arguments employed by his predecessors. Introducing this new measure on the floor, Representative Zablocki presented the bill as dealing with "democratic control over that most vital of national decisions: the declaration to go to war" (*CR*, 6.25.1978, 21209). Criticism of this bill centered upon the provision stipulating that troops must be withdrawn if Congress took no action to authorize their continued deployment beyond 120 days. New Jersey Republican Peter Frelinghuysen, for example, described this provision as "inexcusably irresponsible" and an attempt to transform Congress' "inability to act ito a positive policy action" (*CR*, 6.25.1973, 21215).

Once the House of Representatives adjourned on June 25th, it took no more action on H.J. Res. 542 until July 18. In the meantime, President Nixon's legal adviser John Dean had revealed Nixon's participation in the Watergate cover-up and the public first learned of the Oval Office taping system (Sullivan 1982, 129). With his political support fading, Nixon's allies in Congress proved unable to defeat the Zablocki bill. Despite multiple attempts to amend it, H.J. Res. 542

passed on July 18 by a vote of 244-170 (*CR*, 7.18.1973, 24707). Two days later, the Senate passed S. 440 by a vote of 72-18 (*CR*, 7.20.73, 25119). With both bills passed, the House of Representatives and the Senate once again faced the task of reconciling them in order to come up with a compromise that could pass both houses.

House and Senate conferees met six times between August and October 1973 in order to work out a compromise proposal. In between July and September, Nixon's approval rating fell fro approximately 40 percent to just over 30 percent. Accordingly, if the conferees found their way to language that all could agree on, it was unlikely that Nixon's political influence would prove an obstacle to final passage. The negotiations began in earnest in late September and it took just over two weeks—from September 20 to October 4—for the conferees to agree on language. The new proposal included an automatic termination provision mandating an end to hostilities after 60 days in lieu of congressional authorization. The "countdown" would begin once the president formally notified Congress of the deployments, and the bill mandated that issue such notification not more than 48 hours after committing troops. In addition, the proposal stipulated that troops could only be deployed "pursuant to (1) a declaration of war; (2) specific statutory authorization; (3) a national emergency created by an attack upon the United States, its territories or possessions, or its armed forces. Finally, they agreed that the mandatory withdrawal provision would also apply to the deployment of "field combat advisers" (Sullivan 1982, 147).

Despite a veto threat from President Nixon, events moved quickly after the deal was announced. On October 10, the Senate passed the conference report by a vote of 75-20. Two days later, the House took up debate on the measure. Rep. Zablocki's statement introducing the bill reinforces one central aspect of my argument. This legislation, he argued, "was not aimed at any president or criticism of past presidential action." Rather, it was an "effort by the Congress to ensure that it is permitted to exercise to the fullest its constitutional responsibilities over questions of peace

and war" (*CR*, 10.12.1973). This bill met with opposition from liberals who believed it too lenient and conservatives who believed it too restrictive. In the end, however, the War Powers Resolution passed on October 12, 1973 by a vote of 238-123.

For the purposes of this analysis, the WPR is coded as a success once it passes both houses. Yet it is important to note that Nixon did live up to his veto threat. On October 24, 1973, he notified Congress that he refused to sign the bill because it imposed "unconstitutional and dangerous" restrictions on the presidency (*The Public Papers of Richard Nixon*, "Veto of the War Powers Resolution," 10.24.1973). The House and Senate both voted to override the veto in early November 1973.

IV. DISCUSSION

In this chapter, I provide a detailed account of the WPR's legislative history in order to illustrate that events outside of Congress played an important, but not sufficient role in the enactment of this reassertion bill. MCs could have passed a less restrictive measure in the years between 1969-1973. The House of Representatives passed a bill Nixon found palatable on 3 different occasions. On the other hand, the more aggressive approach favored by Senator Javits could have failed to attract the support of Democrats *and* Republicans. The WPR passed when it did, and in the form it did, because of Nixon's deep unpopularity, because Democrats coalesced behind the plan, and because Republicans saw it in their interest to cross a president of their own party.

Tables 6.1 and 6.2 aim to further substantiate these claims by looking at how MCs voted and the factors that helped determine their votes. Model 1 in the table corresponds to votes in the House of Representatives and Model 2 corresponds to votes in the Senate. For these analyses I look at how MCs voted on the question of whether to override President Nixon's veto. However, the statistical results are nearly identical if one looks at the final passage votes that took place in July (H.J. Res. 542 and S. 440) or in October (Conference Report).

These results demonstrate the absence of any party effects in the Senate. Neither the indicator variable denoting a Senators membership in the president's party, nor either of the ideological measures are statistically significant. In the House of Representatives, however, we see that more conservative members proved less likely to support the veto override. We also see that Democrats who are more distant from the ideological center of the party proved less likely to vote for the override. Similar to the results I present and discuss in Chapter 4, we see that party cohesion plays more of a role in the House than in the Senate.

Table 6.1: The War Powers Resolution - Final Votes (House)

Vote	Yea	Nay
Democrat	196	32
Southern Democrat	55	23
Northern Democrat	141	9
Republican	87	103
Independent Democrat	1	0
Total	284	135

Table 6.1a: The War Powers Resolution - Final Votes (Senate)

Vote	Yea	Nay
Democrat	49	3
Southern Democrat	13	1
Northern Democrat	36	2
Republican	25	14
Independent	1	0
Conservative	0	1
Total	75	18

Table 6.2: Logit Estimation - Veto Override

Variable	Model 1 (β\SE)	Model 2
President's Party	-0.15	0.15
	(0.58)	(2.45)
First Dimension NOMINATE	-2.97***	-5.03
	(0.79)	(3.46)
Second Dimension NOMINATE	-0.22	0.36
	(0.38)	(1.78)
President's Vote Share	–	2.99
	(–)	(7.52)
Constant	0.38	-0.28
	(0.34)	(4.69)
	$R^2 = 0.16$	$R^2 = 0.28$
	N=413	N=91

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: "Yea" Vote on WPR Veto Override

Robust standard errors reported in parenthesis

Table 6.2a: Logit Estimation - Veto Override

Variable	Model 1 (β\SE)	Model 2
President's Party	–	–
	(–)	(–)
Individual Cohesion	-5.73***	-6.60
	(1.01)	(5.70)
Second Dimension NOMINATE	0.12	-3.40
	(0.33)	(2.51)
President's Vote Share	–	25.43
	(–)	(20.58)
Constant	2.13	-0.28
	(0.28)	(4.69)
	$R^2 = 0.16$	$R^2 = 0.24$
	N=231	N=91

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Dependent Variable: Majority Party Votes on Veto Override

Robust standard errors reported in parenthesis

President's Party not included due to collinearity

CHAPTER 7
CONCLUSION

The argument I provide in the foregoing analysis unfolds in multiple steps. First, I define reassertion and distinguish it from alternative forms of legislative opposition to the executive branch. Next, I explained how reassertion legislation subverts norms of governance generated by the contemporary, presidency-centered order. The constitutional and democratic aims pursued by reassertion bills, I argue, undermine the modern president's preference for autonomous, discretionary and ambiguous power. Thirdly, I link the substantive goals of reassertion bills with the conditions under which they are pursued and passed. Finally, I carry out a series of quantitative and qualitative analyses aimed at validating my claim that successful reassertion is conditional on presidential weakness, majority party size and cohesion, and bipartisan support.

The tissue connecting the substance of reassertion legislation and the conditions under which such bills are pursued is an individual MC's judgment about what is in his/her own best interest. An individual member stands to gain little by challenging an institutionally and/or politically strong president. Reassertion is therefore conditional on presidential weakness. The majority party stands to gain little from pursuing reassertion if it cannot agree on alternative policy, or is concerned that a given reassertion bill will be successfully blocked by the minority party. Reassertion is therefore conditional on majority party size and cohesion. Finally, risk-averse MCs in the majority party stand to gain little if they alone will be blamed for negative policy outcomes following enactment of reassertion legislation. Reassertion is therefore conditional on bipartisan agreement. MCs mitigate risk by distributing some of it to the opposition party.

While my analysis focuses on when and how MCs use the legislative process to bolster their own positive, autonomous policymaking capacity, I do not try to "save" Congress by depicting members as committed defenders of constitutional principle, self-interest be damned. Indeed, I

share Silverstein's (1997) view that we have "little reason to expect legislators to exchange short-term calculations for long-term considerations of the balance of powers" (220). The validity of this claim, however, should not lead us to the conclusion that MCs *never* consider Congress' status vis-à-vis the president. Indeed, the argument I make attempts to clearly articulate the circumstances under which reassertion serves *both* the short-term political interests of MCs and the larger democratic/constitutional ends I describe. Reassertion is most likely when short-term interests and long-term goals overlap. The evidence I marshal suggests that MCs can and will reassert when doing so does not obligate them to engage in a kind of political martyrdom.

The argument I make, and the findings I present, contribute to our understanding of how separation of powers operates in the modern era because they explore untested assumptions built into two important lines of research. The first one, which I describe as "Newtonian" in its approach, posits inter-branch conflict as a product of partisan conflict. On this argument, the president's co-partisans in Congress are presented as his stalwart allies. They are unwilling and unlikely to challenge his institutional status and they are assumed to defend him from the any legislative challenge. Those in the opposition party, on the other hand, are depicted as his inveterate opponents. The "oil" that makes our separated system "go of itself" is a continuous struggle between the two parties. The second argument, which I describe as "Darwinian" in its approach, treats the president as the central political actor in our constitutional system. He pursues power, uses the institutional tools at their disposal to maximum effect, and develops new strategies for promoting and protecting his influence over policy development and implementation. The modern president is well suited for these tasks because he retains first-mover and informational advantages over Congress. In addition, the veto power allows him to significantly minimize Congress' opportunity to reverse or contest executive branch authority even as the collective action costs plaguing Congress render it particularly ill-suited for contending with a president who has both the incentives and ability to act unilaterally. If the

Newtonians explicitly addressed reassertion, they would treat it as a consequence of partisanship. The Darwinian argument, on the other hand, leaves little room for any systematic discussion of reassertion. I seek to offer a "middle" way by presenting reassertion as conditional on the factors described above.

Having summed up my conclusions, I will now address my reservations. As is the case with many research projects, in attempting to answer one set of questions those left unanswered are brought into stark relief. First, and most importantly this analysis provides a supply side examination of reassertion. As a consequence, I largely neglect the demand side of the story. Stated differently, because I explore the conditions under which MCs attempt and successfully enact reassertion bills, I must take the existence of such bills as a given. I do not provide a clearly specified explanation for how reassertion legislation makes it onto the congressional agenda in the first place. My data set of reassertion legislation makes clear that MCs will persistently advocate for Congress to take up reassertion bills. Similarly, my case studies show the tenacity of those who spearhead reassertion efforts. Yet, neither my data nor my analysis clearly explains *when* we should expect a Bricker or a Javits to emerge. Under what conditions will an individual MC begin advocating for reassertion? Why? These are questions in need of answers. We will not fully understand reassertion until we also understand the motivations of the political entrepreneurs who initiate the fight for reassertion. I aim to address these issues in future research.

The second set of questions left unanswered by this analysis deal with presidential reactions to reassertion legislation. More specifically, I do not explain if, when, successful reassertion constrains presidential action. For example, consider again the War Powers Resolution. In 1982, President Reagan deployed troops to Lebanon and, as a consequence, initiated the mandatory cut-off provision of this law. In this case, Congress enforced the WPR and President Reagan abided by congressional action (Howell and Pevehouse 1982, 15). On the other hand, in a June 2011 op-ed

published in the *New York Times,* legal scholar Bruce Ackerman condemns the Obama Administration for explicitly subverting the WPR.[56] These inconsistent responses to the WPR make clear that some uncertainity exists over whether reassertion bills consistently achieve their stated purpose. How often are presidents constrained by reassertion? When do they seek to avoid the legislative constraints imposed by these bills? These are questions that must be answered. The data set of reassertion bills that I have compiled provides a starting ground for beginning such an analysis.

While questions about presidential reactions to reassertion do remain, one thing we can be sure of is this: the modern president aggressively pushes (some say subverts) constitutional boundaries in a variety of ways and in a wide range of policy areas. Such action, argues Skowronek (2009), should alert us to a "rumbling at the [Constitution's] foundations." In response, he advocates "scholarly attention to shifting foundations of authority and emerging problems of legitimacy" (801). As I write this conclusion, the "problem of legitimacy" has once again emerged. On Wednesday, June 25, 2014, House Speaker John Boehner made public his intention to "sue" president Obama for failing to execute the law. "The Constitution makes it clear that a president's job is to faithfully execute the laws; in my view, the president has not faithfully executed the laws," Boehner argued.[57]

Speaker Boehner's argument offers yet another reason why those studying Congress and the presidency should take legislative reassertion seriously. Like most modern executives, President Obama has contravened enacted statute and declared himself empowered to alter the meaning of enacted statute. For example, when he negotiated for the release of POW Bowe Bergdahl, President Obama explicitly ignored a provision of the National Defense Authorization Act calling for consultation with Congress before releasing any prisoners from the facility at Guantanamo Bay. As

[56] Ackerman's article can be read here: http://www.nytimes.com/2011/06/21/opinion/21Ackerman.html?_r=0
[57] A story on Boehner's press conference can be read here: http://www.nytimes.com/2014/06/26/us/politics/boehner-to-seek-bill-to-sue-obama-over-executive-actions.html

another example, President Obama unilaterally decided to postpone aspects of the Affordable Care Act despite the fact that doing so cut against provisions written into the statute itself. Is it legitimate for a president to evade the constraints imposed by reassertion? Under what conditions will he do so and what are the implications of such decisions? By answering these questions, we will learn more about the relative power of Congress, the presidency and legal restrictions in contemporary American politics.

BIBLIOGRAPHY

Adler, E. Scott. 2002. *Why Congressional Reforms Fail: Reelection and the House Committee System*. Chicago, IL: University of Chicago Press.

"Always in Vague." 2014. *Washington Post*. January 21, 2014. (http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/01/21/always-in-vague/).

Arendt, Hannah. 1963. *On Revolution*. New York: Penguin Books.

Arnold, R. Douglas. 1990. *The Logic of Congressional Action*. New Haven, CT: Yale University Press.

Arnold, Peri E. 1998. *Making the Managerial Presidency: Comprehensive Reorganization and Planning, 2nd Edition*. Lawrence, KS: University of Kansas.

Arnold, Peri E. and L. John Roos. 1974. "Toward a Theory of Congressional-Executive Relations." *The Review of Politics* 36 (July): 410-429.

Austin, J.L. 1975. *How To Do Things With Words*. Cambridge, MA: Harvard University Press.

Balkin, Jack M. 1993. "Ideological Drift and the Struggle Over Meaning." *Connecticut Law Review* 25 (Spring): 869-892.

Balla, Steven J. 1998. "Administrative Procedures and Political Control of the Bureaucracy." *American Political Science Review* 92 (September): 663–673.

Banks, William C., and M.E. Bowman. 2001. "Executive Authority for National Security Surveillance." *American University Law Review* 50 (Spring): 2-129.

Banks, William. 2007. "The Death of FISA." *Minnesota Law Review* 91 (5): 1209-1299.

Bawn, Kathleen. 1995. "Political Control versus Expertise: Congressional Choices about Administrative Procedures." *American Political Science Review* 89 (March): 62–73.

Bendor, Jonathan and Adam Meirowitz. 2004. "Spatial Models of Delegation." *American Political Science Review* 98 (May): 293-310.

Bickel, Alexander M. 1971. "Congress, the President and the Power to Wage War." *Chicago-Kent Law Review* 48 (Fall-Winter): 131-147.

Binder, Sarah A. and Forrest Maltzman. 2009. *Advice and Dissent: The Struggle to Shape the Federal Judiciary*. Washington, DC: Brookings Institution Press.

Boehmke, Frederick. 2008. "PLOTFDS: A Stata Utility to Plot the Marginal Effect of Independent Variables. (Version 1.1, December 2008).

Bradley, Curtis A. and Trevor W. Morrison. 2012. "Historical Gloss and the Separation of Powers."

Harvard Law Review (December): 412-485.

Brady, David W., Joseph Cooper and Patricia A. Hurley. 1979. "The Decline of Party in the U.S. House of Representatives, 1887-1968." *Legislative Studies Quarterly* (August): 387-401.

Bricker, John W. 1953. "Making Treaties and Other International Agreements." *Annals of the American Academy of Political and Social Science*. 289 (September): 134-144.

_____. 1954. "The Bricker Amendment: Treaty Law vs. Domestic Constitutional Law." *Notre Dame Lawyer: A Quarterly Law Review* 29 (August): 529-550.

Brown, Rebecca L. 1991. "Separated Powers and Ordered Liberty." *University of Pennsylvania Law Review* 139 (June): 1513-1566.

Brownlow, Louis. 1949. *The President and the Presidency*. Chicago, IL: The Lakeside Press.

Burden, Barry C. 2007. *Personal Roots of Representation*. Princeton, NJ: Princeton University Press.

Burke, John P. 2000. *The Institutional Presidency: Organizing and Managing the White House from FDR to Clinton*. Baltimore, MD: The Johns Hopkins University Press.

Burnham, James. 1959. *Congress and the American Tradition*. New York: Transaction Publishers.

"Bush's Leviathan State." 2006. *New Republic*. July 24, 2006. (http://www.newrepublic.com/article/bushs-leviathan-state).

Calabresi, Steven G. and Christopher S. Yoo. 2008. *The Unitary Executive: Presidential Power from Washington to Bush*. New Haven: Yale University Press.

Canes-Wrone, Brandice. 2005. *Who Leads Whom? Presidents, Policy, and the Public*. Chicago, IL: University of Chicago Press.

Carey, George W. 1978. "Separation of Powers and the Madisonian Model: A Reply to Critics." *American Political Science Review* 72 (March): 151-164.

Carpenter, Ted Galen. 1986. "United Staes' NATO Policy at the Crossroads: The 'Great Debate' of 1950-1951." *The International History Review* 8 (August): 389-415.

Ceaser, James. 1979. *Presidential Selection: Theory and Development*. Princeton, NJ: Princeton University Press.

Chamberlain, Lawrence H. 1946. *The President, Congress, and Legislation*. New York: Columbia University Press.

Coase, R.H. 1937. "The Nature of the Firm." *Economica* (November): 386-405.

Cohen, Jeffrey E. 2012. *The President's Legislative Policy Agenda, 1798-2002*. Cambridge: Cambridge University Press.

Corwin, Edward S. 1984. *The President: Office and Powers, 1787-1984, 5th Edition*. New York: New York University Press.

Croly, Herbert. 1998. *Progressive Democracy.* ed. Sidney A. Pearson, Jr. Brunswick, NJ: Transaction Publishers.

_____. 2014. *The Promise of American Life.* ed. Sean Wilentz, Princeton, NJ: Princeton University Press.

Crovitz, L. Gordon, Jeremy A. Rabkin and Robert H. Bork. 1989. *The Fettered Presidency: Legal Constraints on the Executive Branch.* Washington, D.C.: AEI Press.

Dahl, Robert A. 1950. *Congress and Foreign Policy*. New York: Harcourt and Brace.

De Grazia, Alfred. 1965. *Republic in Crisis: Congress Against Executive Force.* Washington, D.C.: Federal Legal Publications.

Devins, Neal. 2008. "Presidential Unilateralism and Political Polarization: Why Today's Congress Lacks the Will and Way to Stop Presidential Initiatives." *Willamette Law Review* (Spring): 395-416.

Dickinson, Matthew J. 1999. *Bitter Harvest: FDR, Presidential Power, and the Growth of the Presidential Branch.* Cambridge: Cambridge University Press.

Dixit, Avinash. 1998. *The Making of Economic Policy: A Transaction-Cost Politics Perspective.* Cambridge, MA: MIT Press.

Eastland, Terry. 1992. *Energy in the Executive: The Case for the Strong Presidency.* New York: Free Press.

Edwards, George C. 2012. *The Strategic President: Persuasion and Opportunity in Presidential Leadership*. Princeton, NJ: Princeton University Press.

Eggertsson, Thrainn. 1990. *Economic Behavior and Institutions: Principles of Neoinstitutional Economics*. Cambridge: Cambridge University Press.

Ely, John Hart. 1990. "The American War in Indochina, Part 1: The (Troubled) Constitutionality of the War They Told Us About." *Stanford Law Review* 42: 877-926.

_____. 1990. "The American War in Indochina, Part II: The Unconstitutionality of the War They Didn't Tell Us About." *Stanford Law Review* 42: 1093-1148.

Epstein, David and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. Cambridge: Cambridge University Press.

Fenno, Richard F. 1973. *Congressmen in Committees*. Boston, MA: Little Brown.

Fiorina, Morris P. 1981. *Retrospective Voting in American Elections.* New Haven, CT: Yale University

Press.

Flores-Macias, Gustavo A., and Sarah E. Kreps. 2013. "Political Parties at War: A Study of American War Finance, 1789-2010." *American Political Science Review* 107 (November): 1-16.

Fried, Charles. 1991. *Order and Law: Arguing the Reagan Revolution: A Firsthand Account*. New York: Simon and Schuster.

Fulbright, J. William. 1971. "Congress, the President and the War Power." *Arkansas Law Review* 25: 71-84.

Gailmard, Sean. 2009. "Discretion Rather Than Rules: Choice of Instruments to Control Bureaucratic Policymaking." *Political Analysis* 17 (Winter): 25-44.

Gailmard, Sean and Jeffery A. Jenkins. 2007. "Negative Agenda Control in the Senate and House: Fingerprints of Majority Party Power." *Journal of Politics* 69 (August): 689-700.

Gailmard, Sean and John Patty. "Slackers and Zealots: Civil Service, Policy Discretion, and Bureaucratic Expertise." *American Journal of Political Science* 51 (October): 873-889.

_____. 2012. *Learning While Governing: Expertise and Accountability in the Executive Branch*. Chicago, IL: The University of Chicago Press.

Galvin, Daniel J. 2009. *Presidential Party Building: Dwight D. Eisenhower to George W. Bush*. Princeton, NJ: Princeton University Press.

Garrett, Stephen A. 1972. "Foreign Policy and the American Constitution: The Bricker Amendment in Contemporary Perspective." *International Studies Quarterly* 16 (June): 187-220.

Geddes, Barbara. 1990. "How the Cases You Choose Affect the Answers You Get." *Political Analysis*. 2 (Spring): 131-150.

Goldsmith, William M. 1974. *The Growth of Presidential Power: A Documented History*. New York: Chelsea House Publishers.

Grant, J. Tobin and Thomas J. Rudolph. 2004. "The Job of Representation in Congress: Public Expectations and Representative Approval." *Legislative Studies Quarterly* 29 (August): 431-445.

Greenstein, Fred I. 1984. *The Hidden Hand Presidency: Eisenhower as Leader*. New York: Basic Books.

_____. 1988. "Introduction: Toward a Modern Presidency." In *Leadership in the Modern Presidency*, ed. Fred I. Greenstein. Cambridge, MA: Harvard University Press.

_____. 2004. *The Presidential Difference: Leadership Style from FDR to George W. Bush, 2nd Edition*. Princeton, NJ: Princeton University Press.

Greenstone, J. David. 1993. *The Lincoln Persuasion: Remaking American Liberalism*. Princeton, NJ: Princeton University Press.

Griffin, Stephen M. 1991. "Bringing the State into Constitutional Theory: Public Authority and the Constitution. *Law and Social Inquiry* 16 (Autumn): 659-710.

_____. 2013. *Long Wars and the Constitution*. Cambridge, MA: Harvard University Press.

_____. 2014. "Executive Power in the U.S. Constitution: An Overview." Tulane Public Law Research Paper 14-3 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2422927).

Gronke, Paul, Jeffrey Koch, and J. Matthew Wilson. 2003. "Follow the Leader? Presidential Approval, Presidential Support, and Representatives' Electoral Fortunes." *Journal of Politics* 65 (August): 785-808.

Haraszti, Zoltan. 1952. *John Adams and the Prophets of Progress*. Cambridge, MA: Harvard University Press.

Hartz, Louis. 1991. *The Liberal Tradition in America: An Interpretation of American Political Thought Since the Revolution*. New York: Harcourt and Brace Company.

Hogan, Michael J. 1998. *A Cross of Iron: Harry S. Truman and the Origins of the National Security State, 1945-1954*. Cambridge: Cambridge University Press.

Howell, William G. 2003. *Power Without Persuasion: The Politics of Direct Presidential Action*. Princeton, NJ: Princeton University Press.

_____. 2009. "Quantitative Approaches to Studying the Presidency." In *The Oxford Handbook of The American Presidency*. ed. George C. Edwards III and William G. Howell, New York: Oxford University Press.

_____. 2013. *Thinking About the Presidency: The Primacy of Power*. Princeton, NJ: Princeton University Press.

Howell, William G., Saul P. Jackman and Jon C. Rogowski. 2013. *The Wartime President: Executive Influence and the Nationalizing Politics of Threat*. Chicago, IL: University of Chicago Press.

Howell, William G., Scott Adler, Charles Cameron and Charles Riemann. 2000. "Divided Government and the Legislative Productivity of Congress, 1945-1994." *Legislative Studies Quarterly* 25 (May): 285-312.

Howell, William G., and Jon C. Pevehouse. 2007. *While Dangers Gather: Congressional Checks on Presidential War Powers*. Princeton, NJ: Princeton University Press.

Huntington, Samuel. 1965. "Congressional Responses to the 20th Century." In *Congress and America's Future, 2nd Edition*. ed. David Truman. Englewood Cliffs, NJ: Prentice Hall, Inc.

_____. 1981. *American Politics: The Promise of Disharmony*. Cambridge, MA: The Belknap Press of Harvard University Press.

James, Scott C. 2000. *Presidents, Parties, and the State: A Party System Perspective on Democratic Regulatory Choice, 1884-1936*. Cambridge: Cambridge University Press.

Javits, Jacob K., 1970. "The Congressional Presence in Foreign Relations." *Foreign Affairs* 48 (221): 221-234.

Kagan, Elana. 2001. "Presidential Administration." *Harvard Law Review* 114 (June): 2245-2385.

Kammen, Michael. 1986. *A Machine that Would Go of Itself: The Constitution in American Culture*. New York: Transaction Publishers.

Katznelson, Ira. 2013. *Fear Itself: The New Deal and the Origins of Our Time*. New York: Liverlight Publishing.

Katznelson, Ira and John S. Lapinski. 2006. "At the Crossroads: Congress and American Political Development." *Perspectives on Politics* 4 (June): 243-260.

Kellerman, Barbara. 1984. *The Political Presidency*. New York: Oxford University Press.

Kendall, Willmore. 1960. "The Two Majorities." *Midwest Journal of Political Science* 4 (November): 317-345.

Kernell, Samuel. 2007. *Going Public: New Strategies of Presidential Leadership, 4th Edition*. Washington, DC: CQ Press.

Kiewiet, D. Roderick and Mathew D. McCubbins. 1991. *The Logic of Delegation: Congressional Parties and the Appropriations Process*. Chicago, IL: University of Chicago Press.

King, Desmond S. and Rogers M. Smith. 2005. "Racial Orders in American Political Development." *American Political Science Review* 99 (February): 75-92.

King, Gary, Michael Tomz, and Jason Wittenberg. 2003. "Clarify: Software for Interpreting and Presenting Statistical Results." *Journal of Statistical Software* 8: 1-30.

Kirk, Russell. 2010. *The Political Principles of Robert A. Taft*. New York: Transaction Publishers.

Kleinerman, Benjamin. 2005. "Lincoln's Example: Executive Power and the Survival of Constitutionalism." *Perspectives on Politics* 3 (December): 801-816.

_____. 2007. "Can the Prince Really Be Tamed? Executive Prerogative, Popular Apathy, and the Constitutional Frame in Locke's *Second Treatise*." *American Political Science Review* 101 (May): 209-222.

Koger, Gregory. 2010. *Filibustering: A Political History of Obstruction in the House and Senate*. Chicago, IL: University of Chicago Press.

Koh, Harold Hongju. 1990. *The National Security Constitution: Sharing Power After the Iran-Contra Affair*. New Haven, CT: Yale University Press.

Krehbiel, Keith. 1992. *Information and Legislative Organization*. Ann Arbor, MI: University of Michigan Press.

Kriner, Douglas. 2009. "Can Enhanced Oversight Repair 'The Broken Branch'?" *Boston University Law Review* 89 (April): 765-793.

Kriner, Douglas and Liam Schwartz. 2008. "Divided Government and Congressional Investigations." *Legislative Studies Quarterly* 33 (May): 295-321.

Kyvig, David E. 1996. *Explicit and Authentic Acts: Amending the U.S. Constitution, 1776-1995*. Lawrence, KS: University Press of Kansas.

Lasswell, Harold D. 1941. "The Garrison State." *The American Journal of Sociology* 46 (January): 455-468.

Lebo, Matthew J. and Daniel Cassino. 2007. "The Aggregated Consequences of Motivated Reasoning and the Dynamics of Partisan Presidential Approval." *Political Psychology* 28 (December): 719-746.

Lebo, Matthew J. and Andrew J. O'Geen. 2011. "The President's Role in the Partisan Congressional Arena." *Journal of Politics* 73 (July): 1-17.

Lee, Frances E. 2009. *Beyond Ideology: Politics, Principles and Partisanship in the U.S. Senate*. Chicago, IL: University of Chicago Press.

Lessig, Lawrence and Cass R. Sunstein. "The President and the Administration." *Columbia Law Review* 94 (January): 1-123.

Levendusky, Matthew. 2009. *The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans*. Chicago, IL: University of Chicago Press.

Levinson, Daryl J. and Richard H. Pildes. 2006. "Separation of Parties, Not Powers." *Harvard Law Review* 119 (June): 2311-2386.

Lewis, David E. 2003. *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997*. Stanford, CA: Stanford University Press.

_____. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton, NJ: Princeton University Press.

Lewis, David E. and Terry M. Moe. 2009. "The Presidency and the Bureaucracy: The Levers of Political Control." In *The Presidency and the Political System, 9th Edition*. ed. Michael Nelson. Washington, DC: CQ Press.

Lewis, David E. and Neal Devins. 2008. "Not-So-Independent Agencies: Partisan Polarization and the Limits of Institutional Design." *Boston University Law Review* 88 (April): 451-498.

Lieberman, Robert C. 2002. "Ideas, Institutions, and Political Order: Explaining Political Change." *American Political Science Review* 96 (December): 697-712.

Light, Paul C. 1999. *The President's Agenda: Domestic Policy Choice from Kennedy to Clinton, 3rd Edition*. Baltimore, MD: Johns Hopkins University Press.

Lowi, Theodore J. 1985. *The Personal President: Power Invested, Promise Unfulfilled*. Ithaca, NY: Cornell University Press.

Lobel, Jules. 1989. "Emergency Power and the Decline of Liberalism." *The Yale Law Journal* 98 (May): 1385-1433.

Locke, John. 2003. *Two Treatises on Government* and *A Letter Concerning Toleration*. ed. Ian Shapiro. New Haven, CT: Yale University Press.

McCarty, Nolan and Rose Razaghian. 1999. "Advice and Consent: Senate Responses to Executive Branch Nominations, 1885-1996." *American Journal of Political Science* (October): 1122-1143.

McCubbins, Mathew D., and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols vs. Fire Alarms." *American Journal of Political Science* 28 (Spring): 165–179.

McCubbins, Mathew D., Roger G. Noll, and Barry R. Weingast. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics & Organization* 3 (Autumn): 243–277.

MacDonald, Jason A. 2007. "Agency Design and Post-Legislative Influence Over the Bureaucracy." *Political Research Quarterly* 60 (December): 683-695.

Manin, Barnard. 1994. "Check, Balances and Boundaries: the Separation of Powers in the Constitutional Debate on 1787." In *The Invention of the Modern Republic*, ed. Biancamaria Fontana. Cambridge: Cambridge University Press.

_____. *The Principles of Representative Government*. 1997. Cambridge: Cambridge University Press.

Mansfield, Harvey C. 1989. *Taming the Prince: The Ambivalence of Modern Executive Power*. Baltimore, MD: The Johns Hopkins University Press.

Mann, Thomas E., and Norman J. Ornstein. 2008. *The Broken Branch: How Congress is Failing America and How to Get it Back on Track*. New York: Oxford University Press.

Mayer, Kenneth R. 2001. *With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton, NJ: Princeton University Press.

Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.
_____. 1991. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946-2002, 2nd Edition*. New Haven, CT: Yale University Press.

Milkis, Sidney M. 1993. *The President and the Parties: The Transformation of the American Party System Since the New Deal*. New York: Oxford University Press.

_____. 2009. *Theodore Roosevelt, the Progressive Party, and the Transformation of American Democracy*. Lawrence, KS: University Press of Kansas.

Milkis, Sidney M. and Jesse H. Rhodes. 2007. "George W. Bush, the Republican Party, and the 'New' American Party System." *Perspectives on Politics* 5 (September): 461-488.

Moe, Terry M. 1987. "An Assessment of the Positive Theory of 'Congressional Dominance.'" *Legislative Studies Quarterly* 12 (November): 475–520.

_____. 1993. "Presidents, Institutions, and Theory." In *Researching the Presidency*. ed. George Edwards, John Kessel, and Bert Rockman. Pittsburgh, PA: University Pittsburgh Press.

_____. 1999. "The Presidency and the Bureaucracy: The Presidential Advantage." In *The Presidency and the Political System, 5th Edition*., ed. Michael Nelson. Washington, D.C.: CQ Press.

Moe, Terry M. and Scott A. Wilson. 1994. "Presidents and the Politics of Structure." *Law and Contemporary Problems* 57 (Spring): 1-44.

Montesquieu. 1989. *The Spirit of the Laws*. eds. Anne M. Cohler, Basia C. Miller, Harold S. Stone. Cambridge: Cambridge University Press.

Nathan, Richard P. 1975. *The Plot That Failed: Nixon and the Administrative Presidency*. New York: John Wiley & Sons.
_____. 1983. *The Administrative Presidency*. New York: Wiley.

Neustadt, Richard E. 1954. "Presidency and Legislation: The Growth of Central Clearance." *American Political Science Review* 48 (September): 641-671.

_____. 1955. "Presidency and Legislation: Planning the President's Program." *American Political Science Review* 49 (December): 980-1021.

_____. 1956. "The Presidency at Mid-Century." *Law and Contemporary Problems* 21 (Autumn): 609-645.

_____. 1990. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York: Free Press.

Nolan, Cathal J. 1992. "The Last Hurrah of Conservative Isolationism: Eisenhower, Congress, and the Bricker Amendment." *Presidential Studies Quarterly* 22 (Spring): 337-349.

Nourse, Victoria F., and John P. Figura. 2011. "Toward a Representational Theory of the Executive." *Boston University Law Review* 91 (January): 273-303.

Orren, Karen and Stephen Skowronek. 2004. *The Search for American Political Development*. Cambridge: Cambridge University Press.

Parsons, Talcott. 1951. *The Social System*. London, England: Routledge & Kegan Paul, Ltd.

Patterson, James T. 1972. *Mr. Republican: A Biography of Robert A. Taft*. New York: Houghton Mifflin Harcourt Publishing Company.

Peek, George A. Jr., ed. 2003. *The Political Writings of John Adams*. Indianapolis, IN: Hackett Publishing Company, Inc.

Pfiffner, James P. 1999. *The Managerial Presidency*. College Station, TX: Texas A&M University Press.

Plotke, David. 1996. *Building a Democratic Political Order: Reshaping American Liberalism in the 1930s and 1940s*. Cambridge: Cambridge University Press.

Poole, Keith T. and Howard Rosenthal. 1997. *Congress: A Political-Economic History of Roll Call Voting*. New York: Oxford University Press.

Posner, Eric A. and Adrian Vermeule. 2010. *The Executive Unbound: After the Madisonian Republic*. New York: Oxford University Press.

Quint, Peter E. 1981. "The Separation of Powers Under Nixon: Reflections on Constitutional Liberties and the Rule of Law." *Duke Law Journal* 1 (February): 2-70.

Ragsdale, Lyn and John J. Theis, III. 1997. "The Institutionalization of the American Presidency, 1924-1992." *American Journal of Political Science* 41 (October): 1280-1318.

Rana, Aziz. 2012. "Who Decides on Security?" *Connecticut Law Review* 44 (July): 1417-1490.

Remini, Robert V. 2006. *The House: The History of the House of Representatives*. New York: HarperCollins.

Richards, Nelson. 2006. "The Bricker Amendment and Congress' Failure to Check the Inflation of the Executive's Foreign Affairs Powers, 1951-1954." *California Law Review* 94 (January): 175-214.

Roberts, Jason M. 2010. "The Development of Special Orders and Special Rules in the U.S. House, 1881-1937." *Legislative Studies Quarterly* 35 (August): 307-336.

Roosevelt, Theodore. 1913. *Theodore Roosevelt: An Autobiography*. New York: Scribner's Sons.

Rossiter, Clinton L. 1948. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. Princeton, NJ: Princeton University Press.

Rudalevige, Andrew. 2002. *Managing the President's Program: Presidential Leadership and Legislative Policy Formulation*. Princeton, NJ: Princeton University Press.

_____. 2006. *The New Imperial Presidency: Renewing Presidential Power After Watergate*. Ann Arbor, MI: University of Michigan Press.

Samuelson, Paul A. and William D. Nordhaus. 2010. *Economics, 19th Edition*. New York: The

McGraw-Hill Companies.

Savage, Charlie. 2007. *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy*. Boston, MA: Back Bay Books.

Schickler, Eric. 2001. *Disjointed Pluralism: Institutional Innovation and the Development of the US Congress*. Princeton, NJ: Princeton University Press.

Schlesinger, Arthur M. 1973. *The Imperial Presidency*. New York: Houghton Mifflin.

Scott, Katherine A. 2013. *Reining in the State: Civil Society and Congress in the Vietnam and Watergate Eras*. Lawrence, KS: University of Kansas Press.

Shepsle, Kenneth A. 1992. "Congress is a 'They,' Not an 'It': Legislative Intent as Oxymoron. *International Review of Law and Economics* 12 (June): 239-256.

Silverstein, Gordon. 1997. *Imbalance of Powers: Constitutional Interpretation and the Making of American Foreign Policy*. New York: Oxford University Press.

Sinclair, Barbara. 2010. "Partisan Models and the Search for Party Effects in the U.S. Senate." In *The Oxford Handbook of Political Parties and Interest Groups*. eds. L. Sandy Maisel and Jeffrey M. Berry. New York: Oxford University Press.

Sklar, Martin. 1986. *The Corporate Reconstruction of American Capitalism*. Cambridge: Cambridge University Press.

Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*. Cambridge: Cambridge University Press.

_____. 1997. *The Politics Presidents Make: Leadership from John Adams to Bill Clinton*. Cambridge, MA: Belknap Press of Harvard University.

_____. 2009. "The Conservative Insurgency and Presidential Power: A Developmental Perspective on the Unitary Executive." *Harvard Law Review* 122 (June): 2070-2103.

Smist, Frank J. 1994. *Congress Overseas the United States Intelligence Community: 1947-1994, 2nd Edition*. Knoxville, TN: The University of Tennessee Press.

Smith, Rogers M. 1993. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *American Political Science Review* 87 (September): 549-566.

Sparrow, Bartholomew H. 1996. *From the Outside In: World War II and the American State*. Princeton, NJ: Princeton University Press.

Stathis, Stephen. 2014. *Landmark Legislation, 1774-2012: Major U.S. Acts and Treaties*. Washington, D.C.: CQ Press.

Stromseth, Jane E. 1993. "Rethinking War Powers: Congress, the President and the United Nations." *Georgetown Law Journal* 81 (597): 597-693.

Stuart, Douglas T. 2008. *Creating the National Security State: A History of the Law that Transformed America*. Princeton, NJ: Princeton University Press.

Sullivan, John H. 1982. *The War Powers Resolution: A Special Study of the Committee on Foreign Affairs*. Washington, D.C.: United States Government Printing Office.

Taft, William Howard. 2009. *Popular Government: Its Essence, Its Permanence and Its Perils*. New York: Transaction Publishers.

Tananbaum, Duane. 1988. *The Bricker Amendment Controversy: A Test of Eisenhower's Political Leadership*. Ithaca, NY: Cornell University Press.

Taylor, Charles. 1989. *Sources of the Self: The Making of Modern Identify*. Cambridge, MA: Harvard University Press.

Tocqueville, Alexis de. 1961. *Democracy in America*. 2 Volumes. New York: Schocken Books.

Tulis, Jeffrey. 1987. *The Rhetorical Presidency*. Princeton, NJ: Princeton University Press.

Tushnet, Mark. 2010. "A Political Perspective on the Theory of the Unitary Executive." *University of Pennsylvania Journal of Constitutional Law* 12 (2): 313-331.

Vermeule, Adrian and Eric A. Posner. 2010. *The Executive Unbound: After the Madisonian Republic*. New York: Oxford University Press.

Vile, M. J. C. 1998. *Constitutionalism and the Separation of Powers, 2nd Edition*. Indianapolis, IN: Liberty Fund.

Volden, Craig. 2002. "A Formal Model of Delegation in a Separation of Powers System." *American Journal of Political Science* 46 (January): 111-133.

Waldron, Jeremy. 2013. "Separation of Powers in Thought and Practice?" *Boston College Law Review* 54 (Spring): 433- 468.

Weber, Max. 1978. *Economy and Society: An Outline of Interpretative Sociology*. eds., Guenther Roth and Claus Wittich. Berkeley, CA: University of California Press.

Weingast, Barry R. and William J. Marshall. 1988. "The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets." *The Journal of Political Economy* 96 (February): 132-163.

Weingast, Barry R., and Mark J. Moran. 1983. "Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission." *Journal of Political Economy* 91 (October): 765–800.

Whittington, Keith. 1999. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Cambridge, MA: Harvard University Press.

Wilentz, Sean. 2005. *The Rise of American Democracy: Jefferson to Lincoln*. New York: W.W. Norton.

Williamson, Oliver. 1986. *Economic Organization: Firms, Markets and Policy Control*. New York: New York University Press.

Wills, Garry. 2010. *Bomb Power: The Modern Presidency and the National Security State*. New York: Penguin Books.

Wilson, Woodrow. 1885. *Congressional Government: A Study in American Politics*. New York: Houghton Mifflin Company.

_____. 1893. *An Old Master and Other Political Essays*. New York: Charles Scribner's Sons.

_____. 1908. *Constitutional Government in the United States*. New York: Columbia University Press.

Wolin, Sheldon S. 1989. *The Presence of the Past: Essays on the State and the Constitution*. Baltimore, MD: Johns Hopkins University Press.

_____. 2001. *Tocqueville Between Two Worlds: The Making of a Political and Theoretical Life*. Princeton, NJ: Princeton University Press.

_____. 2004. *Politics and Vision: Continuity and Innovation in Western Political Thought*. Princeton, NJ: Princeton University Press.

Wood, B. Dan. 2011. "Congress and the Executive Branch: Delegation and Presidential Dominance." In *The Oxford Handbook of the American Congress*. ed. Eric Schickler and Frances E. Lee. New York: Oxford University Press.

Wood, B. Dan, and John Bohte. 2004. "Political Transaction Costs and the Politics of Administrative Design." *Journal of Politics* 66 (Winter): 176-2002.

Wood, Gordon S. 1998. *The Creation of the American Republic, 1776-1787*. Chapel Hill, NC: The University of North Carolina Press.

Yoo, John. 2010. *Crisis and Command: A History of Executive Power from George Washington to George W. Bush*. New York: Kaplan Publishing.

Zeisberg, Mariah. 2013. *War Powers: The Politics of Constitutional Authority*. Princeton, NJ: Princeton University Press.

Zelizer, Julian. 2010. *Arsenal of Democracy: The Politics of National Security from World War II to the War on Terror*. New York: Basic Books.

Other Sources

Congressional Record (*CR*)
The Papers of Harry S. Truman
The Papers of Dwight D. Eisenhower
The Papers of Richard M. Nixon
History of the Foreign Relations of the United States (HFRUS)
New York Times

U.S. Congress, Senate Committee on the Judiciary, "Constitutional Amendment Relative to Treaties and Executive Agreements," report to accompany S.J. Res. 1. 83rd Congress, 1st Session, Senate Report 83-412.

U.S. Congress, Senate Committee on Foreign Relations, "National Commitments," report to accompany S. Res. 187, 90th Congress, 1st Session, Senate Report 90-797.

U.S. Congress, Senate Committee on Foreign Relations, "National Commitments," report to accompany S. Res.85, 91st Congress, 1st Session, Senate Report 91-129.

U.S. Congress, Senate Committee on Foreign Relations, "War Powers," report to accompany S. 2956. 92nd Congress, 2nd Session, Senate Report 92-606.

U.S. Congress, "Hearings before a Senate Subcommittee of the Committee on the Judiciary, on S.J. Res. 130," 82nd Congress, 1st Session.

U.S. Congress, "Hearings before a Senate Subcommittee of the Committee on the Judiciary, on S.J. Res. 1 and S.J.Res. 43," 83rd Congress, 1st Session.

U.S. Congress, "Hearings before a Senate Subcommittee of the Committee on the Judiciary, on S.J. Res. 1 and S.J.Res. 43," 83rd Congress, 1st Session.

U.S. Congress, "Hearings before the Subcommittee on National Security Policy and Scientific Developments on Congress the President and the War Powers," 91st Congress, 2nd Session.

U.S. Congress, "Hearings before the Senate Committee on Foreign Relations on S. 731, S.J. Res. 18, and S. J. Res. 59," 92nd Congress, 1st Session.

U.S. Congress, "Hearings before the Subcommittee on National Security Policy and Scientific Developments on Congress the President and the War Powers," 93rd Congress, 1st Session. (Hearings 2 in document)

U.S. Congress, "Hearings before the Senate Committee on Foreign Relations," 93rd Congress, 1st Session.

The President's Committee on Administrative Management. 1937. *Administrative Management in the United States.* (Brownlow Committee Report)

SUPPLEMENTAL INFORMATION. REASSERTION LAWS: 1947-2002

Congress	Bill Number	Description	Success	Attempt
80th Congress, 1st Session	S. 526	to promote the progress of science, to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes; Creates the National Science Foundation, puts Congress in control of policy through advice and consent of head and through periodic reports.	**X** **(vetoed)**	
	S. 564	to provide for the performance of the duties of the office of President in case of the removal, resignation, or inability of both the President and Vice President	**X**	
	S.J. Res. 123	declaring that in interpreting certain acts of Congress, joint resolutions, and proclamations World War II, the limited emergency, and the unlimited emergency shall be construed as terminated and peace established	**X**	
	H.R. 775	for the establishment of the Commission on Organization of the Executive Branch of Government	**X**	
	H.J. Res. 27	proposing an amendment to the constitution of the united states relating to the terms of office of the president	**X**	

Congress	Bill Number	Description	Success	Attempt
80th Congress, 2nd Session	H.J. Res 342	directing all executive departments and agencies of the federal government to make available to any and all standing, special, or select committees of the House of Representatives and the Senate, information which may be deemed necessary to enable them to properly perform the duties delegated to them by the Congress		**X**
81st Congress, 1st Session	S. 2072	to create a commission to make a study of the administration of overseas activities of the government, and to make recommendations to Congress with respect thereto		**X**
81st Congress, 2nd Session	S. 3728	to implement reorganization plan no. 20 of 1950 by amending title 1 of the united states code, as regards publication of the united states statutes at large, to provide for the publication of treaties and other international agreements between the united states and other countries in a separate compilation, to be known as united states treaties and other international agreements, and for other purposes	**X**	
82nd Congress, 1st Session	S. 1166	to create a commission to make a study of the administration of overseas activities of the		**X**

Congress	Bill Number	Description	Success	Attempt
		government and to make recommendations to Congress with respect thereto		
82nd Congress, 2nd Session	S. 913	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the government of the united states		**X**
83rd Congress, 1st Session	S. 833	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the Government of the United States		**X**
	H.R. 992	for the establishment of the Commission on Organization of the Executive Branch		**X**
83rd Congress, 2nd Session	S. J. Res. 1	proposing an amendment to the Constitution of the United States relative to the making of treaties and executive agreements		**X**
	H.R. 7308	to repeal section 307 of Title III of the federal Civil Defense act of 1950		
84th Congress, 1st Session	S. 1644	to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes		**X**
84th Congress, 2nd Session	S. 1644	to prescribe policy and and procedure in connection with construction contracts made by executive agencies, and for other purposes		**X**

Congress	Bill Number	Description	Success	Attempt
85th Congress, 1st Session	S. 1584	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of government		**X**
85th Congress, 2nd Session	H.R. 5538	to provide that withdrawals, reservations, or restrictions of more than 5,000 acres of public lands of the United States for certain purposes shall not become effective until approved by act of Congress and for other purposes	**X**	
	H.R. 12451	to promote the national defense by providing for reorganization of the Department of Defense and for other purposes	**X**	
87th Congress, 1st Session	S. 529	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the United States		**X**
88th Congress, 1st Session	S. 537	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the United States		**X**
	H.R. 4638	to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a president and the inauguration of a new president		**X**

Congress	Bill Number	Description	Success	Attempt
88th Congress, 2nd Session	S. 2114	to provide for periodic congressional review of Federal grants-in-aid to states and to local units of government		**X**
	S. J. Res. 139	proposing an amendment to the constitution of the United States relating to succession to the presidency and vice-presidency and to cases where the president is unable to discharge the powers and duties of his office		**X**
	H.R. 4638	to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new president	**X**	
	H.R. 9752	to preserve the jurisdiction of the Congress over construction of hydroelectric projects on the Colorado River below Glen Canyon Dam		**X**
89th Congress, 1st Session	S. 2	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the government of the United States		**X**
	S. J. Res. 1	proposing an amendment to the constitution of the United States relating to the succession to the presidency and vice presidency and to cases where the president is	**X**	

Congress	Bill Number	Description	Success	Attempt
		unable to discharge the powers of his office		
90th Congress, 1st Session	S. 538	to amend the Legislative Reorganization Act of 1946 to provide for more effective evaluation of the fiscal requirements of the executive agencies of the Government of the United States		**X**
90th Congress, 2nd Session	S. 698	to achieve the fullest cooperation and coordination of activities among the levels of government in order to improve the operation of our federal system in an increasingly complex society, to improve the administration of grants-in-aid to the states, to provide for periodic congressional review of federal grants-in-aid, to permit provision of reimbursable technical services to State and local government, to establish coordinated intergovernmental policy and administration of grants and loans for urban development, to authorize the consolidation of certain grant-in-aid programs, to provide for the acquisition, use, and disposition of land within urban areas by federal agencies in conformity with local government programs, to establish a uniform relocation assistance policy, to	**X**	

Congress	Bill Number	Description	Success	Attempt
		establish a uniform land acquisition policy for federal and federally aided programs		
	S. 3640	to establish a commission to study the organization, operation, and management of the executive branch of government and to recommend changes necessary or desirable in the interest of governmental efficiency and economy		**X**
91st Congress, 1st Session	S. 1022	to provide that future appointments to the office of the Administrator of the Social and Rehabilitation Service, within the Department of Health, Education, and Welfare, shall be made by the President, by and with the advice and consent of the Senate		**X**
	S. 1872	to repeal the Emergency Detention Act of 1950		**X**
91st Congress, 2nd Session	H.R. 17654	to improve the operation of the legislative branch of the Federal Government and for other purposes	**X**	
92nd Congress, 1st Session	H.R. 234	to amend title 18, United States code, to prohibit the establishment of detention camps and for other purposes	**X**	
	H.J. Res. 1	concerning the war powers of the Congress and the President		**X**
92nd Congress, 2nd Session	S. 2956	concerning the war powers of the Congress and the President		**X**

Congress	Bill Number	Description	Success	Attempt
93rd Congress, 1st Session	S. 37	to amend the Budget and Accounting Act of 1921 to require the advice and Consent of the Senate for appointments to Director and Deputy Director of the Office of Management and Budget		**X**
	S. 373	to insure the separation of Federal powers and to protect the legislative function by requiring the President to notify the Congress whenever he, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States, impounds, orders the impounding, or permits the impounding of budget authority, and to provide a procedure under which the Senate and the House of Representatives may approve the impounding action, in whole or in part, or require the President, the Director of the Office of Management and Budget, the department or agency of the United States, or the officer or employee of the United States, to cease such action, in whole or in part, as directed by Congress and to establish a ceiling on fiscal year 1974 expenditures		**X**

Congress	Bill Number	Description	Success	Attempt
	S. 440	to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress		**X**
	S. 518	to abolish the offices of Director and Deputy Director of the Office of Management and Budget, to establish the Office of Director, Office of Management and Budget, and to transfer certain functions thereto, and to establish the Office of Deputy Director, Office of Management and Budget	**X** **(Vetoed)**	
	S. 590	to require that certain future appointments for certain officers in the Executive Office of the President be subject to confirmation by the Senate		**X**
	S. 1828	to require the President to appoint, with the advice and consent of the Senate, the head of the Mining Enforcement and Safety Administration, Department of the Interior		**X**
	S. 2432	to establish a procedure assuring Congress the full and prompt production of information from Federal officers and employees		**X**
	H.R. 7130	to amend the Rules of the House of Representatives and the Senate to improve Congressional control		**X**

Congress	Bill Number	Description	Success	Attempt
		over budgetary outlay and receipt totals, to provide for a Legislative Budget Director and staff, and for other purposes		
	H.R. 8480	to require the President to notify the Congress whenever he impounds funds, to provide a procedure under which the House of Representatives or the Senate may disapprove the President's action and require him to cease such impounding, and to establish for the fiscal year 1974 a ceiling on total federal expenditures	**X**	
	H.J. Res. 542	concerning the war powers of Congress and the President	**X**	
93rd Congress, 2nd Session	S. 37	to amend the Budget and Accounting Act of 1921 to require the advice and consent of the Senate for appointments to Director and Deputy Director of the Office of Management and Budget	**X**	
	S. 3698	to amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology	**X**	
	S. 4016	to protect and preserve tape recordings of conversations involving former president Richard Nixon and made during	**X**	

Congress	Bill Number	Description	Success	Attempt
		his tenure as President, and for other purposes		
94th Congress, 1st Session	S. 5	to provide that meetings of Government agencies and of congressional committees shall be open to the public and for other purposes		**X**
	H.R. 1767	to suspend for a 90-day period the authority of the President under section 232 of the Trade Expansion Act of 1962 or any other provision of law to increase tariffs, or to take any other import adjustment action, with respect to petroleum or products derived therefrom; to negate any such action which may be taken by the President after January 15, 1975, and before the beginning of such 90-day period; and for other purposes	**X** **(Vetoed)**	
	H.R. 3884	to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies		**X**
	H.R. 4035	to provide for more effective congressional review of administrative actions which exempt petroleum products from the Emergency Petroleum Allocation Act of 1973, or which result in a major increase in the price of domestic crude oil; and to provide for an	**X** **(Vetoed)**	

Congress	Bill Number	Description	Success	Attempt
		interim extension of certain expiring energy authorities		
94th Congress, 2nd Session	H.R. 3884	to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies	**X**	
	H.R. 12048	amending title 5 of the United States Code to improve agency rule making by expanding the opportunities for public participation, by creating procedures for congressional review of agency rules, and by expanding judicial review		**X**
	H.R. 13828	to amend title 44, United States Code, to strengthen the authority of the Administrator of General Services with respect to records management by Federal agencies, and for other purposes	**X**	
95th Congress, 1st Session	S. 555	to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes	**X**	
	H.R. 7738	with respect to the powers of the President in time of war or national	**X**	

Congress	Bill Number	Description	Success	Attempt
		emergency		
95th Congress, 2nd Session	S. 2	to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information		**X**
	S. 555	to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes	**X**	
	S. 1566	to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information	**X**	
	H.R. 11003	to clarify the authority for employment of personnel in the White House Office and the Executive Residence at the White House, to clarify the authority for employment of personnel by the President to meet unanticipated needs, and for other purposes	**X**	
	H.R. 13500	to amend title 44 to insure the preservation and public access to the official records of the President, and for other purposes	**X**	

Congress	Bill Number	Description	Success	Attempt
96th Congress, 2nd Session	S. 2284	to authorize the intelligence system of the United States by the establishment of a statutory basis for the national intelligence activities of the United States, and for other purposes		**X**
98th Congress, 1st Session	H.R. 1271	a bill with regard to Presidential certifications on conditions in El Salvador	**X**	
	H.R. 2760	a bill to amend the Intelligence Authorization Act for fiscal year 1983 to prohibit U.S. support for military or paramilitary operations in Nicaragua and to authorize assistance, to be openly provided to government of countries in Central America, to interdict the supply of military equipment from Nicaragua and Cuba to individuals, groups, organizations, or movement seeking to overthrow governments of countries in Central America		**X**
	H.R. 4042	a bill to continue to effect the current certification requirements with respect to El Salvador until the Congress enacts new legislation providing conditions for military assistance to El Salvador or until the end of fiscal year 1984 whichever	**X**	

Congress	Bill Number	Description	Success	Attempt
		occurs first		
	H.J. Res. 13	a joint resolution calling for a mutual and verifiable freeze on, and reductions in nuclear weapons		**X**
	H.J. Res. 364	a joint resolution providing statutory authorization under the war powers resolution for continued U.S. participation in the multinational peacekeeping forces in Lebanon in order to obtain withdrawal of all foreign forces from Lebanon		**X**
98th Congress, 2nd Session	H.R. 4656	a bill to continue in effect the current certification requirements with respect to El Salvador until the Congress enacts new legislation providing conditions for U.S. military assistance to El Salvador or until the end of fiscal year 1984, whichever occurs first		**X**
	H.R. 5164	to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency and for other purposes	**X**	
	H.R. 6300	to require that the President transmit to the Congress, and that the congressional budget committee report a balanced budget for each fiscal year		**X**
99th Congress, 1st Session	S. 1831	a bill to amend the Arms Export Control Act to		**X**

Congress	Bill Number	Description	Success	Attempt
		require that congressional vetoes of certain arms export proposals be enacted into law		
	H.R. 3622	to amend title 10, United States code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed forces, and for other purposes	**X** **(Vetoed)**	
99th Congress, 2nd Session	S. 2004	to require the President to submit to the Congress an annual report on the management of the executive branch		**X**
	H.R. 3622	to amend title 10, United States code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed forces, and for other purposes	**X**	
100th Congress, 1st Session	S. J. Res. 194	a resolution to require compliance with the provisions of the War Powers Resolution		**X**
100th Congress, 2nd Session	S. 908	a bill to amend the Inspector General Act of 1978	**X**	
	S. 1721	a bill to improve the congressional oversight of certain intelligence activities and to strengthen the process by which such activities are approved within the executive branch		**X**
	H.R. 3932	to amend the Presidential Transition Act of 1963 to	**X**	

Congress	Bill Number	Description	Success	Attempt
		provide for a more orderly transfer of executive power in connection with the expiration of the term of office of a President		
101st Congress, 2nd Session	H.R. 5258	to require that the president transmit to Congress, that the congressional budget committee report, and that the Congress consider a balanced budget for each fiscal year		**X**
102nd Congress, 1st Session	H.R. 586	to require regular reports to the Congress on the amount of expenditures made to carry out Operation Desert Shield and Operation Desert Storm and on the amount of contributions made to the United States by foreign countries to support both		**X**
102nd Congress, 2nd Session	H.R. 2164	to amend the Congressional Budget and Impoundment Control Act of 1974 to establish procedures for the expedited consideration by the Congress of certain proposals by the President to rescind amounts of budget authority		**X**
103rd Congress, 2nd Session	H.R. 4600	to amend the Congressional Budget and Impoundment Act of 1974 to provide for the expedited consideration of certain proposed recessions of		**X**

Congress	Bill Number	Description	Success	Attempt
		budget authority		
105th Congress, 1st Session	H.J. Res. 58	disapproving the certification of the President under section 490(b) of the Foreign Assistance Act of 1961 regarding foreign assistance for Mexico during fiscal year 1997	**X**	
105th Congress, 2nd Session	S. 1668	to encourage the disclosure to Congress of certain classified and related information		**X**
	H.R. 4647	to amend the Agricultural Trade Act of 1978 to require the President to report to Congress on any selective embargo on agricultural commodities, to provide a termination date for the embargo, to provide for greater assurances for contract sanctity, and for other purposes		**X**
106th Congress, 1st Session	H.R. 17	to require the president to report to Congress on any selective embargo on agricultural commodities, to provide a termination date for the embargo, to provide greater assurances for contract sanctity and for other purposes		**X**
106th Congress, 2nd Session	H.R. 4118	to prohibit the rescheduling or forgiveness of any outstanding bilateral debt owed to the United States by the Government of the Russian Federation until the President certifies to Congress that the		**X**

Congress	Bill Number	Description	Success	Attempt
		Government of the Russian Federation has ceased all of its operations at, removed all personnel from, and permanently closed the intelligence facility at Lourdes, Cuba		
	H.R. 4251	to amend the North Korea Threat Reduction Act of 1999 to enhance congressional oversight of nuclear transfers to North Korea		**X**
107th Congress, 2nd Session	H.R. 4561	to amend Title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals		**X**