

## THE PRESIDENT AS POLICY MAKER

WHEN FDR SENT HIS first legislative package to Congress, he broke the traditional model of law-making.<sup>21</sup> As envisioned by the Framers, it was to be Congress that made the laws. Now FDR was claiming a leadership role for the president in the legislative process. Said the president of this new relationship: “It is the duty of the President to propose and it is the privilege of the Congress to dispose.”<sup>22</sup> With those words and the actions that followed, FDR shifted the presidency into a law- and policy-maker role. Now the president and the executive branch not only executed the laws but generally suggested them, too.



*Photo courtesy: Bettmann/CORBIS*

■ President Lyndon B. Johnson signs the long awaited Civil Rights Act of 1964. Immediately to his right is Senator Edward Brooke (R-MA), the first African American to be popularly elected as a U.S. senator. On his left is Senator Walter Mondale (D-MN), who later served as vice president. Next to Mondale is Thurgood Marshall, who Johnson later appointed to the U.S. Supreme Court, where he became its first African American member.

### The President's Role in Proposing and Facilitating Legislation

From FDR's presidency to the Republican-controlled 104th Congress, the public looked routinely to the president to formulate concrete legislative plans to propose to Congress, which subsequently adopted, modified, or rejected his plans for the nation. Then, in 1994, it appeared for a while that the electorate wanted Congress to reassert itself in the legislative process. In fact, the Contract with America was a Republican call for Congress to take the reins of the law-making process. But several Republican Congresses failed to pass many of the items of the contract, and President Bill Clinton's continued forceful presence in the budgetary process made a resurgent role for Congress largely illusory. The same scenario holds true for President George W. Bush.

Modern presidents continue to play a major role in setting the legislative agenda, especially in an era when the House and Senate are narrowly divided along partisan lines. Without working majorities, "merely placing a program before Congress is not enough," as President Lyndon B. Johnson (LBJ) once explained. "Without constant attention from the administration, most legislation moves through the congressional process at the speed of a glacier."<sup>23</sup> Thus, the president's most important power (and often the source of his greatest frustration), in addition to support of the public, is his ability to construct coalitions within Congress that will work for passage of his legislation. FDR and LBJ were among the best presidents at working Congress, but they were helped by Democratic majorities in both houses of Congress.<sup>24</sup>

On the whole, presidents have a hard time getting Congress to pass their programs.<sup>25</sup> Passage is especially difficult if the president presides over a divided government, which occurs when the presidency and Congress are controlled by different political parties (see chapter 7). Recent research by political scientists, however, shows that presidents are much more likely to win on bills central to their announced agendas, such as President George W. Bush's victory on the Iraq war resolution, than to secure passage of legislation proposed by others.<sup>26</sup>

Because presidents generally experience declining support for policies they advocate throughout their terms, it is important that a president propose key plans early in his administration, during the honeymoon period, a time when the goodwill toward the president often allows a president to secure passage of legislation that he would not be able to gain at a later period. Even President Lyndon B. Johnson, who was able to get nearly 60 percent of his programs through Congress, noted: “You’ve got to give it all you can, that first year . . . before they start worrying about themselves. . . . You can’t put anything through when half the Congress is thinking how to beat you.”<sup>27</sup>

Presidents can also use **patronage** (jobs, grants, or other special favors that are given as rewards to friends and political allies for their support) and personal rewards to win support. Invitations to the White House and campaign visits to the home districts of members of Congress running for office are two ways to curry favor with legislators, and inattention to key members can prove deadly to a president’s legislative program. Former Speaker of the House Tip O’Neill (D–MA) reportedly was quite irritated when the Carter transition team refused O’Neill’s request for extra tickets to Jimmy Carter’s inaugural. This incident did not exactly get the president off to a good start with the powerful speaker.

Another way a president can bolster support for his legislative package is to call on his political party. As the informal leader of his party, he should be able to use that position to his advantage in Congress, where party loyalty is very important. This strategy works best when the president has carried members of his party into office on his coat-tails, as was the case in the Johnson and Reagan landslides of 1964 and 1984, respectively. In fact, many scholars regard President Lyndon B. Johnson as the most effective legislative leader.<sup>28</sup> Not only had he served in the House and as Senate majority leader, but he also enjoyed a comfortable Democratic Party majority in Congress, and many Democrats owed their victories to President Johnson’s landslide win over his Republican challenger, Senator Barry Goldwater (R–AZ).<sup>29</sup>

### patronage

Jobs, grants, or other special favors that are given as rewards to friends and political allies for their support.



Photo courtesy: J. Scott Applewhite/AP/Wide World Photos

■ President Bill Clinton and Vice President Al Gore celebrate the first balanced budget in years, a feat not likely to be repeated soon in light of the federal tax cuts and huge spending increases under the next president, George W. Bush. In January 2005 the White House announced that the federal budget deficit was expected to rise to \$427 billion, a figure including a new request from President Bush to help pay for the war in Iraq.

## The Budgetary Process and Legislative Implementation

Closely associated with a president's ability to pass legislation is his ability to secure funding for new and existing programs. A president sets national policy and priorities through his budget proposals and his continued insistence on their congressional passage. The budget proposal not only outlines the programs he wants but indicates the importance of each program by the amount of funding requested for each and for its associated agency or department.

Because the Framers gave Congress the power of the purse, Congress had primary responsibility for the budget process until 1930. The economic disaster set off by the stock market crash of 1929, however, gave FDR, once elected in 1932, the opportunity to assert himself in the congressional budgetary process, just as he inserted himself into the legislative process. In 1939, the Bureau of the Budget, which had been created in 1921 to help the president tell Congress how much money it would take to run the executive branch of government, was made part of the newly created Executive Office of the President. In 1970, President Nixon changed its name to the **Office of Management and Budget (OMB)** to clarify its function in the executive branch.

The OMB works exclusively for the president and employs hundreds of budget and policy experts. Key OMB responsibilities include preparing the president's annual budget proposal, designing the president's program, and reviewing the progress, budget, and program proposals of the executive department agencies. It also supplies economic forecasts to the president and conducts detailed analyses of proposed bills and agency rules. OMB reports allow the president to attach price tags to his legislative proposals and defend the presidential budget. The OMB budget is a huge document, and even those who prepare it have a hard time deciphering all of its provisions. Even so, the expertise of the OMB directors often gives them an advantage over members of Congress.

### Office of Management and Budget (OMB)

The office that prepares the president's annual budget proposal, reviews the budget and programs of the executive departments, supplies economic forecasts, and conducts detailed analyses of proposed bills and agency rules.

## Policy Making Through Regulation

Proposing legislation and using the budget to advance policy priorities are not the only ways that presidents can affect the policy process, especially in times of highly divided government. Executive orders offer the president an opportunity to make policy without legislative approval. Major policy changes have been made when a president has issued an **executive order**, a rule or regulation issued by the president that has the effect of law. While many executive orders are issued to help clarify or implement legislation enacted by Congress, other executive orders have the effect of making new policy. President Harry S. Truman ordered an end to segregation in the military through an executive order, and affirmative action was institutionalized as national policy through Executive Order 11246, issued by Lyndon B. Johnson in 1966.

Executive orders have been used since the 1980s to set national policies toward abortion. President Ronald Reagan, for example, used an executive order to stop federal funding of fetal tissue research and to end federal funding of any groups providing abortion counseling. President Bill Clinton immediately rescinded those orders when he became president. One of President George W. Bush's first acts upon taking office was to reverse those Clinton orders.

Like presidents before him, George W. Bush has used executive orders to put his policy stamp on a wide array of important issues. After much soul searching, for example, he signed an executive order limiting federal funding of stem cell research to the sixty or so cell lines currently in the possession of scientific researchers.<sup>30</sup> An executive order also was used to allow military tribunals to try any foreigners captured by U.S. forces in Afghanistan or linked to the terrorist acts of 9/11. One of President George W. Bush's more controversial executive orders eviscerated the 1978 Presidential Records Act. This act was written after the Watergate scandal and "established that the records of presidents belong to the American people."<sup>31</sup> Now, not only do former vice presidents as well as former presi-

### executive order

A rule or regulation issued by the president that has the effect of law. All executive orders must be published in the Federal Register.



"With the Stroke of a Pen": The Executive Order over Time



## THE PRESIDENT AS POLICY MAKER: TURNING THE RECOMMENDATIONS OF THE 9/11 COMMISSION INTO LAW

On July 22, 2004, the bipartisan National Commission on Terrorist Attacks Upon the United States (better known as the 9/11 Commission) released its “Final Report” to the public. The report became an immediate best seller, winning praise for its clarity and vision. In their most ambitious recommendation, the ten members of the commission, led by Chair Thomas H. Kean, a former Republican governor of New Jersey, and Vice Chair Lee Hamilton, a former Democratic member of the House of Representatives from Indiana, called for a complete overhaul of the U.S. intelligence community. Through their recommendations, the commission sought to create greater responsibility, accountability, and unity among the nation’s fifteen intelligence agencies—goals that they deemed essential to improving the nation’s ability to gather, share, analyze, and act on intelligence information. To carry this message to the nation, the ten commission members also took the unusual step of creating the 9/11 Public Discourse Project and traveled around the country to explain and promote the findings and recommendations of the commission.

President George W. Bush initially opposed the creation of the 9/11 Commission. Nonetheless, Congress created the commission in November 2002. Although the administration generally cooperated with the commission, it also resisted or constrained elements of the commission’s investigation. In the end, however, the administration provided critical information to the commission, including direct testimony by President Bush, Vice President Dick Cheney, and then National Security Advisor Condoleezza Rice.

Key figures in both political parties, such as Senators John F. Kerry (D–MA) and John McCain (R–AZ) and House Minority Leader Nancy Pelosi (D–CA) urged Congress and the president to turn all forty-one recommendations in the final report into law as quickly as possible. In late August 2004, President Bush demonstrated his support for the recommendations by signing several executive orders that temporarily would give the director of central intelligence greater authority over all fifteen national intelligence agencies and implement other commission recommendations in anticipation of Congress passing new legislation. In early October, the Senate overwhelmingly passed a reform bill, but the Republican leadership in the House of Representatives believed that they should take more time to review the report and apply their own expertise to craft the reforms.

Several powerful members of the House contested the commission’s recommendation to transfer control over the bulk of the \$40 billion annual national intelligence budget, particularly that of the National Security Agency, the National Geospatial-Intelligence Agency, and the National

Reconnaissance Office, away from the Department of Defense and House Armed Services Committee, to a new director of national intelligence, who would report directly to the president, and the House Intelligence Committee. Other House Republicans also wanted more restrictions on immigration and expanded powers for law enforcement agencies to counter terrorism. Consequently, Republican leaders had to block a vote on the bill in November 2004 when it could not muster a majority of Republican House members to support the reforms, even after President Bush called Senate leaders to help work out a compromise. If the deadlock continued, the first major piece of legislation endorsed by the president after his reelection would go down to defeat.

After several more weeks of intense discussions, however, President Bush brokered a compromise deal with Republican House leaders in early December 2004 that left control over intelligence-gathering satellites and reconnaissance aircraft in the hands of the Department of Defense. The White House suggested new language regarding Department of Defense control over some intelligence resources, President Bush called on Congress to pass the bill in his weekly radio talk to the nation, while Vice President Cheney phoned several reluctant House Republicans to get their support for the legislation.<sup>a</sup> Finally, on December 7, 2004—the last working day of the 108th session of Congress—the House passed the compromise measure, which the Senate approved the following day and President Bush signed into law. “Some people, including me, were not sure which side of this he [President Bush] was on in the early stages, or whether he might be on both sides of this,” noted the senior Democratic member of the House Intelligence Committee, Jane Harmon (D–CA), then “it turned out, in the later weeks, that he and his White House staff were all over this and really helped bring this across the finish line.”<sup>b</sup>

### Questions

1. Generally, presidents enjoy their greatest success rates right after their election or reelection. Why do you think that passage of this legislation proved so difficult?
2. In legislation directly affecting the structure of the executive branch, as well as lines of authority to the president, how much weight should Congress pay to the president’s recommendations?

<sup>a</sup> Charles Babington, “House Approves Intelligence Bill,” *Washington Post* (December 8, 2004) A1, A4.

<sup>b</sup> James Kuhnenn, “House OK’s Intelligence Overhaul Bill,” *Miami Herald* (December 8, 2004) <http://www.miami.com/mld/miamiherald/news/>.

dents have veto power, but scholars, journalists, and other interested persons must demonstrate a specific “need to know” when requesting presidential or vice presidential documents.<sup>32</sup> For whatever reason the order was issued, it demonstrates how easily presidents may thwart the wishes of Congress and substitute their own policy preferences through executive orders, which require congressional action to make them unenforceable.