

Andrew Voneshen, AIJ

US – 6: 'The President is at liberty, both in law and conscience, to be as big a man as he can' (Woodrow Wilson). How effective are the limitations on presidential power?

It should first be specified, using Wiley-Blackwell, that 'presidential power' can basically cover the entire executive. Chief.

The main limits on presidential power are laid out in the formal checks and balances possessed by congress and the judiciary;

Judiciary on executive: Judicial Review can be applied to that action of any part of the executive unconstitutional (and as the president is boss of all the executive committees, who carry out his agenda...). Youngstown Sheet & Tube Company v Sawyer – Trumans commerce secretary being told to remove federal troops who were breaking up strikes. United States v Richard Nixon; a more direct application. Hamdan v Rumsfeld – military commissions Bush used to try Al Qaeda members at Guatmo. Another example is Clinton's line item veto being removed.

Legislature on Executive:

Amend, Block and Reject legislation,

Override the Veto,

Power of the purse – the ability to limit the presidents spending on their agenda – like military spending in Iraq attempt.

Can Declare war – can force presidents to get authorisation before committing troops.

Senate's power to ratify treaties.

Senate's power to ratify appointments – However, W-B suggest a "failure of oversight" – the senate not using this power "in the strictly ethical sense...rooting out inefficient, incompetent or corrupt appointees". The figures of rejection vs appointments; 2/600,000+ rejected, 1200/600,000+ withdrawn. Appointments can be very secular. Some good examples; Bert lance in Nixon/Carter.

This view may be over simplistic, or the expectation may be unrealistic.

Power of Investigation -> Power of impeachment. However, W-B claim that impeachment is "cumbersome and formalised" and have what W-B call an "advantage" the ability to get away with offences which are not "truly a threat to the integrity of the office".

Is this really an advantage? This is surely a weakness of congress -> Clinton's example was not really the same as Nixon's.

However, there are exceptions and informal powers:

-The president can get acts passed which extends their powers; President Wilson, for example, had the 'lever act' passed in world war 2 which allowed him to directly intervene in production for the war effort.

This can be seen as Woodrows attitude of being a 'big man' – the president is the "national unifying force" and so can ask congress for additional powers, as well as leading a number of executive areas.

Andrew Voneshen, AIJ

The 'big man' is the only person in the country with a 'national constituency' and whilst subject to a lot of scrutiny, has free reign too;

However, it is also important to consider the use of public opinion as a check against the president, because it can go both ways; although being a 'big man' and setting an agenda is important, doing it in an authoritarian fashion can backfire

The presidents committees are subject to many checks, but in reality these are not always effective.

Presidents can be very powerful indeed. Although much of the P's SPECIFIC powers are limited, they have many informal ones, and abilities not in the constitution, which although are now vital to performing their job (committees), they allow what W-B call offences which are not "truly a threat to the integrity of the office"

## US – 6: 'The President is at liberty, both in law and conscience, to be as big a man as he can' (Woodrow Wilson). How effective are the limitations on presidential power?

The President is in charge of an extremely important and responsible position; as Woodrow Wilson claims, he is not just at liberty to be a “big man” in terms of power; he is also bound by “conscience” to be a serious influence in the political arena. The President therefore faces a delicate balancing act, where they have to stay true to their election promises to keep public support, without stepping on the toes of congress so as to get caught out by rules or causing a scandal through the misuse of their powers. The president limitations are glossed over somewhat by Wilson; the President is not quite “at liberty” to exercise his powers – Nixon felt the pressure of the spotlight, and numerous scandals and firings have exposed the occasional vulnerability of the executive.

### “Presidential Power”

I would first like to make it clear just how wide a field “presidential power” is. “Presidential power” is not just the influence of one man. In fact, as some academics have suggested, the President has influence, at least in part, over the entire executive, and no part of it can survive without his support or blessing. The constitution specifies all of the executive must exist in a President, but in reality the president uses a cabinet and numerous executive committees, such as EXOP (The executive office of the president). The President’s roles include being chief executive, commander-in-chief, chief diplomat, chief recruiting officer, and chief legislator (an unintended consequence of the party system and the president’s role as chief of the executive)<sup>1</sup>. The amount of roles where the President is the designated chief is huge; although the President may not always be able to be directly involved in all of these categories, the President does at least have a hand in all of them; in this way, the President can be considered to have a hand in all roles carried out by the executive; they are eventually responsible for any mishaps, and are able to influence at the very least a diluted form of power using these various departments and members of the cabinet.

### Constitutional Limits

Article 2 of the constitution provides the President with much of their power; the majority of which are covered by section 2; however, these powers are limited by a variety of checks and balances executed by the Legislature and Judiciary.

### Judicial Checks and Balances

The judiciary has the vital power of judicial review, and can therefore declare any decision of any part of the executive unconstitutional. Because the President, as has been shown, is head of the executive, by restricting the actions of their departments and staff, the Supreme Court is able to greatly restrict the autonomy of the President and ensure that they are only acting according to what is said in the Constitution; the Supreme Court has used this power several times, such as in Youngstown Sheet & Tube Company v Sawyer where President Truman’s commerce secretary was forced to remove federal troops who were being used to break strikes. Another example is United States v Richard Nixon<sup>2</sup> where the Supreme Court decided that President Nixon’s executive privilege did not cover the “White House Tapes” which were instrumental to the accusations against Nixon after the Watergate affair – in this case, this led to Nixon resigning. Another example is Hamdan v Rumsfeld – where

---

<sup>1</sup> Theory and List obtained from “American Politics and Society” – Wiley-Blackwell

<sup>2</sup> From A2 US Government & Politics – AJ Bennett

George Bush's military commissions being used to try prisoners at Guantanamo Bay were declared illegal; this once again shows a President being unable to push through his agenda due to opposition from the Supreme Court. An even clearer example of a President being unable to do what they truly want to was when the Supreme Court declared President Clinton's line item veto to be unconstitutional, which significantly reduced the President's influence over Congress; it saw Clinton's Congress spiral out of his control.

### Legislative Checks and Balances

Congress, in both houses, has a huge amount of influence over the President and can greatly undermine their authority, or greatly help their agenda - although in many cases, this does not lead to Congress acting as a rubber stamp or refusing everything; even with a clear party split, the President can find that they have little control over their own legislature. In terms of legislation, congress has 4 powers over the president.

Firstly, whenever the President suggests a draft bill, it is only a part of the finished product; both houses of Congress have the ability to significantly amend legislation, and this can lead to a situation where the President, the House and the Senate all have different versions of a bill, and different ideas for its progression. In this case, the President is required to be a 'big man' - only by forming a strong unifying presence can the President hope to see the bill they suggested make it to their desk, and this involves a skillful manipulation of politicians from both parties that involves whips and 'sticks and carrots'. Much of this process is informal, and therefore the President is only really held back by laws of good practice and an amount of scrutiny from Congress and the public. It is still a key part of the Presidency though; a President who lacks bargaining skills faces a serious check on their powers. David Mervin stated that "the President must bargain, he must make deals, he must negotiate with those with whom he shares power" - although the President is not restricted by many laws in this "bargaining", it is an entirely different matter making Congress pay attention - it's independence is a very effective check on the President's powers.

The President also faces the issue of Congress blocking or rejecting legislation, and trying to force **them** to back down on key issues (the now infamous instance of the 'public option' in President Barack Obama's healthcare reform bill was the case in point here). Congress may try and force the President to back down on key issues to pass a bill - and if they don't, then the bill will not be passed.

Even more of a tug-of-war of sorts between the President is emphasized by the President's ability to veto - although this does allow the President to be proactive in his opposition to controversial legislation, allowing them to be a 'big man' if it suits the political agenda - an example was when George Bush vetoed the State Children's Health Insurance Programme in order to benefit libertarian interest groups; Congress was unable to override the veto in this instance. Examples of the veto failing are fairly rare; the President is unlikely to use the veto unless it has a good chance of success. Even so, past Presidents have been forced to use it at times where it has failed; Clinton once faced the humiliation of having his veto overruled by a Congress controlled by his own party.

Finally, Congress has the much touted "Power of the Purse" - the ability of the House to set the budget on certain issues, which allows the House to significantly limit the President's ability to spend money on certain areas, meaning that their agenda can be significantly limited by a House of Representatives that does not agree with their agenda. Although the President can attempt to be a "big man" and use various methods of bargaining and influence to try and make the House adhere to their authority, the House still has the power to undermine the President quite significantly on major areas

of policy – a clear example of this was the attempt of the House Democrats to try and cut the spending by President Bush on the Iraq war. Although the attempt was overturned by Bush persuading the House through issues of patriotism and security to drop the proposal, the ability of the House to pass such a damaging bill would have significantly impeded Bush’s plans for the ‘War on Terror’.

Another interesting ability of Congress against the President is shown by the conflicts in Iraq and Afghanistan; that only Congress can declare war, so even though the President is head of the armed forces, they still require authorization and approval from Congress before doing so – this can stop the President from acting like a ‘big man’ and waging wars for reasons that Congress does not agree with. This is a check on the military power of the President and cuts down on the authority that is originally given by the President’s status as head of the armed forces.

The Senate also has a check on the power of the President – they have the ability to ratify treaties, or declare them void. This seems to undermine greatly the President’s role as “Chief Diplomat” – the President can hardly be said to be free to follow his own agenda on diplomatic issues if they are being forced to ensure that the Senate agrees with them; this means that the President has a responsibility to be a ‘big man’ in international affairs too – and to negotiate treaties that are to the satisfaction of the people of the United States, so that the Senate will eventually pass them. The Senate rejecting a treaty can significantly damage the President and their role in international affairs; after the Senate rejected the treaty of Versailles, the US was consequentially unable to join the league of nations – the damage this had to world security was intense; because Wilson and the Senate disagreed on key points of the treaty, partly because Wilson was acting as a ‘big man’ and taking on his Senate, the net result was no treaty being agreed upon – this was immensely damaging.

The Senate also has the power to ratify appointments made by the President for the court system, for roles in the government, and many more; there are a vast amount of appointments made by the President and most of the executive. Wiley-Blackstone suggest<sup>3</sup> that the Senate usually suffers from a “failure of oversight” and that the Senate are not using their power of ratification “in the strictly ethical sense...rooting out inefficient, incompetent or corrupt appointees”. The practical truth of this can plainly be seen in the statistics of appointments and some of the disastrous appointment procedures. Clarence Thomas’s nomination for the Supreme Court was a clear example of the Senate not being “strictly ethical” – Thomas described his nomination as “A circus...a national disgrace” and stated that he had been “lynched”. The issue of Thomas came from some rather tenuous claims he had had an extra-marital affair. President Bush was not in control of the Senate, and so, not wielding any influence due to the frequency of divided government, was unable to interfere noticeably in the Senate’s actions; despite this, Thomas was still appointed, but the ability of the Senate to cause the President trouble due to divided government and damage their political agenda (by appointing a judge many would see as a conservative) was made clear. There is a damning statistic for the Senate though that suggests in many cases their power of oversight is hardly used – only 2 out of **over six hundred thousand** appointments have been rejected<sup>4</sup> in recent years. Of the same number, 1200 have been withdrawn; however, this may be more telling – for example, Harriet Myers withdrew, who was generally considered unqualified, and had been nominated by the Democrats minority leader in the Senate! Still, with the statistics given it is clear that many appointments have slipped through the net – either due to the sheer volume of appointments or secular interests - Bert Lance, for example, turned out to be corrupt and not very good at his job, despite having a lot of support.

---

<sup>3</sup> In “American Politics and Society”

<sup>4</sup> According to Wiley-Blackstone

However, this view may be over simplistic, or the expectation may be unrealistic. The Senate cannot possibly deal with that many appointments in any form of detail, and even so, the Senate only has a limited amount of time to investigate and evaluate potential appointments, and much of the duty may lie in the President – providing an excellent example of the President being able to manipulate the system and be a ‘big man’ and be able to make appointments that suit them.

The Senate also possesses the power of investigation, or the power of impeachment. This is an important check on the executive and the application of its power, and can stop Presidents such as Nixon being a ‘big man’ to the extent of appropriating federal resources to win elections. However, Wiley-Blackstone claim that impeachment is “cumbersome and formalised” and have what they call an “advantage”; the ability to get away with offences which are not “truly a threat to the integrity of the office”. Clinton’s attempted impeachment and Nixon fleeing office before his are examples of this.

It can be questioned though, whether this is really an advantage? This is surely a weakness of Congress; the impeachment process is supposed to be the ultimate check against a tyrannical executive and it is suggested that is ineffective in this regard!

However, Clinton’s example was not really the same as Nixon’s. Although it can be suggested Nixon quit because of a Democrat congress, Clinton was before a republican controlled one. Clinton may have misbehaved, but his scandal did not interfere with the “integrity of the office” in the same way Nixon misusing the CIA did. Clintons could be left to public scrutiny, whereas Nixon required an immediate removal from office. This shows a serious limitation on the ability to be a “big man” – Nixon broke the rules of the office and seriously misused federal resources. Clinton did not abuse power in the same way; although it may be fair to assume the president could break the rules in a manner that at least a third of the senate agreed with, this allows them some power, and the ability to be a ‘big man’.

#### Other Limits and Exceptions

The president has the ability to get acts passed which extend their powers; President Wilson himself, for example, had the ‘lever act’ passed in World War 2 which allowed him to directly intervene in production for the war effort. This is a clear example of Wilson being a ‘big man’ and in a very legitimate sense as well – Wilson was able to ask his Congress to give him more power, and they obliged – many of the President’s actions can be legitimate and still influential; after all, the President is the “national unifying force” and so can ask congress for additional powers, as well as leading a number of executive areas legitimately.

Because of this, the fact that the ‘big man’ is the only person in the country with a ‘national constituency’<sup>5</sup> and whilst subject to a lot of scrutiny, has free reign too; public support for a president means that they can get congress to pass a lot of legislation helping them do what they will. Congress follows the people, and although, as Clinton proved, an amiable congress does not equal legislation, frequent re-elections for parts of Congress gives the president plentiful influence if the public is on side.

However, it is also important to consider the use of public opinion as a check against the president, because it can go both ways; although being a ‘big man’ and setting an agenda is important, doing it in an authoritarian fashion can backfire; the Republicans promised “harsh consequences” in the next

---

<sup>5</sup> Again, Wiley-Blackstone

election if Obama and the democrats used a budget adjustment to push healthcare<sup>6</sup>(passing the law as a budget adjustment would require less of a majority in the Senate); meaning the president could end up working against congress (divided government, a real risk with elections every 2 years) and even facing the ultimate check – being voted out. This appears to be in contravention to the assumption that the president can be a ‘big man’ even if he does not control congress; if Obama and the Democrats use the budget adjustment, then the republicans threaten doom at the polls. However, as Time suggests, this may not be strictly true, and budget adjustments have been used before without being punished in the same way. If this is true, then the ability of the President to be a ‘big man’ and to take charge and influence all parts of the government is true, but the worrying ability of him to be ‘at liberty’ to do so seems in direct contravention to much of the constitution, and raises questions about the checks and balances that the legislature does possess.

The influence of the President is also extended through committees, which are subject to many checks, but in reality these are not always effective. For example, the Iran-Contra affair was an example of executive committees being able to flood legislative committees with so much information they could not effectively do their job. Presidents can use this to make them more powerful; along with the criticisms of impeachment, it suggests that the President is able to accomplish a large amount through subterfuge and bureaucracy. This is an ability which has only increased since the time of Woodrow Wilson, with the federal bureaucracy ballooning and a digital era where vast amount of information can be collated without much difficulty. This means that the President is able to be a big man; and as long as they do not step too far outside of the rules, Wiley-Blackstone’s criticism of impeachment raises some worrying concerns about how far this ‘liberty’ has extended; Woodrow Wilson would perhaps question whether or not the President can be at liberty in conscience anymore.

### Conclusion

In conclusion then, Presidents can be very powerful indeed. Although much of the President’s specific powers are limited, they have many informal ones, and abilities not in the constitution, which although are now vital to performing their job (committees), they allow what has been defined as misdemeanours that are not “truly a threat to the integrity of the office” to slip through the net, allowing Presidents to be very ‘big men’ indeed.

---

<sup>6</sup> “Time” Magazine, March 15 2010 Issue.