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Shaping the 44th Presidency

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EXECUTIVE SUMMARY

The Twenty-Second Amendment, as ratified in 1951, replaced a question mark with a period. Will the president seek a third term? He or she cannot. Once reelected, a president becomes the present that is tomorrow's past. The final two years of a president's term are especially notable given that the second midterm election is the last opportunity, however problematic, for gauging the president's status with voters. Heads begin to turn, focusing as much or more on "who's next" as "who's still there." As this happens, the new presidency begins to take shape.

Three presidencies—those of Eisenhower, Reagan and Clinton—have experienced this inevitable look forward. Nixon, too, was reelected but resigned before the second midterm election. Of the other post-1951 presidencies, Truman and Johnson could have run for another term but chose not to; Carter and George H.W. Bush (Bush 41) sought reelection and were defeated, as was Ford for a full term. And now George W. Bush (Bush 43) is serving in that period when the present is forming the future.

This issue paper will compare Eisenhower, Reagan and Clinton before turning to Bush 43. The first three have several common characteristics that help to explain the type of presidency being formed in the last two years. As it enters its period of termination, the Bush 43 presidency scarcely resembles those of his predecessors and the differences are a cause for concern. The 44th president will inherit a *diminished presidency* in a system that appears now to be pitted against itself.

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Three Terminating Presidencies

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The Eisenhower, Reagan and Clinton presidencies show these common characteristics in the last two years in office:

- Presidential job approval scores were relatively high, averaging just over 60 percent for Eisenhower and Clinton and 50 percent for Reagan. Clinton and Reagan left office with higher ratings than they entered.
- Each faced predicaments to overcome—the embarrassing U2 incident for Eisenhower, the Iran-Contra investigations for Reagan, Monica Lewinsky and an impeachment and trial for Clinton.
- Each president faced opposition party majorities in the House and Senate: Democrats with commanding 65 percent control (Eisenhower) and reclaiming majority status in the Senate (Reagan); Republicans maintaining their slim and lessening House and Senate majorities (Clinton).
- An heir-apparent vice president was the president's party nominee for all three—Nixon for Eisenhower, Bush for Reagan, and Gore for Clinton. Consequently, the nominee of the president's party represented the record of the outgoing administration.
- Domestic issues dominated the legislative agendas for the three terminating presidencies.
- The three presidents continued to veto bills at about the same rate as before. Eisenhower and Reagan experienced overrides in the last Congress (the first for Eisenhower in his eight years), Clinton did not.
- The new presidents entered office with weak political capital—very narrow wins for Kennedy in 1960 and Bush 43 in 2000; moderate Democratic congressional majorities facing Bush 41.

There were also notable differences across these administrations:

- Few major laws were enacted in the last of Eisenhower and Clinton's four congresses (by the count of David R. Mayhew in *Divided We Govern*), whereas Reagan's last congress was the most productive of his four, by this same count.
- Congressional prominence ascended, with agenda designation shifting to Capitol Hill, in the last two years of the Eisenhower and Reagan presidencies whereas the impeachment aftermath, Republican leadership struggles, and narrow margins interfered with a similar rise in status for the Republican-controlled 106th Congress of Clinton.

One could reasonably predict the type of presidency being formed in each of the three post-1951 administrations.

- Leading out-party candidates were drawn almost entirely from the Senate in 1960 and from Congress and the state houses in 1988 and 2000 (governors winning the nomination in both of the latter cases).
- Party shifts occurred in the White House in 1960 (Republican to Democratic) and 2000 (Democratic to Republican) whereas in 1988, Bush 41 became the first sitting vice president to win since Van Buren in 1836.

Predictable Results

One could reasonably predict the type of presidency being formed in each of the three post-1951 administrations. The legislative agenda was brim-full as Eisenhower's second term was concluding. Democrats were anxious to pass laws and were optimistic that their White House team of Kennedy and Johnson could unite the party sufficiently to overcome the conservative coalition of southern Democrats and Republicans. A *legislative presidency* was being formed, expressed later as the New Frontier, then the Great Society.

Equally predictable was the heir-apparent presidency to follow Reagan. The Democratic 100th Congress had virtually starved the 1988 campaign of issues by enacting more than twice as many major laws as in Eisenhower's last two years. Emptying the agenda had the effect of forming a *status quo presidency*, a development further set in place by the victory of the vice president and Democrats remaining comfortably in the majority in both houses.

There was no shortage of issues during the last two years of the Clinton presidency. Clinton had identified most of them in his 1998, 1999 and 2000 State of the Union Messages: for example, Social Security, health care, Medicare, tax cuts, crime, education. As with the Eisenhower case, few major laws were enacted to treat these issues. Party politics had changed dramatically from the 1950s, however. Areas previously represented by southern Democrats were now Republican. *Partisanship was more purely Democrats vs. Republicans*. The impeachment and trial of the president accentuated partisan differences in lawmaking. Consequently, a *partisan presidency* was being formed, one likely to be realized whichever candidate won—Bush or Gore.

The Outlier Case—George W. Bush

The present term-limited presidency of George W. Bush differs in important ways. Bush enters his last two years with his job approval approximately half that of the others. Vice President Cheney is not a candidate, and national security and foreign policy issues dominate the agenda.

Even where conditions are similar, the specifics are notably different. Democrats regained majority status in the House and Senate in 2006 with small

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margins in both houses. Multiple foreign and domestic predicaments have invited extensive oversight and investigations, along with efforts to constrain executive prerogatives.

Additionally, there are prominent features not seen before. The Bush 43 presidency is the first sequential case—Clinton's two terms followed by Bush's—and also the first multi-term sequence since 1824—Jefferson's two terms followed by Madison's and then by Monroe's.

As noted, conditions favored a partisan presidency in 2001, conditions that have persisted to present day (broken for a brief period of bipartisanship on national security issues only in the immediate aftermath of 9/11). Partisan splits took several forms from 2001 to 2007: (1) GOP House, tie in the Senate (first five months of 2001); (2) GOP House, Democratic Senate (2001-03); (3) GOP in both houses (2003-07); and (4) Democratic in both houses (2007-present). The margins have been narrow throughout, thus fostering the party discipline needed to win. Maintaining party unity with narrow margins can and did strain relations between the parties, leading to resentment and anxiety for payback by the Democratic minority.

The 2006 elections gave the Democrats a chance for retribution. A weakened president has turned to veto threats, confident that narrow Democratic margins prevent overrides. Thus partisanship has taken a form in 2007 different from that between 2001 and 2006. It is demonstrably the case that split-party government can pass major laws (Mayhew, *Divided We Govern)*. In the present case, however, events (notably Iraq and terrorist threats), a weakened president as pure executive threatening vetoes, and a majority party in Congress claiming a mandate to govern from Capitol Hill conspired to limit productivity in the early months of 2007.

Further complicating matters, the 2008 presidential nominating campaign has had the earliest start ever. Democratic and Republican frontrunners emerged by late spring 2007, with exploratory probing and fundraising occurring even earlier. Debates were well underway by the beginning of summer. Meanwhile virtually every action by the new Democratic Congress has had overtones for the presidential campaign, especially given the spate of investigations underway and the number of candidates from Capitol Hill playing simultaneous campaigning and governing roles.

Another special feature of the Bush case is the limited political capital of the president. Eisenhower, Reagan and Clinton were comfortably elected and reelected. Bush will go down in history as having had nearly the least political standing of any president. Upon entering office in 2001, he ranked last of postwar presidents when combining his percentages of popular vote, electoral vote and job approval, only to drop slightly lower by these measures upon returning to office in 2005 (due to small reductions in job approval, from 2001 to-2005).

Perhaps the most striking difference between Bush 43 and the other term-limited presidencies is in the nature of the agenda.

His legislative standing was better. He had the advantages of a Republican House of Representatives until 2007 and of a Republican Senate, from 2003 to 2007. He also had a boost when his job approval improved dramatically following 9/11. It then declined with the insurgency in Iraq, and dropped steadily by spring 2007. Astonishingly, by 2007, *Time* magazine did not include the president in its list of the world's most influential people that year.

The president might have been expected to be cautious in exercising power under these circumstances. However, upon reelection, he announced the boldest agenda of any other reelected president in the postwar era. Further, the issues he tackled were bound to be contentious, even within his own party: for example, Social Security, immigration, education and tax code reform. As the pure executive, President Bush governed as though forthrightness was the essence of leadership in a separated system.

The 2006 congressional election results were broadly interpreted as a dramatic shift in power, providing the Democrats with a mandate for change. Comparatively, the House results were impressive, resulting in a Democratic majority in the House for the first time in twelve years. Yet the net gain in seats was less than that in 1958 and produced a slim margin.

Senate Democratic net gains in 2006 were half those of 1958 and two fewer than in 1986, when Democrats also recaptured majority status. Still the Democrats won a razor thin majority and thus had control of both houses for the first time since 1994.

The narrow margins in each house adversely affect the capacity of Democrats effectively to shift the balance to Congress. The result at this writing is more like that in the last two years of Clinton's presidency than those of Eisenhower or Reagan. Clearly there has been change: notably the further weakening of the president's political and legislative standings. But his loss appears not to have been Congress's gain. Party discipline and the majority's advantage in House rules have permitted passage of bills in that chamber but the slim margin in the Senate has made it difficult to get the 60 votes needed to prevent filibustering of major legislation.

Meanwhile the president who vetoed only one bill in the first six years of his presidency (compared to 51 regular vetoes for Eisenhower in his first six years, 31 for Reagan, and 27 for Clinton) has threatened more frequent use of his veto power. Lacking the 60 needed for cloture, chances are even slimmer that Democrats can muster the two-thirds needed in both houses to override Bush's vetoes. Conclusion? *The presidency has diminished without a compensating increase in the status of Congress*. Put otherwise: Weakness versus weakness equals stalemate.

Perhaps the most striking difference between Bush 43 and the other term-limited presidencies is in the nature of the agenda. In the three previous cases, the legislative agenda was weighted more to domestic over national security and foreign policy issues (mostly left for presidential decisions). The reverse is true

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for Bush 43. The war in Iraq dominates, along with a series of security issues associated with protecting against terrorism at home and abroad, the Middle East more generally, oil and other energy issues, treatment of detainees, safeguarding privacy rights, trade and immigration. This agenda will likely carry forward to January 20, 2009. Personnel issues, too, have been paramount, notably as associated with Attorney General Alberto Gonzalez and the appointment of U.S. attorneys, and Vice President Cheney's Chief of Staff, Lewis "Scooter" Libby.

Many of these issues are traditionally and, in some cases, constitutionally considered to be more executive in nature than legislative. Intense public and congressional dissatisfaction with results, however, has led to serious attempts by members of Congress to fashion a stronger legislative role in what are ordinarily executive matters. *It is these attempts that should be monitored for their effects in shaping the 44th presidency. Congressional constraints on or redefinitions of presidential powers are not easily ignored later, especially if endorsed by the winning presidential candidate.*

Also subject to monitoring, will be the promises made by the winning candidate: "If elected president, I will…" Embedded in those pledges is a concept of governing that will then have to be reconciled with the reality of a presidential-congressional balance of powers fashioned in the last months of the Bush 43 presidency. Related is the experience of members of Congress in justifying a more co-equal role in regard to a series of divisive national and homeland security issues. The new president may find it difficult to reclaim powers that have been circumscribed or redistributed.

There is more to consider in monitoring the last two years of Bush's terminating presidency. Mention has been made of Cheney's decision not to run. Thus, the race is wide open in both parties for the first time since 1952. One effect is to allow the Republican candidates to fashion their own campaigns. It is not quite correct, however, to state that there is no "heir-apparent" candidacy. As with Nixon in 1968 and Mondale in 1984, Senator Hillary Clinton can claim serious White House experience in certifying her candidacy.

As with Nixon and with Mondale to an even greater extent, her candidacy will profit or debit from that familiarity with executive life. It is already the case that her husband is more directly active in the campaign than was true of either Eisenhower for Nixon or Carter for Mondale. It is also the case that her White House experience was an effort to expand the role of the First Lady, incorporating policy, political, and organizational responsibilities.

Further, her election would, for the first time in history, bring a former president into the role of First Spouse. These prospects raise issues that should be explored in the 2008 campaign, raising questions of a co-presidency different from those in 1993, to include relationships between a former president and the newly elected vice president.

An open race has resulted in many more candidates than in 1952. Eight Democratic and 10 Republican prospects participated in the debates in late spring 2007. Most of these 18 candidates have had legislative experience—six sitting senators (Joseph Biden, Hillary Clinton, Chris Dodd and Barack Obama among Democrats; Sam Brownback and John McCain among Republicans), four sitting representatives (Dennis Kucinich among Democrats; Duncan Hunter, Ron Paul and Tom Tancredo among Republicans), and three who previously served in Congress (John Edwards and Mike Gravel in the Senate; Bill Richardson in the House among Democrats).

Just one sitting governor is running—Richardson, along with three former governors (Mike Huckabee, Mitt Romney and Tommy Thompson among Republicans—a fourth Republican, Jim Gilmore, pulled out in mid-July), and one former mayor (Rudy Giuliani among Republicans). Two prospective candidates at this writing, both Republicans, also have legislative experience (Fred Thompson as a senator and Newt Gingrich as house speaker). A prospective addition among Democrats is Al Gore, with experience in the House, Senate, and as a vice president who ran for president in 2000 as an heir apparent. Interestingly, should he run, there would be two "latter day" heir apparents in the race—Gore joining Clinton.

Sitting members of the Senate, and thus participants in the shaping of the next presidency, were likewise candidates in 1960. Again there is a difference this time. Those in 1960 were active in shaping a legislative agenda, then to be enacted in the subsequent presidencies of two of the most active participants, Kennedy and Johnson. It remains to be seen the extent to which sitting members of Congress as candidates are leading the development of a legislative agenda for 2009. None is a party leader in either chamber.

Predicting the Result

An extraordinary presidency is closing down. A weakened and weakening president faces critical challenges to his exercise of executive powers. George W. Bush has served as a pure executive, often insufficiently attentive to the advantages of incorporating congressional perspectives into presidential decisions. Now the efforts by congressional Democrats to tip the balance their way typically constrain presidential discretion, notably in regard to Iraq, terrorist threats, and related national and homeland security issues but extending as well to trade, appointments, and executive options (including executive privilege). The intense partisanship of Republicans versus Democrats has now been extended to Congress versus the presidency.

The agenda requires public and congressional support for executive decisions, and that support is lacking. An earlier than ever campaign forces candidates to commit themselves on divisive issues that will change in the

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coming months but are unlikely to go away. Iraq, immigration, treatment of detainees, surveillance and other issues of privacy, homeland security, and energy supply and demand will all greet the 44th president. Candidates presently in Congress are participants in the tug of war (over war) between the two elected branches, a spectacle that seemingly is contributing to low and lower public support for both institutions.

As has happened before in the post-1951 era of the two-term limitation, a new presidency is being shaped as the old one is being terminated. In the present case, however, a *diminished presidency* is being wrought, a development that can prove dysfunctional for the separation of powers. Congress is ill equipped to perform executive functions through oversight or legislation. Presidential rule by the veto checkmate indicates lack of influence in lawmaking—a mark of weakness, not strength. And in narrow-margin politics, vetoes are unlikely to be overridden. A system separated against itself cannot govern effectively.

Checks and balances were not designed to freeze the system in place but to ensure differing perspectives and talents from divergent representation, term lengths, institutional settings, and constitutional prerogatives. Presidential candidates in 2008 need to reveal how they intend to cope with these institutional issues, in addition to the serious policy matters that are piling up in a system presently exemplified by balanced checking between the presidency and Congress. There is still time to shape a different presidency. Is there the will or the way?

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