

FOCUS

on Law Studies

Teaching
about law
in the
liberal arts

FALL 2008
Volume XXIV, Number 1

PUBLISHED BY THE DIVISION FOR PUBLIC EDUCATION OF THE AMERICAN BAR ASSOCIATION



The American Presidency: Looking Forward, Looking Back

PART I: Institution in Crisis?

EDITOR (John Paul Ryan): *Is the American presidency in a period of crisis? Why (not)? What crises or challenges currently face this institution?*



MARY STUCKEY (Georgia State University/Communication): I think the presidency is pretty much always in a state of crisis. There are opportunities and constraints on the office, as an institution designed for one political era tries to suit itself to later and different eras.

At the moment, the expectations for the office remain high. Since no one has any faith left in George W. Bush, those expectations were placed upon the candidates. President-Elect Obama will find himself having to deal with the financial crisis at home and the war in Iraq, both of which are incredibly expensive and will constrain

Editor's Note: *Six experts on the presidency, including a political journalist and scholars from political science, history, and communications, discuss the institutional presidency—then and now. They discuss what crises and challenges face the office, the constitutional and statutory constraints on the growth of executive power, whether the long presidential campaign season is a good audition for the job of president, and what challenges face President-Elect Obama as he takes office on January 20, 2009. The dialogue took place shortly before and after the November 4, 2008 elections. To view or download copies of this dialogue, go to www.abanet.org/publiced/focus/home.html.*

any domestic policy action. These constraints are especially important, as demands for improvements in the health care system mount.

The presidency is not designed for, nor is it very good at, managing the economy. As the federal government places an ever-larger stake in the banking system, Obama is going to have to find institutional mechanisms for managing that stake. It is not at all clear how that will work.



NANCY KASSOP (State University of New York at New Paltz/Political Science): The current state of the presidency is that of an institution on the cusp. It is ready for new leadership, and it is waiting, expectantly, to see where that new direction will lead. George W. Bush's record-low job approval ratings this past year have contributed, in part, to an historically low registering of trust and confidence in government. The American public seems exceptionally eager to usher into office a new chief executive who can offer, at the very least, an injection of fresh views and renewed energy to an institution that has grown heavy of its own weight of the last eight years.

The challenges that await the institution and President-Elect Obama are staggering in their complexity and intractability. The policy issues are obvious: a looming economic recession in tandem with a crisis in confidence among financial institutions and the public that depends on them; the need to promote energy independence; a commitment to achieve meaningful health care reform; a need to

secure guarantees of educational opportunity. Foreign policy brings its own list of trouble spots around the globe from Iraq to Afghanistan and Pakistan, to the elusive efforts to achieve peace in the Middle East, to nuclear tensions with Iran and North Korea.

But beyond these very tangible issues lies an even greater need: to restore respect for the United States around the globe and to reestablish its moral position among its allies. This challenge is one that both the nation and the office of the presidency confront together, since they are jointly responsible for creating the conditions that gave rise to this need. The tarnished reputation of the United States is inevitably associated with the George W. Bush presidency and with its aggressive use of power for national security objectives. The equally tarnished reputation of the office is also linked to the theory of excessive executive power that drove the Bush administration and that has, depending on one's perspective, either expanded and strengthened the powers of the office or, conversely, weakened and undermined it as the paradoxical consequence of presidential overreaching. Whichever view prevails, it is clear that President-Elect Obama will need to consider whether to retain the inflated and unprecedented range of powers currently

IN THIS ISSUE

Institution in Crisis?	1
Presidents, Eras, and Change	4
Presidential Personalities and Skills	8
Campaigning and Governing	9
President Obama & the Future	12
Resources	14

claimed by the chief executive or restore the more traditional boundaries of presidential power.

A corollary to the consideration of the limits of presidential power will be the need to determine the confines of vice-presidential power. That office, too, has undergone a transformation and redefinition by Dick Cheney. In both cases, the key will be to see whether a change in personalities is sufficient to revise the conceptions of these offices, or whether the changes are more institutional in nature and, thus, more resistant to efforts to reverse them.

JEFFREY COHEN (Fordham University/Political Science):



I am not sure I would call the American presidency an institution in crisis. The presidency has significant policy and institutional challenges, many coming from the Bush administration and the

larger political system.

The policy challenges are well known—the war in Iraq, a resurgent Taliban in Afghanistan among other international relations issues, and the current economic crisis, perhaps the most severe since the Great Depression. Fallout from these problems has undermined public confidence in major political and economic institutions, including the presidency. Especially on the economic front, if the credit and financial markets do not stabilize before President-Elect Obama takes office, he will be presented with a major crisis of confidence. That crisis of confidence may undermine the presidency as an institution or, alternatively, provide the opportunity for new leadership to restore institutional confidence. Institutions and policy performance always interact. Over the long haul, poor performance on major policies erodes public confidence in the institutions of government, which may, under some circumstances, destabilize political systems.

But another challenge faces the presidency—the increased use of unilateral and sometimes secret, if not unconstitutional and illegal, actions by an administration. This trend toward “unilateral decree” behavior in the presidency is not a recent development. Divided government and po-

larized politics have contributed to and reinforced such presidential behavior, in part because navigating Congress has become so difficult. To some degree, presidents bent on a policy course may see no option except the unilateral policymaking route, especially when the policy problem requires attention (such as war and defense) or the public cries out for new policies (such as in an economic crisis). The problem for the nation and the presidency is that this long-term tendency concentrates power in the executive branch and leads presidents to push the envelope, skirting the edge of what is constitutionally and legally acceptable. This, in turn, leads to the long-term institutional challenge, not so much for the president but for the nation as a whole, to find a way for the legislative process to operate so that presidents and Congress, together, can build effective public policies.

MARY STUCKEY: I think your comments are correct, Jeffrey, but I wonder: if one president does it, is this a trend? I am not sure Clinton had this tendency toward secrecy; if President-Elect Obama doesn't continue it, is this an aberration? Or are you seeing something in the institution that drives this beyond President Bush?

JEFFREY COHEN: I think we have a trend going back to the Reagan years, but I think the tendency toward secrecy-unilateralism has increased during the George W. Bush years. Clinton did not have the same policy issues that Bush had to confront, and polarization between the parties has ratcheted up, too. At this point we can't tell if the Bush presidency is an aberration or just the incremental growth of a longer term trend. I don't know what the future will bring, but if we are in a trend, we have some serious problems.

CHARLIE SAVAGE (New York Times): It



is very important to emphasize at the beginning that, even though we are having this conversation in the context of a Republican administration, executive power is not a partisan issue: future Democratic

presidents will be able to use these expanded powers to advance a liberal policy

agenda, so conservatives and Republicans have an equal stake in understanding what has been happening to our constitutional system.

I wish to follow up on the exchange between Mary and Jeffrey—whether the dramatic expansion of presidential power under George W. Bush has been an aberrational moment or is, instead, part of a longer-term trend. In my view, while the Bush legal team's effort to expand presidential power has been abnormally intense, it is part of a trend that began not with Reagan but with Truman.

To understand the trend toward increasing unilateralism and secrecy, I think we must begin not with George W. Bush or Ronald Reagan but with the Truman administration. Harry Truman—a Democrat—used the standing armies and crisis atmosphere of the early Cold War to seize much greater power for the presidency. Milestone events include going to war in Korea without congressional authorization, the attempt to seize steel mills based on supposed inherent commander-in-chief powers (thwarted by the Supreme Court),

FOCUS

on Law Studies

Teaching about law in the liberal arts

DWIGHT SMITH

Chair, Standing Committee on
Public Education

MABEL MCKINNEY-BROWNING

Director, Division for Public Education

JOHN PAUL RYAN

Consulting Editor

The Education, Public Policy, and Marketing
Group, Inc.

Focus on Law Studies (circulation: 5,504), a twice-annual publication of the American Bar Association Division for Public Education, examines the intersection of law and the liberal arts. Through the articles, dialogues, debates, and book reviews published in *Focus*, scholars and teachers explore a wide variety of policy, empirical, and theoretical subjects pertaining to law, including: government regulation; national security and civil liberties; campaign finance; civil rights; judicial appointments; gun laws and policies; and immigration. By examining law from multidisciplinary viewpoints and across the ideological spectrum, *Focus* seeks to engage the community of law and liberal arts faculty in the social sciences, humanities, and related fields who teach about law and the legal system at the undergraduate collegiate level. The views expressed herein have not been approved by the ABA House of Delegates or the Board of Governors and, accordingly, should not be construed as representing the policy of the American Bar Association.

©2008, American Bar Association Division for
Public Education, 321 N. Clark St., 20.2, Chicago,
IL 60610-4714

ISSN: 1932-2518

and the beginnings of the case that established the state-secrets privilege.

Truman and his successors of both parties pushed the envelope, and the outer limits achieved by each became the starting point for their successor to go even further. Eisenhower invented the terminology and modern concept of “executive privilege” and greatly expanded covert CIA action abroad without congressional oversight. Kennedy sidelined Congress during the missile crisis. Johnson increased warrantless domestic surveillance and Americanized offensive combat operations in Vietnam without congressional input. Nixon escalated these trends to a peak and breaking point, prompting a short-lived period of congressional backlash during the mid-1970s.

The post-Watergate/Vietnam moment faded by the end of the Carter administration. The Reagan team began working to roll back the congressional resurgence, including by taking many aggressive combat operations abroad without prior congressional authorization and by developing the Unitary Executive Theory and the modern form of signing statements. George H.W. Bush continued this approach, as did Clinton in several ways. I agree with Mary that in the 1990s we didn’t see as much pushing on the secrecy front—the Clinton administration was more open than recent Republican administrations on Freedom of Information Act requests, for example. But recall that by going to war in Kosovo for 78 days without explicit congressional permission, Clinton was the first president to violate the War Powers Act’s 60-day clock for unauthorized combat operations—something that even George W. Bush did not do. Nevertheless, the Bush administration has been an aberration in the intensity it brought to bear on this long-term expansion of executive power.

Still, I am not sure the institution of the presidency (separated from the contemporary challenges of the day) is in crisis. It is important to note that from the perspective of someone who thinks that the modern world, and America’s role in it, demands a muscular presidency—say, Cheney—it probably appears that the institution is in the best shape it’s been in for a generation. Others might say that the institution of Congress is in a crisis. But whatever spin a particular faction might put on it, the Bush administration set out

to leave the presidency stronger than it had been when it arrived, and I would argue that this has been among its most successfully implemented policies.

JOHN BURKE (University of Vermont/Political Science):



Charlie makes a very important point in taking us through a broad sweep of presidential history. While the notion of a unitary executive and its attendant claim to powers

may be quite muscular in the Bush presidency, Bush is still in company with his post-World War II predecessors in making a generous interpretation of inherent powers. Indeed, Charlie’s comments on Clinton and Kosovo are especially notable. I would add to that Clinton’s broad claims of executive privilege in the Whitewater/Lewinsky investigations. Although definitive resolution was not rendered by the Supreme Court, lower federal courts ruled against the White House in its claims for executive and attorney/client privilege for Bruce Lindsey (White House legal counsel’s office), executive privilege for Sidney Blumenthal, and a “protective function” for the Secret Service.

The lesson here lies in the Madisonian hope in designing a system of separate but shared powers where “ambition would counteract ambition.” That worked in the Clinton executive privilege cases, and it worked in the Court’s recent Guantanamo detainee decisions. Nor does the Court seem to have paid much heed to the interpretive merits of presidential signing statements.

If there is an imbalance of power, is it perhaps not also a bit of Congress’s doing? During the Nixon years, it was Congress that was much more muscular in its own assertion of power regarding Vietnam funding than it has been over Iraq and so, too, with Nixon’s attempts at the impoundment of funds. More recently, there has been much congressional rhetoric and oversight hearings, but as I see it, especially in the past two years with Democratic control, very little effective response.

My view is that the presidency itself is not in crisis—under strain yes, in crisis no. In addition to the problems the Bush administration has brought upon itself, ex-

pectations on the presidency remain high—too high—often with a failure on the public’s part to understand the nature of the office, its power, and limitations. To take but one example: the Bush administration might be faulted for not anticipating the banking and financial community practices that led to the economic meltdown, but so, too, may Congress. After all, Congress still writes the laws.

Clearly, President-Elect Obama will face great crises, perhaps the most significant a modern president has faced, since they are so deeply difficult and range across a spectrum of foreign, economic, and domestic problems. How to deal with crisis effectively, however, is a different question from whether the presidency itself is in crisis.

GARY SMITH (Grove City College/History):



Although George W. Bush had a very low approval rating, Congress has had an even lower job approval (as much as ten percentage points lower than Bush). Many Americans view the response of

both the president and Congress to the domestic and global problems we have talked about here as misguided, inadequate, or even harmful. Thus, it may be more appropriate to say that the federal government as a whole is experiencing a tremendous strain, if not a crisis, given the lack of confidence that Americans have in it. Despite being U.S. senators, both McCain and Obama emphasized during the recent campaign that Washington (the federal government) was a major problem and promised to fix it.

I see two major difficulties. First, it takes a different set of skills to get elected than to lead the nation effectively as president. Second, many of the problems we face as a nation are part of global trends and issues. Those men and women who have the rhetorical and communications skills to campaign effectively do not necessarily have the ability to govern well. While some skills are important in both arenas, such as organization and the ability to work well with others, the other traits needed for these two enterprises are quite different. Given their views and methods of campaigning, this may not have been

an issue the founders considered. We can probably all think of individuals we believe could do a good job as president but could never be elected because they lack the charisma, connections, and experiences perceived to be vital to being president.

Moreover, the nature of American politics and campaigning often prompts candidates for the presidency to run to the middle, try to please diverse constituencies, make promises they cannot fulfill, refuse to take unpopular positions that may be necessary to solve the nation's thorniest economic and social problems, or ask Americans to make any type of sacrifices. Thus, the political process inhibits the ability of presidents and Congress to tackle and resolve the daunting domestic and foreign problems the United States currently faces. Judged from this perspective, it may be appropriate to say that the presidency (and federal government) confronts a crisis.

Another problem is that only rare individuals possess the leadership traits that enable them to fulfill all of the responsibilities of the office. Some presidents are good instrumental leaders who focus on accomplishing tasks and can push legislation through Congress. Other presidents are good expressive leaders who can create solidarity and harmony, reduce tensions, and help individuals work together. Those presidents consistently rated as great have typically exhibited both types of leadership, but most individuals, including most presidents, do not excel in both types of leadership.

As John Burke argues, the public's expectation for the presidency is very high, despite the widespread feeling that presidents have not delivered on their promises. Many Americans think presidents have much more power than they actually do. Chief executives must deal with Congress, public opinion, and leaders of other nations. They have limited power to affect the course of many events. Their office allows them to place issues of concern on the national agenda, but presidents are constrained by time, the public's short attention span, world events, the media, and a host of other forces.

PART II: Presidents, Eras, and Change

EDITOR: Thinking about your own research or perspective on the subject, could you discuss a period of significant development or change in the American presidency? What was particularly distinctive? How and why did it take place?

GARY SMITH: My research focuses on the role of religion in American politics and how the faith of presidents affected their character, rhetoric, policies, political campaigns, and relationship with various constituencies. I argue that this has been a very neglected, misunderstood, and un-

Washington and Lincoln played key roles in the development of civil religion.

GARY SMITH

derappreciated aspect of the presidency. Many Americans have cared deeply about the religious commitments of presidents from those of George Washington to current times. The religious convictions of candidates have loomed large in numerous campaigns, most notably in 1800, 1896, 1908, 1928, 1960, 1976, 1980, 2000, 2004, and 2008. In the recent campaign, candidates Obama and McCain both appeared at a forum on faith hosted by pastor Rick Warren, and both parties competed vigorously for the votes of religiously committed Americans, especially evangelicals and conservative Catholics.

One factor that has played a significant role in American politics and the presidency is the nature, use, and consequences of civil religion. Also known as civic piety, public religion, and the common faith, civil religion provides a religious sanction for the political order and a divine justification of and support for civic society and a nation's practices. This generalized form of faith involves the government's use of widely held religious sentiments, concepts, and symbols to further

its own purposes. Transcending specific denominations, it blends piety and patriotism and mixes traditional religion with national life. Involving symbols, rituals, values, norms, and allegiances, it functions as a social glue to help bind Americans together and give them a sense of spiritual unity. Supported and perpetuated by mores and folkways rather than law, it involves beliefs (but no formal creed), revelatory events (most notably, the American Revolution and the Civil War), prophets (especially Washington, Jefferson, and Lincoln), sacred places (Washington, D.C., with its shrines to Washington, Lincoln, and Franklin Roosevelt; Bunker Hill; the Alamo; and Gettysburg), sacred texts (the Declaration of Independence, the Constitution, Lincoln's Gettysburg Address, and key inaugural addresses), ceremonies (Memorial Day, Independence Day, and Veterans' Day celebrations, and the pageantry of presidential inaugurations, all of which fuse piety and patriotism), hymns ("God Bless America" and "My Country 'Tis of Thee"), and rituals (prayers at public events such as inaugurations and the beginnings of sessions of Congress, deferential behavior toward the flag, and national days of prayer).

By presiding over the nation's rituals and reaffirming its creeds, presidents have served as the prophets and priests of this civil religion. They have employed civil religion to unite Americans and to frame and win support for specific policies. These national magistrates, whatever their private religious beliefs, have been guided by America's civil religion in performing their official duties, and their religious commitments have helped shape the civil religion of particular periods. Regularly invoking God in inaugural addresses and on other solemn occasions, presidents have functioned as the nation's "principal prophet, high priest, first preacher, and chief pastor." In their inaugural addresses and other speeches and proclamations, presidents have portrayed God as a benevolent father who blesses America much more than as celestial judge who holds the nation accountable to his standards. They have also frequently quoted biblical passages and alluded to scriptural narratives, parables, and stories.

While all presidents have promoted and used civil religion to serve various

purposes, Washington and Lincoln played especially important roles in its development. As president, Washington was the first major spokesperson and practitioner of American civil religion, and after his death he became a principal figure in its development. In his first inaugural address, the president thanked God for his past guidance and sought his favor for the nation's future. As both commander-in-chief and president, Washington repeatedly argued that every step in establishing and maintaining the republic demonstrated God's "providential agency." Throughout his presidency, Washington linked "piety and patriotism, God and country, and divine benevolence with the well-being of the nation" in his public pronouncements. He also helped shape America's civic faith by repeatedly emphasizing that religion provided an essential foundation for "public morality, republican institutions, and national happiness." Washington frequently asserted that religion helped promote virtue, order, and social stability and praised the efforts of churches to make people "sober, honest, and good Citizens, and the obedient subjects of a lawful government." In his farewell address, the nation's civil pastor called religion and morality "indispensable supports" of "political prosperity" and human happiness.

Lincoln also played a pivotal role in the development of American civil religion. While most other presidents primarily promoted a "priestly" civil religion, which offers God's comfort and solace to people in the midst of tragedy and affliction, Lincoln exercised a "prophetic" civil religion, which uses biblical themes to challenge citizens' attitudes and actions. He used masterful prose to express the central convictions of the nation's public religion and devised a civil theology that emphasized America's Christian heritage and mission and the importance of religious faith to national unity. Unlike some other presidents, however, Lincoln persistently refused to identify the aims of the United States with God's will. After his assassination, Lincoln quickly became an object of civil religion, as Americans transformed him from a prairie politician to the "Savior of the Union" and Father Abraham. Sermons frequently compared Lincoln with Washington, Moses, and Jesus. While Washington was the nation's founder and father, ministers averred, Lincoln was its

restorer and redeemer. Struck down on Good Friday, Lincoln, like Jesus, was a martyr who shed his blood and offered a redeeming sacrifice.

From Washington to George W. Bush, "presidents have symbolized, and in some cases defined, the civil religion or public faith that has held this diverse society together." The nation's chief executives have served as the nation's central symbol and as its interpreter in chief who tell Americans what sort of people they should be and help shape the national self-identity. They have used civil religion to sanctify the political order, reinforce cherished ideals, appeal to principles shared by the country's many religious communities, and assure citizens that God uses the Unit-

*Eisenhower's
administration
set the stage
for the modern
White House staff.*

JOHN BURKE

ed States to accomplish his purposes (especially to defeat evil and spread democracy) and endorses its policies. Deeply desiring to hold the nation's disparate elements together, presidents have often employed the rhetoric and symbols of civil religion in their efforts to promote unity or provide comfort in times of national trial and tragedy. In the absence of a national church or sanctioned religious credo, and given Americans' substantial religious diversity, their use of this form of discourse is quite understandable. Presidents have frequently employed civil religious rhetoric to criticize the nation's shortcomings and failure to incarnate or implement transcendent standards. Unfortunately, however, they have also often used this vocabulary to justify U.S. policies, actions, and principles and to exaggerate its righteousness.

JOHN BURKE: As a student of presidential decision-making and White House organization, I find the Eisenhower presidency interesting from a developmental perspective. Although FDR's Brownlow

Commission is often cited as the impetus for the institutional presidency (and it was surely important), organization was haphazard through the remainder of FDR's tenure. This was to some extent also true under Truman, although certainly there were institutional developments such as the National Security Council (NSC) and its staff and the creation of the Council of Economic Advisers. Yet it is the Eisenhower administration that set the stage for what is now the modern White House staff—the creation of the chief-of-staff position, a congressional liaison unit, a cabinet liaison unit, and the change in counsel's position from one of general advice under Truman (a position notably held by Clark Clifford and then Charles Murphy) to a more tightly defined legal affairs staff. After *Sputnik*, an advisory panel of scientific experts was created, and it evolved into today's Office of Science and Technology Policy. The early work of Robert Cutler in 1953 was important in creating the modern NSC advisor's position, as was the creation of the Planning Board and the Operations Coordinating Board as inter-agency venues under the full National Security Council. Cutler's efforts to define the NSC advisor's role as one of serving as an honest broker is also notable. Although additional responsibilities would be added to the job over the years, especially in providing policy advice and serving as a counselor to the president, the honest-broker role remains an important component of the job (witness Condoleezza Rice's failure at times to embody it, and its impact on the Bush decision-making process). The value of this role—especially to effective decision-making—is captured in Alexander George's notion of a managerial custodian, and its lessons and adaptation for more contemporary NSC advisors are explored in my book *Honest Broker: The National Security Advisor and Presidential Decision Making*.

Eisenhower as a staff manager, and as a student and practitioner of effective organization and decision-making, is also notable. The general did a much more effective job than our first MBA president (George W. Bush), to say the least. He was a shrewd assessor of personal strengths and weaknesses, which then supported his practice as a selective delegator, as Fred Greenstein has pointed out in his study of Ike's *Hidden-Hand Presidency*. Eisenhower recognized the impact of

bureaucratic politics and insisted that his cabinet members see themselves as more than representatives of their respective departments. He was adept at creating a healthy “organizational culture.” Nor was he the captive of formal organizations and structures. There was no “Eisenhower Bubble;” rather, he had a wide range of extramural contact with those outside of government who provided an important stream of informal advice to him.

NANCY KASSOP: My research examines interbranch conflicts over the limits of presidential power. More than two hundred years of history have demonstrated that there is an almost rhythmic alternating of power dominance between the two political branches (and occasionally the Court also enters this mix, as in the early–New Deal period of judicial supremacy). Many periods might fit the description of one where significant change occurred in the institution, and so, it may be arbitrary to select one. However, I think the Watergate-Vietnam era of the mid-to-late 1960s to the mid-1970s, spanning the presidencies of Lyndon Johnson and Richard Nixon, would be on anyone’s list of eras in which a perceptible change occurred in the contours of presidential power. Schlesinger’s concept of “the imperial presidency,” of a chief executive who claimed absolute and exclusive power, and who asserted that his interpretations of constitutional authority overrode those of any coordinate branch, was an evocative and striking construct in 1974, and it remains so today, reappearing prominently in recent works by presidency scholars (e.g., Andrew Rudalevige) and in newspaper editorials. Although the political world of 2008 is light-years away from that of 1974, there is still a connection between the two eras, in that the politics and the presidency of today had their origins in the Watergate-Vietnam era.

Clearly, Richard Nixon was not the first or only president to push the constitutional envelope to aggrandize the power of this office. Washington, Jefferson, Lincoln, Teddy Roosevelt, Franklin Roosevelt and, especially, Truman (as Charlie noted) all expanded their powers. Interestingly, however, Schlesinger notes that FDR “never once alleged special powers in foreign affairs as Commander-in-Chief”—a prime

source of Truman’s claimed authority in his seizure of the steel mills and, certainly, the quintessential source of authority claimed by the Bush administration for anything a president wishes to do. And yet, it was the Watergate-Vietnam period that sowed the seeds of the excessive partisan, institutional, and cultural divides that we see today.

My thesis here is on two levels. First, there is an historical thread that runs from the Watergate-Vietnam era to the present, i.e., there are elements of our contemporary politics that began in that earlier era and that have developed over time to lead



President-Elect Richard Nixon confers with President Lyndon Johnson in the transition period, December 12, 1968.

us to where we are today. Second, the presidency of today continues to use some of the same tools and rationales that originated thirty to forty years ago. The thread that keeps the eras connected across those decades is woven through periods of the “imperial presidency,” followed by a congressional resurgence in the mid to late 1970s (during the Carter years) with all of the legislation that had as its prime objective to rein in and oversee the presidency (so as to prevent any future imperial ones), to a reassertion of presidential primacy during the Reagan years (by way of a political mandate from the electorate and expressed through a fine-

tuning of some of the presidential tools that began in the Nixon period). These tools included budget deferrals and rescissions (as milder forms of Nixon’s impoundments), signing statements, and advocacy of a line-item presidential veto.

Moreover, there was a repeated presidential rejection of, and resistance to, a variety of congressional efforts to limit or monitor the presidency (such as in the War Powers Resolution, the Budget and Impoundment Control Act, the Ethics in Government Act and its special prosecutor provisions, the Case Act overseeing executive agreements, the Federal Elections Commission Acts of 1971 and 1974, the Hughes-Ryan Amendment to the 1964 Foreign Assistance Act, the Intelligence Oversight Act of 1980, etc.). These statutes all required the president to “report” to Congress or for Congress to monitor the activities of the executive branch; both of these features rankled the Reagan White House, which believed that it did not have to comply with such strictures (under the theory of the unitary executive that we see in full flourish today). One additional area where the presidency staked its claim during the Reagan years was in the overt effort to remake the federal courts with conservative jurists, and it was here that we see the genesis of the hyper-partisan judicial appointments process.

The presidency under George H.W. Bush continued much the same approach to separation of powers as Reagan had. Then, with the advent of Clinton, it became clear that Democratic presidents could play the same game as Republicans, since Clinton used many of the same tools that Reagan used (in presumptive use of war powers, pushing the envelope on executive privilege, and the expansive use of the pardon power, signing statements, and executive orders such as in his public-lands policy). On the other hand, Clinton made an effort to defuse the judicial nominations process by skipping over some of the more extreme liberal potential nominees for the Supreme Court (e.g., Laurence Tribe and Mario Cuomo) who would have prompted predictable opposition from conservatives, and he chose instead the seemingly more moderate Stephen Breyer and Ruth Bader Ginsburg. It was on the lower federal courts, however, where Clinton’s nomina-

tions took a beating, and where the Republican Senate halted the scheduling of any further votes in the last year of Clinton's first term. This hardened atmosphere—and bad blood—on the judicial appointments process has continued to the current day.

Thus, the same features that underlie the presidency in its current state—excessive claims of exclusive and absolute power and resentment of oversight or intervention by either of the other two branches of government—had their origins in the Watergate-Vietnam era—and we are living today with the legacy of that era today.

CHARLIE SAVAGE: As I argue in my book *Takeover*, the Bush administration, driven by Vice-President Cheney's experiences as chief of staff in the Ford administration, systematically looked for opportunities to solve policy problems in a way that would expand presidential power for the long run, even when doing so brought short-term political difficulties.

Here are a few examples: claiming and then demonstrating that the commander in chief may bypass statutory and treaty constraints; establishing that a president can indefinitely imprison without trial a U.S. citizen arrested on U.S. soil; securing the power that a president can pull the U.S. out of a ratified defense treaty without congressional authorization (expanding a Carter-era precedent); dramatically expanding executive secrecy (including by winning a precedent in the energy task force dispute that gutted the Federal Advisory Committee Act, which had forced President Clinton to reveal details of Hillary Clinton's health care task force in the early 1990s); appointing "presidentialist" lawyers to fill Supreme Court vacancies; centralizing greater White House control over the executive branch bureaucracy; using signing statements to challenge more sections of laws restricting presidential power than all previous administrations combined; and using the 9/11 crisis (helped, at times, by one-party rule) to win from Congress many statutes—the Military Commissions Act, the Patriot Act, the FISA Amendments Act, etc.—that have added to the president's undisputed authorities.

MARY STUCKEY: As a communication-oriented scholar of the presidency, the influence of media on the institution is one

of my main interests. The most important research that focuses on this is the "rhetorical presidency" literature. Essentially, the argument is that there are "two constitutions"—the one that existed prior to the beginning of the twentieth century that restricted presidential persuasive influence, and the one since Teddy Roosevelt and Wilson that relies heavily on presidential persuasive influence and has led to a variety of destructive elements, such as the growing power differential between Congress and the presidency, and the increasing amount of presidential speech and its corresponding loss of value.

There are counterarguments to all of these claims. Scholars have argued that presidents always functioned persuasively;

*The rise of
cable television
and the Internet
has changed
presidential
leadership styles.*

JEFFREY COHEN

that contemporary presidents are not all that different from their predecessors; that presidential rhetoric is different from the "rhetorical presidency" and that it matters a great deal. Scholars who want to argue for a sea change in the significance of presidential speech tend to point to the early twentieth century and to FDR as the pivotal points in the history of presidential rhetoric. Those who want to argue for continuity tend to debate the importance of these eras as definitive markers.

I have a foot in both camps but am fascinated when new technologies of communication facilitate new understandings of political leadership. I am not a technological determinist. But I think Lincoln's eloquence is different from Webster's, and that difference reveals cultural as well as technological changes. Teddy Roosevelt and Wilson, who had printed speeches and occasional newsreels, spoke differently than FDR, who could use radio. Their speeches were meant to be read, FDR's were meant to be heard. Reagan's speeches were meant to be seen. President-Elect

Obama's speeches have been set to music. The technology of communication and the culture in which it is embedded have led to many changes in the ways that presidential leadership has come to be understood and embodied.

JEFFREY COHEN: My recent research has focused on the impact of the news media system and communications technologies on presidential leadership. During the middle part of the twentieth century, the invention of national electronic communications and the spread of an "objective" reporting style gave the president new opportunities for leadership. These communications technologies (e.g., television) allowed presidents to reach a large mass public. The tenor of the times, which was basically respectful of authoritative institutions, opened the public to presidential leadership efforts, too. This is not to say that presidents could get the public to automatically follow, but a system was in place that made presidential leadership possible.

In recent decades, the rise of cable television and the Internet, heightened political polarization, and declining respect for authority have undermined the type of leadership that presidents could pursue in the 1960s, 1970s, and early 1980s. But we still have high expectations of leadership from the president. Consequently, presidents have altered their leadership style, in effect becoming factional as opposed to national leaders. In this new environment, presidents increasingly pay attention to their party base and select interest groups already aligned or predisposed to support the president. The tug of party and interest groups has also moved presidents to take more extreme policy positions than they did a generation ago, when presidents had a greater chance to influence the median, moderate voter. Increasing policy extremism by presidents feeds into and reinforces the tendency toward polarization, creating a vicious cycle.

MARY STUCKEY: I would add the idea that coalition building is now done on an issue-by-issue basis. I don't mean this to contradict but to underline your point, Jeffrey. I think it's the case now that presidents can't depend on a consistent coalition based on geography or ideology; instead, they have to reinvent coalitions for every issue, every policy. This means a

different kind of leadership as well, because it drives them to factions and away from broad consensus.

JEFFREY COHEN: I agree, but with one caveat. Interest groups have sorted into either the Republican or Democratic camp, so that even if the president needs to build a different specific coalition for each policy, these coalitions are rooted in the two parties.

MARY STUCKEY: Maybe, but so many of the coalitions are single issue, and so many congressional campaigns seem to center on single issues. Isn't it more a case that the parties provide the menu of possible allies and candidates still have to put together a majority from that menu?

PART III: Presidential Personalities and Skills

EDITOR: How are the kinds of people who have become president in contemporary times (since World War II) different—in professional and political background, personality, skills, temperament—from earlier presidents? What accounts for these changes? What are the implications for successful governance? What might biographies of American presidents suggest here?

JEFFREY COHEN: On several levels, I do not think that presidents of the contemporary period differ all that much from those of earlier eras. A competitive political process selected them for the office. Presidents, first and foremost, across the entirety of U.S. history, with only a few exceptions, have been politicians, indeed the nation's most successful politicians. Political biographies often overlook the commonalities and similarities across presidents because they focus too much on the individual president being studied.

Some background studies (see Dean Simonon) find that presidents are usually more well educated than the nation during their lifetimes and tend to go to elite schools, although they may come from diverse economic and social backgrounds. Even the political psychology studies that identify different personality prototypes (see James David Barber) suggest that modern presidents do not differ as a group from earlier ones. All of Barber's

personality types can be located in both historical epochs.

Still, the recruitment system for the modern presidency has changed somewhat, making some kinds of skills more important in recent decades. Perhaps the most important development is the growing significance of public communication, which is so vital to gaining the nomination in a primary system and for reaching citizens through the mass media. But even here, we may be making too much of this. In a recent book, Marty Cohen, et al. suggest that party leaders, even in the modern primary age, are highly influential over the party nomination. While public communications skills may be something that party leaders look at in evaluating or endorsing a nominee, other factors count, too. After all, we have had numerous modern nominees and some presidents who lacked strong public communications skills (both Bushes, Ford, Carter, Dukakis, Kerry, Gore, McCain). Only Reagan, Clinton, and Obama seem to be strong communicators.

What are the implications for governance? Perhaps not as much as we think. George W. Bush came to office wanting to be a "uniter not a divider," but he became the most polarizing and divisive president in a generation (see Gary Jacobson's book). Why? Bush is a gregarious fellow who—even his enemies say—is sociable. It's not Bush's personality that drove his polarizing behavior; instead, it was a seriously polarized political system. Bush governed with the hand dealt him, as do most presidents. We should not lose sight of the conditioning factor of the larger political environment, which may be even more important to governing than who we select as president.

MARY STUCKEY: I agree with Jeffrey; I don't think that the type of person who has become president has changed much. People with small egos have never been eager to be president. But I also think changes are driven by electoral style—that is, one needs a different set of communicative skills to appeal primarily to small groups (e.g., Nixon), large crowds (e.g., LBJ) and television (e.g., Reagan). Yet all these men governed during the post-World War II period, and all of them found ways to manage the communicative environment to suit their skills.

GARY SMITH: Jeffrey's analysis is very insightful and provides a succinct summary of recent research on the subject. One thing that has changed significantly is that the presidents since World War II have to be at least moderately effective communicators on television and to be able to deal with the press reasonably well. Although presidents who served before 1945 were subjected to considerable media scrutiny and criticism, it does not compare with the amount, variety, and intensity of media attention, analysis, and attack that more recent presidents have faced. It is hard to imagine having another president who rarely spoke in public forums like Washington or one who was as terse with the press as Calvin Coolidge.

The use of speechwriters has significantly changed the presidency as well. Although Washington used speechwriters even as commander in chief and Alexander Hamilton helped write his farewell address, the presidents before FDR generally wrote their own speeches.

While more recent chief executives have always helped shape the content of their speeches and frequently contributed to their wording, they have relied on wordsmiths to shape their message. More recent presidents have not had the eloquence of John Adams, Jefferson, Madison, John Quincy Adams, Lincoln, or Wilson, nor are their successors likely to, either.

While it is true that many presidents have been highly successful politicians, a significant minority have not been. Several were known for their military exploits and had little or no political experience—Andrew Jackson, William Henry Harrison, Zachary Taylor, U. S. Grant, and Dwight Eisenhower, among others. It is unlikely that any future presidents will rise from the ranks of military leadership to the White House without some political experience. Moreover, Abraham Lincoln did not qualify as a highly successful politician prior to his election as president. On the other hand, Barack Obama has shown that it is still possible to gain a major party nomination and the presidency without having had much national political experience.

It is also hard to imagine that we will ever have another president who has not attended college, as was true for Truman and eight men who served before World War II. Increasingly, our presidents will

probably have graduate degrees of some kind, primarily in business or law.

We have never had a president who professed to be an agnostic or atheist, belonged to a non-Christian religion, or was openly hostile to Christianity. Recent polls indicate that 40 percent of Americans say they would not vote for an atheist for president and that more than 70 percent of Americans want their presidents to have strong religious beliefs. Despite the increased secularization of American society and the greater outspokenness of critics of Christianity such as Sam Harris and the British journalist Christopher Hitchens, only 7 percent of Americans consider themselves atheists or agnostics or have no religious preference. Although Joseph Lieberman, an Orthodox Jew, received the Democratic vice presidential nomination in 2000, it is highly improbable that a Muslim, Hindu, Buddhist, atheist, agnostic, or vocal critic of Christianity will win the presidency any time soon.

PART IV: Campaigning and Governing

EDITOR: As we reflect upon the 2008 presidential campaign, I offer the following question: Is conducting a presidential campaign a good test for prospective presidents—as some observers have argued in favor of our lengthy, expensive, and complex campaign season? Or, is the art of governing fundamentally different from campaigning in the skills, experiences, and temperament required?

JEFFREY COHEN: A theme in recent political science literature is that governing has come increasingly to resemble campaigning, in which presidents either attempt to rally public support behind their policy efforts and/or pander, following public preferences on policies and issues, instead of developing sound approaches to dealing with policy problems. To me, some of the complaint about the campaigning aspects of governing smacks of elitism; populist democratic theory would hold such governing behavior in relatively high repute.

Assuming that campaign styles affect governing styles, what do presidential candidates learn from the campaign? First, candidates learn about the public. I am still somewhat skeptical about the new lit-

erature in political science that finds strong “campaign effects” on voters’ decisions. But campaigning sensitizes elected politicians to input from the electorate, which they take with them to the office. I also think that, often, what politicians learn about the public’s priorities and concerns has a strong effect on later governmental agendas. For example, in 1992 candidate Clinton learned that health care was a major source of concern for many people, which led him to push health-care reform to high priority status. No matter whether we agree with his policy solution, the nation entered into a serious debate over health care in 1993, which was all to the good. In 2009, I think that President-Elect

*Candidates learn
about the public
by testing themes
to see which
ones resonate.*

MARY STUCKEY

Obama will rank the economy as his highest priority.

I am also struck by the little attention and lack of leadership that candidates McCain and Obama both offered on perhaps the most serious economic problem since the Depression. Maybe this is good—it may be a mistake to take very strong policy positions that would later tie one’s hands or raise charges of flip-flopping. Recall, even in the 1932 campaign, FDR offered almost nothing concrete about what he would do about the Depression.

Another lesson that we might draw from the recent election campaign: As much as both candidates tried to steer the electorate to particular issues or ways of thinking about politics, neither was very successful. I would hope that future candidates learn a little humility from this election; when important issues disturb and fixate the public, nothing a candidate does can deflect attention in other directions.

MARY STUCKEY: I agree with Jeffrey that candidates learn about public preferences. But they do so less by “listening” and more by testing themes and policies to see which ones resonate with voters. For in-

stance, one of McCain’s problems was that he was tone-deaf to the reaction his negative charges against Obama generated.

The primaries function to allow candidates to hone their messages in interactions with sympathetic audiences. They are interesting because there is a winnowing process within each campaign and between campaigns, as each candidate stakes out a specific issue or set of issues and ways of conveying them. Candidates rise and fall, depending on how audiences find the salience of their messages and how well each message is suited to each messenger. The general election is, then, a process of moving that message from the political base outward. Elections are also a learning experience, in that they provide a chance to watch the rhetorical processes of coalition-building, a skill that is more important than in the past.

GARY SMITH: I agree with both Jeffrey and Mary that candidates do learn important lessons about public preference, interests, and fears from campaigning. But I am not convinced that these lessons compensate for the negative aspects of the campaign process. Moreover, these lessons could perhaps be learned through other means.

It is hard to imagine what experiences could adequately prepare someone to be president of the United States, arguably the most challenging, demanding, important job in the world, given its responsibilities and powers and the place, prominence, and power of the United States in the world today. No previous training, education, or experience can possibly fully prepare someone for this multifaceted role, the burdens of the office, or the scrutiny and criticism to which he or she will be subjected by the press and public. Only those with certain temperaments, thick skin, a great tolerance for ambiguity, an appreciation of complexity, and an ability to sleep no matter what is happening around them can possibly do the job.

In many ways conducting a presidential campaign is not a good test for prospective presidents. The process of doing so seems to be becoming even longer and less civil, and it is certainly becoming more expensive. Together, Obama and McCain spent over one billion dollars on their campaigns. Moreover, the numerous negative ads and attacks on the character of the candidates may make it more diffi-

cult to govern effectively, and they certainly reduce the ability of politicians—and Americans—to work together.

Most significant is the fact that the current structure of the presidential campaign does not enable candidates to discuss the best solutions to our national ills. The need to win a majority of the electoral votes prompts candidates to make unrealistic promises and pledge to do many things they will be unable to accomplish, given the state of the economy, global trends, and political opposition. Some of the actions that might best serve the common good and help solve our economic and energy woes will never be proposed because they are unpopular and would demand sacrifices of the American people in terms of higher taxes, the reduction of services, or changes in our lifestyles or patterns of consumption. The unwillingness of either candidate during the debates to specify any significant reductions in their spending proposals necessitated by the nation's economic problems was both glaring and telling.

Some individuals who might do a good job as president, perhaps a business leader like Ross Perot or a CEO of General Motors, Exxon Mobil, or General Electric, or the president of an Ivy League or major public university, or a military leader, or someone with extensive appointive public service probably cannot be elected, because either they lack political experience, a political base, and enough public recognition, or they suffer from the negative reputation of their enterprise. Times have changed considerably from the early national period and antebellum years, when gentlemen farmers could be elected, or even from the pre-World War II era when a businessman like Herbert Hoover, who had never been elected to public office (though he did serve as Secretary of Commerce), could win the presidency.

CHARLIE SAVAGE: With respect to my own policy specialty—executive power—I think that campaigns have generally been very poor forums for learning how a president is likely to behave. Moreover, the campaign moment is an underutilized resource that holds the capacity of providing a much better test in the future. I am focusing, here, not on how the candidate directs his own campaign, but rather what he says during its course.

Campaigns have been poor because the candidates themselves (of both parties) have volunteered too little about what limits, if any, they would accept on their powers if voters entrusted them with the White House; indeed, they have seldom been asked about it. Back in 2000, for example, Bush and Cheney said nothing to voters about their attitude toward executive power, even though expanding it would be a central policy goal that was talked about at the very first meeting of their new White House legal team the day after the inauguration. In the recent campaign, it is interesting to note that neither primary nor general election debate moderators found the time to ask a single question about, say, whether the candidates

*Talking about the
limits of executive
power should become
a routine part
of presidential
campaigns.*

CHARLIE SAVAGE

believe that Article II gives the president the authority to lawfully bypass a statute at his own discretion in order to protect national security. It may be that these issues are too abstract to become a major campaign issue; as someone once said to me, no one thinks about executive power while mowing his lawn.

But the campaign moment—especially the pre-Iowa caucuses period, when numerous candidates are jostling for the nominations and none can afford to be too aloof—does provide an opportunity to get would-be presidents on the record, if someone will ask the question. Last fall, for example, I asked the six leading candidates of each party a set of questions and got detailed responses from nine of them—including Senator McCain and then-senators Obama and Biden (*Boston Globe*, December 22, 2007). I was able to use the fact that their rivals were answering these questions to get others to join in, creating a momentum to go on the record in a way that would-be presidents probably would

rather avoid doing; it is improbable that a candidate who has already secured the nomination, or a sitting president, would tie themselves down in this way. While there is no guarantee (to say the least) that presidents will remain consistent with views they expressed as candidates, having such views on the record is still valuable as a way to hold them more accountable if they do later deviate. For this reason, I think that talking in a detailed way about the limits of executive power should become a routine part of all future presidential campaigns.

JOHN BURKE: I would like to emphasize the disjuncture between successful campaign skills and successful governing skills. Campaigns generate unrealistic promises across a broad range of policy issues, which will prove unrealistic and politically unworkable once in office; as well, candidates are forced to pander to the interests and demands of a variety of constituency groups. After Election Day, however, the calculus changes. Prioritization and honing a policy agenda to perhaps four or five key legislative issues will be needed during the 2008 transition and thereafter. Largely replicating a campaign agenda—a laundry list—as a set of initial legislative priorities proved disastrous for President Jimmy Carter in 1977.

Moreover, the organizational skills for presidential decision-making are quite different from those that drive campaigning, as the differing skill sets of aides in those processes attest. In addition, much policy detail and explanation is left untouched in the campaign due to its complexity and voter disinterest in details, as Charlie notes with respect to executive power. In the recent election, neither candidate offered an adequate explanation of the impact of income taxation on the public or its current redistributionist effects—much too complex and potentially too toxic to explain in a two-minute debate answer. (Does the public know, for example, that the top 1 percent of taxpayers already pay about 40 percent of all federal income tax revenues? Or that the bottom 50 percent currently pays 3 percent—down from 4 percent under Bush? Or that more than 22 million citizens, who have no federal income tax liability, actually receive rebates through the Earned Income Tax Credit program?) Nor did the presidential de-

bates really present the public with a sound and thorough analysis of the looming crisis in Medicare expenditures as an ever-increasing percentage of the federal budget. Social security reform is a piece of cake, by comparison.

What does the campaign process positively contribute to governance? Here I think communication ability stands out. The current process tests for “media savvy” and the ability to deal with a 24-hour news cycle, one which presidents, for better or worse, now face. The campaign tests for the ability to hone and target a message, as Mary notes. This is a skill that rhetorical presidents (see the work of Jeffrey Tulis) must successfully master. So, too, with Jeff Cohen’s comments about becoming sensitive to input from the electorate, now the public, once a president-elect takes office. Organizational skill and decision-making processes are a bit more of a stretch. Yet, campaigns have become increasingly larger in terms of staff, and campaigns that experience organizational difficulty and signs of disarray are indicators of White Houses and administrations that will likely be problematic. Finally, there is the fire-in-the-belly issue: the process is so tough, so grinding, and so politically and personally inquisitive and intrusive today—perhaps ironically—it may be a good test of presidential endurance and, ultimately, of success or failure once in office.

NANCY KASSOP: Let me highlight, reiterate, and expand upon a few points. Jeffrey’s observation that campaigning gives the candidates an opportunity to “learn how to learn about the public’s preferences” is exactly right. Mary builds upon that by explaining the different purposes served by the primaries versus the general election campaigns, as candidates experiment with their messages and rhetorical style, with the ultimate objective of finding what works in order to build coalitions (which, after all, is what they will continue to need to do, once in office). Gary supplies a useful list of personality characteristics that an effective president will need to possess—“temperament, thick skin, tolerance for ambiguity, appreciation for complexity.” John wonders whether the campaign process can help a candidate to gain or further develop the organizational and management skills that a president will need. And Charlie raises the question

that has the greatest resonance for me—why has there been no effort during the campaign to elicit from the candidates their approach to the issue of the limits of executive power?

I would respond to John’s reference to organizational skills with what is probably self-evident to many by now. If there is anything that even the most partisan observers from both parties can agree upon from this recent election season, it is that President-Elect Obama’s superior campaign organization has been dazzlingly effective. We can question whether those same skills are easily transferable to governance, as opposed to campaigning, but no one would doubt that he ran an exceptionally effective operation over the last two years, including the judgment to hire people to manage the campaign who performed their jobs brilliantly to bring him to the White House. So, I think we do have some basis here for concluding that the campaign has allowed the public to witness Obama’s organizational and management skills, a judgment that we can make because a long campaign season allowed us to watch this develop.

As for Charlie’s concern about the lack of interest in even questioning candidates about the limits of executive power, this should have been a matter of concern to more people than just political scientists. In addition to Charlie’s inquiries of the candidates, there was one other excellent treatment of this subject recently by David Nather, where he compiled extensive profiles of all of the major candidates from both parties who were running in the primaries, based on their public statements and actions as government officials on such issues as the use of the war power, whether they would use signing statements, any past experience with matters of executive privilege, the degree to which they had permitted public access to their own private records, and their positions on secrecy in government.

Obviously, two articles are not sufficient to inform the general public about the position of candidates on what is, essentially, the core of their leadership approach and the level of their understanding of the “job manual” that defines their responsibilities (the Constitution). A presidential campaign could be that “teachable moment” when, as political scientist David Gray Adler has argued, we should try to instill a “constitutional conscious-

ness” in the public (and also in the candidates!). I wholeheartedly agree with Charlie that it is disappointing that there was so little effort to ask the candidates to tell us their views on executive power. Yes, Obama taught constitutional law (but then so did Clinton), so we can presume he has a thorough understanding of the document; but he taught only “Civil Liberties,” not the other part of the course on separation of powers—arguably, the more important of the two with respect to issues of executive power.

Do I think that campaigns, as presently structured, offer the public a chance to judge the qualities necessary for a good president? My answer used to be “no,” but I think I’ve revised it to “maybe, yes.” To go back to the recent campaign and Gary’s list, did we see evidence of the temperament of both candidates, whether they have a “thick skin,” “tolerance for ambiguity,” and “appreciation for complexity”? Yes, I think so, although I agree with John that we saw neither evidence of a comprehensive understanding of economic intricacies nor a recognition that a campaign agenda will be supplanted by the economic realities in January 2009.

EDITOR: What reforms, if any, would you recommend to the presidential campaign process to make it a more accurate test?

GARY SMITH: I have no concrete proposals for ways to reform the process, except to advocate limits on campaign spending.

JOHN BURKE: For the Democrats, there were far too many party officials—“hangers-on”—as superdelegates. Making sure that elected officials are delegates is one thing, but the vast array of party officials eligible [to be superdelegates] is far too much. Caucuses are a peculiar and time-intensive process; we should end them. Also, we should adopt rules to spread out the primary process by eliminating the “front loading/clustering” of primaries. Finally, let’s return to the pre-1972 practice of not campaigning in the year before the election. At best, it deprives the media of its insipid and ill-informed “invisible primary.” The less power to the media, the better!

PART V: President Obama and the Future

EDITOR: On January 20, 2009, Barack Obama will be inaugurated as the 44th president of the United States. What should be his priorities for the first 100 days? For the first year? For the longer term? In order to be successful, what style of leadership should he adopt? How, if at all, might President Obama change the institutional presidency?

GARY SMITH: In addition to trying to create a smoothly operating administrative team and responding to whatever crises emerge in his first 100 days, President-Elect Obama will need to continue to explore and develop short- and long-term strategies to help remedy our economic woes. He will also need to establish relationships with world leaders and make sure he is well prepared to continue the war against terrorists. During his first year he will likely focus on health-care reform, energy policy, immigration issues, and tax reform—all issues that will probably be important during his entire term. He may also make educational reform a major priority. Obama is likely to concentrate on substantially reducing the size of the U.S. military force in Iraq while increasing the number of troops in Afghanistan.

As George W. Bush discovered on September 11, 2001, and many other presidents have also experienced, events often profoundly change what presidents planned to do while occupying the Oval Office. Given the global interconnectedness of economic, energy, environmental, and many other issues, the terrorist threat, and the role the United States has played since 1947 as the world's policeman, President-Elect Obama will undoubtedly face many largely unanticipated and profoundly important events and challenges. As a candidate Obama (as did McCain) promised to reach across the aisle and work with members of the opposition party (Bush promised to do the same but had limited success). The strident nature of the 2008 campaign, and the sharp disagreements over policy pre-

scriptions between Democrats and Republicans, may make this difficult to do. The strong Democratic majority in both houses of Congress will make it easier for Obama to pass his legislative agenda. Moreover, Obama's superb rhetorical skills will probably help him gain popular support for various policies and measures he advances. I doubt that Obama will change the institutional presidency, however, unless he feels compelled to do so by major international or national crises.

MARY STUCKEY: I would add that presidents get both credit and blame for whatever happens during their administrations, fairly or unfairly. President-Elect Obama will reap positive results from halting the



President-Elect Barack Obama meets with President George W. Bush in the transition period, November 10, 2008.

economic downturn and winding down the wars in Iraq and Afghanistan. Much of what a president must deal with, as others have pointed out, is beyond his control. He can set an agenda, but events will dominate it.

JOHN BURKE: The pressures facing President-Elect Obama as he takes office will be enormously complex and problematic. I can think of no new administration since FDR's in 1933 that has faced such an extremely difficult context—severe crisis in the financial sector, a deepening

recession, engagement in two wars, mounting federal deficits, the ever-present threat of terrorism, and the need to ensure homeland security.

Consequently, the transition period will be enormously important in preparing for a successful presidency. Each of these contextual areas will require an early personnel and organizational response before Obama takes office; he must be prepared to name key staff and departmental appointees soon after election day is over. The transition period is also the time to move from the world of myriad campaign promises to the more narrow and focused agenda of the first months in office.

Contextual constraints will also need to be considered. The projected deficit—factoring in the costs of both the war and the financial bailout, plus declining tax receipts as the recession deepens—will likely limit possibilities for expensive policy initiatives during the administration's first year and, given the short honeymoon period of that first year, may make them politically more difficult as time passes. Thus, health-care reform will prove difficult, as would tax cuts that reduce federal receipts. Initiatives that threaten the economy in the short run will also likely be off the table—e.g., global warming efforts that come with an economic price tag such as carbon reduction or cap and trade. Financial sector reforms will likely occur (and be both congressional and presidential in origin), but they will be the focus of much effort and may possibly eliminate the normal attention given to presidential initiatives early in the first year.

What else is possibly on the table? We might see initiatives dealing with energy production, immigration reform, and possible changes to No Child Left Behind. Needless to say, reducing the American footprint in Iraq will also be attractive, both as a political and budgetary matter. For President-Elect Obama, the difficulty will be the elusiveness of change and the price tag on his ambitious vision of hope. Public disappointment and disenchantment might occur as a consequence.

With respect to changes in the institutional presidency, I agree with Gary that not much is likely. Some units of the Executive Office of the President are estab-

lished by statute, although others—such as the National Economic Council (NEC), the Domestic Policy Council (DPC), the Homeland Security Council (HSC), and the Office of Homeland Security (OHS)—were created by executive order and potentially subject to change. The units within the White House Office, especially those we associate with the White House staff and the West Wing, are especially subject to presidential discretion and invention. Yet even here, we see organizational persistence through time, whether under Democratic or Republican administrations, as I have noted in my book *The Institutional Presidency*. That said, actual use of these entities in decision-making and policy-making varies enormously. George W. Bush never made effective use of the DPC as an interagency venue, nor were the White House aides assigned as staff to it particularly effective. After Robert Rubin's initial tenure as director of the NEC under Clinton, it never lived up to its initial promise. Domestic policy under Clinton was largely in the hands of advisers Bruce Reed and William Galston, rather than through the more formal structure of the DPC.

We may see some alteration of the chain of command and internal authority. Bush did this early on, when he assigned some staff units to Karl Rove and others to Karen Hughes. Will there be a senior adviser to the president or a counselor to the president under Obama—someone who is given greater organizational authority, as Rove and Hughes were? What will that configuration likely be? I doubt we shall see a Rove-like figure, but perhaps the difficult challenges facing the administration on a number of fronts will lead to a new internal configuration of authority within the White House staff—e.g., a White House economics czar, an energy czar, or a global warming czar.

Apart from organization, how Obama defines the roles of top aides will be important. Here, management of the institutional presidency becomes crucial. Condoleezza Rice, for example, pledged to be an “honest broker” in the early days of her tenure as NSC advisor, yet her efforts ran up against bureaucratically skilled heavyweights such as Cheney and Rumsfeld, as well as her other duties as private counselor to the president. “Honest brokerage” is a key ingredient to effective decision-making, but it must be reconciled with oth-

er duties that NSC advisors have assumed in the post-Eisenhower years. This is also the case with the role of chief of staff. To what extent will Obama's new chief of staff, Rahm Emanuel, be a source of substantive policy advice as well as a manager and taskmaster of the White House? The Don Regan/John Sununu “strong” model of chief of staff (under Presidents Reagan and George H. W. Bush) is problematic, but so too is the Mack McLarty “weak” model (under Clinton).

All of the above suggests that attention to how policy decisions are made and the processes and structures through which these decisions coalesce are needed to ensure presidential effectiveness and success. That attention, moreover, is one that must

*Will President Obama
keep ... or sweep
away unwise
aggrandizements to
executive power?*

NANCY KASSOP

initially occur during the transition, and it is especially critical given Obama's lack of executive experience.

JEFFREY COHEN: The most important thing President-Elect Obama can do is inspire confidence about how his administration will handle the economy. We are not in a typical economic downturn but one of global proportions that is reshaping and restructuring the economy. This provides us with an opportunity to steer the economy in desired directions, as well as allowing us to adjust to new economic paradigms and realities.

President-Elect Obama will have a very short window of opportunity to inspire confidence. To that end, he must outline a program to deal with the immediate concerns of recession and build a new economic future. He must also cease the silly and divisive orientation to the economy that both candidates followed in the campaign, whether it is the trickle-down of the Republicans or the bottom-up of the Democrats. We must begin to think of the economy more holistically and collectively.

NANCY KASSOP: There appears to be clear agreement among my fellow dialogue participants that President-Elect Obama will need to address the economic crisis sooner rather than later, not waiting until January 20. Recall FDR's decision to keep his distance from Hoover during the 1932 transition, deciding instead to wait to tackle the economy until after he entered office. From November 1932 to March 1933 (an even longer transition time than we now have), the economy worsened, and FDR walked into a more serious crisis than the one that existed in November. President-Elect Obama will have the equally fateful choice—either to try to take an active role in economic policy-making during the transition, recognizing that whatever actions Congress or the executive branch take during that period will tie his hands next year (so he may as well participate), or to wait until his inauguration, as FDR did, and lose precious time and perhaps find an even more grim situation than just a few months earlier. This second option seems untenable today. The only real question is what role the Bush administration will permit President-Elect Obama to take in the transition period. Obama may have to contend with any final efforts by the Bush administration to put policies in place that would complicate policy choices in his own administration.

More generally, President-Elect Obama will have to decide how to navigate the transition period, a time of some 75 days characterized by a heightened sensitivity and a lack of reference as to what is appropriate—and necessary—conduct on the part of both the lame-duck occupant of the White House and the incoming chief executive. And Obama will confront this dilemma on the heels of what has been an exceptionally bruising, caustic, and intensely polarizing campaign season. It may be equally important to watch what McCain says and does because the depth of the partisan division and the width of the ideological gulf between the two opposing campaigns are features that will not easily subside after the election. Obama's decisive win may help solidify the legitimacy of his victory. But it is still worrisome to consider how difficult it will be to defuse the partisan tensions that divide the nation.

Any new president comes into office with opportunities and constraints. There is the opportunity to do what George

H.W. Bush said he would do in his 1989 inaugural address—to extend the “offered hand” to the other party, to “rise above the merely partisan,” and to “make the old bipartisanship new again.” And there are the constraints of seemingly intractable problems, from addressing the economic recession to improving public education to providing affordable health care for all, to fostering careful stewardship of the environment and, ultimately, to reestablishing our reputation in the world and comity with other nations. Wherever we look, the obstacles are daunting, and the need to reach beyond the comfortable is enormous. Perhaps more than most, the agenda of the new Obama administration will be driven by remedying the problems left

to it by its predecessor, not the least of which is determining the end of two ongoing wars, reenergizing the Middle East peace process, and deciding the fate of Guantanamo Bay camp and its detainees. The future direction of the Supreme Court and the lower federal courts is also a serious concern.

Finally, the processes of the presidency—the ways in which the executive branch does business with other government units—will need to be addressed. The use of signing statements to an unprecedented degree and based on the questionable theory of the unitary executive, excessive government secrecy, marginalizing the constitutional roles of Congress and the courts, and undermining the

interagency process by centralizing decision-making in the hands of four or five executive branch lawyers were all recurring features of the Bush presidency, ones that have altered the governmental process in ways that stray from the Constitution’s mandates. Whether these features were idiosyncratic to the specific people in power since 2001 or have become so institutionalized as to become standard operating procedure remains to be seen. Political scientists in particular, but also our citizenry as a whole, will be watching President Obama closely, to see whether he keeps these new executive processes in place or whether he cleans house and sweeps away these unwise aggrandizements to executive power. ■

RESOURCES

Adler, David Gray. *Restoring a Constitutional Presidency* (forthcoming).

Barber, James David. *Presidential Character: Predicting Performance in the White House*, 4th ed. Upper Saddle River, N.J.: Prentice-Hall, 1992.

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

— *Honest Broker: The National Security Advisor and Presidential Decision Making*. College Station, Tex.: Texas A&M University Press, 2009.

Cohen, Jeffrey. *The Presidency in the Era of 24-Hour News*. Princeton, N.J.: Princeton University Press, 2008.

Cohen, Marty, David Karol, Hans Noel, and John Zaller. *The Party Decides: Presidential Nominations Before and After Reform*. Chicago: The University of Chicago Press, 2008.

Greenstein, Fred. *The Hidden-Hand Presidency: Eisenhower as Leader*. New York: HarperCollins, 1982.

Harris, Sam. *The End of Faith: Religion, Terror, and the Future of Reason*. New York: W. W. Norton, 2004.

Hitchens, Christopher. *God Is Not Great: How Religion Poisons Everything*. New York: Twelve/Hachette, 2007.

Jacobson, Gary C. *A Divider, Not a Uniter: George W. Bush and the American People*. New York: Longman, 2007.

Kassop, Nancy. “The War Power and Its Limits,” *Presidential Studies Quarterly* (September, 2003).

Nather, David. “New Handshake, Same Grip,” *Congressional Quarterly*, December 17, 2007 <http://public.cq.com/docs/cqw/weeklyreport110-000002643955.html>

Rudalevige, Andrew. *The New Imperial Presidency: Renewing Presidential Power after Watergate*. Ann Arbor, Mich.: University of Michigan Press, 2006.

Savage, Charlie. *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy*. New York: Little Brown, 2007.

Savage, Charlie. “Candidates on Executive Power: A Full Spectrum,” *Boston Globe*, December 22, 2007 www.boston.com/news/nation/articles/2007/12/22/candidates_on_executive_power_a_full_spectrum/

Schlesinger, Arthur M., Jr. *The Imperial Presidency*. New York: Houghton Mifflin, 1973.

Simonton, Dean Keith. *Greatness: Who Makes History and Why*. New York: The Guilford Press, 1994.

Smith, Gary Scott. *Faith and the Presidency: From George Washington to George W. Bush*. New York: Oxford University Press, 2006.

Stuckey, Mary. *Jimmy Carter, Human Rights, and the National Agenda*. College Station, Tex.: Texas A&M University Press, 2008.

— *Defining Americans: The Presidency and National Identity*. Lawrence, Kans.: University Press of Kansas, 2004.

Tulis, Jeffrey K. *The Rhetorical Presidency*. Princeton, N.J.: Princeton University Press, 1987.

CONTRIBUTORS

Editor

JOHN PAUL RYAN

(johnpryan@ameritech.net) is an education and social studies consultant. Previously, he taught political science at Vassar College and was director of college and university programs for the American Bar Association Division for Public Education. He is the author of *Cultural Diversity and the American Experience* (Sage Publications 1975) and co-author of *American Trial Judges* (Free Press, 1980); he has written widely on courts and judges, as well as on teaching about law in the liberal arts.

Contributors

JOHN BURKE

(John.P.Burke@uvm.edu) is professor of political science at the University of Vermont, where he specializes in American politics and the presidency. He is the author of numerous books on the American presidency, including *How Presidents Test Reality* (Russell Sage Foundation, 1989), which won the 1990 Richard Neustadt award of the American Political Science Association, *Becoming President: The Bush Transition 2000–2003* (Lynne Rienner, 2004), and the forthcoming book *Honest Broker: The National Security Advisor and Presidential Decision Making* (Texas A&M University Press).

JEFFREY COHEN

(cohen@fordham.edu) is professor of political science at Fordham University, where his teaching and research interests include the presidency and public policy, the mass media, and economic policy. He

is the author of several books on the presidency, including *Presidential Responsiveness and Public Policy* (University of Michigan Press, 1997), which won the 1998 Richard Neustadt Award of the Presidency Research Group of the American Political Science Association, and *The Presidency in the Era of 24-Hour News* (Princeton University Press, 2008). During the 2008–09 academic year, he was a visiting senior research scholar at the Center for the Study of Democratic Politics of the Woodrow Wilson School, Princeton University.

NANCY KASSOP

(kassopn@newpaltz.edu) is professor and chair of the Department of Political Science and International Relations at the State University of New York at New Paltz. She is the author of numerous articles and essays on presidential power and constitutional law, and has written on such issues as war powers, impeachment, and presidential succession. She is a contributor to the White House Transition Project (www.whitehousetransitionproject.org), where she co-authored “The White House Counsel’s Office” (with MaryAnne Borrelli and Karen Hult). She is a past president of the Presidency Research Group of the American Political Science Association.

CHARLIE SAVAGE

(savage@nytimes.com) is a Washington correspondent for the *New York Times*. He previously covered national legal affairs for the *Boston Globe*. He is the author of *Takeover: The Return of the Imperial Presiden-*

cy and the Subversion of American Democracy (Little Brown, 2007), which received the New York Public Library’s Helen Bernstein Book Award for Excellence in Journalism. His articles on the expansion of presidential power by the Bush-Cheney administration won the Pulitzer Prize for National Reporting, as well as the American Bar Association’s Silver Gavel Award.

GARY SMITH

(gssmith@gcc.edu) is chair and professor of history at Grove City College, where he was the college’s professor of the year in 2000 and the Pennsylvania Professor of the Year in 2001. He specializes in American religious history, secularization, and religion and politics. He is the author of numerous articles, chapters, and essays, as well as *Faith and the Presidency: From George Washington to George W. Bush* (Oxford University Press, 2006).

MARY STUCKEY

(joumes@langate.gsu.edu) is professor of communication and political science at George State University. She is particularly interested in how political power is constructed and communicated. Her books focus on presidential communication and rhetoric, including national identity, strategic failures, the prepresidential and presidential rhetoric of Ronald Reagan, the *Challenger* address, and the theory and practice of political communication research. Her most recent book is *Jimmy Carter, Human Rights, and the National Agenda* (Texas A&M University Press, 2008).



PREVIEW of United States Supreme Court Cases

New Online Features

PREVIEW provides expert, plain-language analysis of all cases given plenary review by the Supreme Court. *PREVIEW* Issues 1-7 precede the Court's argument sessions from October to April. *PREVIEW* Issue 8 reviews the term using a combination of charts, statistics, case summaries, and essays.

PREVIEW is a must-have addition to any school or law library—keeping you current on issues before the Supreme Court.

New for 2009

New enhancements to the *PREVIEW* website, www.supremecourtpreview.org, include:

- All merit and amicus briefs submitted to the Court (including weekly email updates);
- Highlighted articles from the current *PREVIEW* issue;
- Follow-up interviews with *PREVIEW* authors after oral arguments;
- Archives of previous issues;
- Summaries of Supreme Court decisions.

Order *PREVIEW of United States Supreme Court Cases* online or call 800.285.2221. (8 issues per Supreme Court term—\$155 organization rate.)



Visit www.supremecourtpreview.org today for these unique online offerings.



321 N. Clark Street, 20.2,
Chicago, IL 60654-7598
312.988.5735

www.abanet.org/publiced



NONPROFIT ORG.
U.S. POSTAGE
PAID
AMERICAN BAR
ASSOCIATION