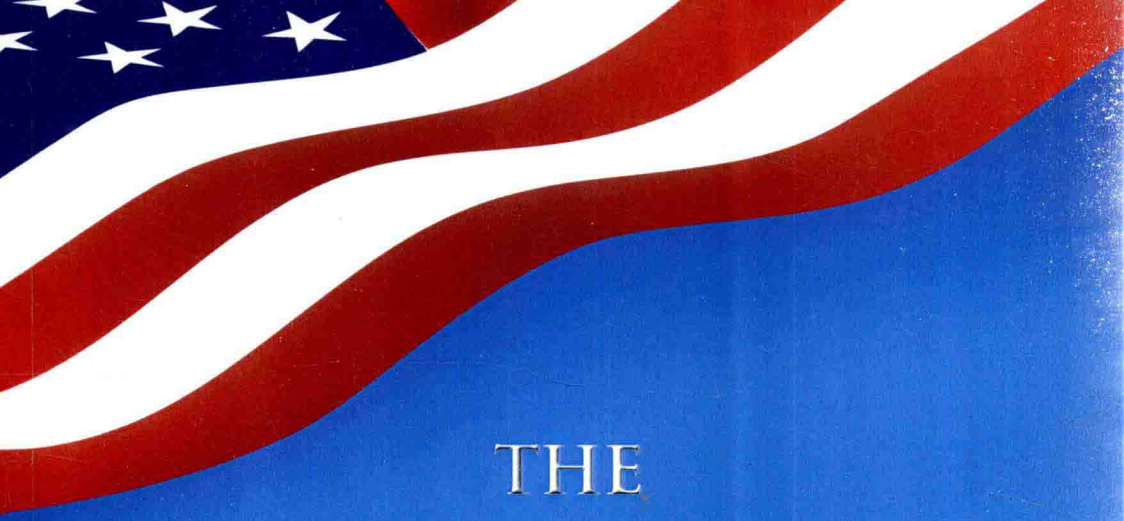

THE PRESIDENCY AND POLITICAL SCIENCE

PARADIGMS OF PRESIDENTIAL POWER FROM THE FOUNDING TO THE PRESENT

SECOND EDITION

RAYMOND TATALOVICH
AND STEVEN E. SCHIER
FOREWORD BY THEODORE J. LOWI

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STEPHEN A. SCHIER
CARLETON COLLEGE

WITH THOMAS S. ENGEMAN
FORMERLY OF LOYOLA UNIVERSITY CHICAGO

FOREWORD BY THEODORE J. LOWI
CORNELL UNIVERSITY

M.E.Sharpe
Armonk, New York
London, England

Library of Congress Cataloging-in-Publication Data

Tatalovich, Raymond.
The presidency and political science : paradigms of presidential power from the founding to the present / by Raymond Tatalovich, Loyola University Chicago and Steven E. Schier, Carleton College; with Thomas S. Engeman Formerly of Loyola University Chicago; foreword by Theodore J. Lowi, Cornell University. — Second edition.
pages cm
Includes index.
ISBN 978-0-7656-4227-1 (hardcover: alk. paper)—ISBN 978-0-7656-4228-8 (pbk.: alk. paper)
1. Presidents—United States—History. 2. Political science—United States—History.
I. Schier, Steven E. II. Engeman, Thomas S. III. Title.

JK511.T375 2014
320.973—dc23

2013028070

Printed in the United States of America

The paper used in this publication meets the minimum requirements of
American National Standard for Information Sciences
Permanence of Paper for Printed Library Materials,
ANSI Z 39.48-1984.

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GP (c) 10 9 8 7 6 5 4 3 2 1
GP (p) 10 9 8 7 6 5 4 3 2 1

THE PRESIDENCY AND POLITICAL SCIENCE

Dedicated to four thinkers who guided our way

Alexander Hamilton, for his precepts
Edward S. Corwin, for his scholarship
Richard E. Neustadt, for his legacy
Theodore J. Lowi, for his insights

and

To Anne, my reason for being
R.T.

To Mary, Teresa, and Anna Schier
S.E.S.

To Susan and Morgan, with love
T.S.E.

Foreword

The End of Presidential Power

After chronicling over 200 years of presidential scholarship, the compelling lesson from *The Presidency and Political Science* is obvious: all modern presidents are greats compared to the vast majority who presided over our government during the previous eighteen decades or so. The task of building the presidency is now complete.

For over 200 years of American government, the presidency has been a work in progress, the unfinished business of the Constitution. But the end is here, and the future is now, because all the powers of the presidency have been revealed over the course of American history. All the gaps, all the ambiguities, all the silences in the Constitution have been overlaid with meaning. From the very beginning presidents dominated foreign affairs; but now presidents also make war with abandon. They always made recommendations to Congress, used vetoes and veto threats, and since Monroe added signing statements to legislation; now the administrative presidency is here to stay, accompanied by the use of executive orders, reorganization plans, and the deployment of czars.

Congress has played the role of co-conspirator by abdicating to the executive its constitutional role. After many years of scanning statutes, I came up with the term *legiscide* to characterize this abdication. Legiscide freed President Franklin D. Roosevelt almost entirely from Congress and, in particular, from the infringements of the standing committees, whose statutes—according to Woodrow Wilson—"regulate the . . . executive departments." In Wilson's 1885 *Congressional Government* he proclaimed that "[t]he most striking contrast in modern politics is not between presidential and monarchical governments, but between Congressional and Parliamentary governments" by which he really meant "government by the Standing Committees of Congress." This is a formulation that must be admired—not lost in an old, dusty reference. It should be vastly important to understand the dominance of Congress throughout the nineteenth century. Wilson's learning in constitutional law

added more value, since it was "the internal organization of Congress *which determines its methods of legislation,* which shapes its *means of governing the executive departments,*" and the key factor in controlling the executive departments was "a vast constitutional system, a system branching and expanding in *statutes* and judicial decisions . . ." (emphases added). These extracts from Wilson reveal the true workings of a legislative system of government. The statute was the rule that bound the president, and it worked, because at that time the national government did not have a lot to do: internal improvements, subsidies, tariffs, disposal of public lands, patents, and coinage.

The end of congressional superiority came with the Roosevelt Revolution. It was not exactly a collapse, because the national government had only so little to take over. So the executive had to invent and lengthen its list of national policies, longer even than the list of state government duties, and the national government grew that list in "100 days" and another "second-hundred days" when Congress yielded power over what "determines its methods of legislation . . . *governing the executive departments*" (emphasis added). And with all that, *statutes* from Congress virtually disappeared. The economic collapse meant that Congress did not have enough time and research to write a good statute. The legislators had to send generalities to the president, as if in a modern version of the monarchy that virtually all the original elite had feared and loathed. All of the leaders of the standing committees declined to send messages that were anything other than loose authorization: "Do something." The learned constitutional lawyers tried to soften their losses with doctrines of "delegation of power" and "filling in the details," to make it look like "legislation" and "statutes," and by yielding: "there wasn't time to get to research." Yes truly, there was not enough time, because the national government leaders had not built what Wilson had praised as "methods of legislation to direct the Executive."

Modern presidents have been anointed by the "delegation of power" to the president. The standard rule, going back to the Supreme Court's *Brig Aurora* (1813), established that Congress cannot delegate legislative power to the president. Just a century later the Supreme Court in *Grimaud* (1911) could declare that the president (along with the secretary of agriculture) was not legislating but only exercising a "power to fill up the details." This was the great step toward legiscide, the surrender of the power to legislate, to alter, to give advice, and it ultimately led to the Economic Stabilization Act of 1970, when Congress delegated *carte blanche* to President Nixon the powers to impose wage and price controls. The actual wording of the 1970 Act stated:

> The President is authorized to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages and salaries. . . . Such orders and regulations may provide for the making of such adjustments as

> may be necessary to prevent gross inequities. [Section 202] The President may delegate the performance of any function under this title to such officers, departments, and agencies of the United States as he may deem appropriate [Section 203].

This is the entire statute. And in 1970 there was plenty of time to do the research and to write something worthy of the name legislation. Congress delegated total power to the president, tied the obligation of law to it, and sub-delegated it to lower levels of the bureaucracy. Yes, we can imagine this happening in the 1930s with so little time but, lest we repeat ourselves, *in 1970 there was plenty of time to write a proper statute.*

In the end, Richard Nixon committed political suicide. He could have chosen impeachment, to win or lose in the Senate, but he chose the Roman way, let's call it "plebiscide," to withdraw and be ruled by the loss of support of the people—the plebs, the common people—who have a direct stake and a direct connection to the president. Nixon was imperial, and he left office the imperial way. But Nixon also had re-opened the door to the fears of Madison and the Anti-Federalists against monarchy and the monarchs who might "own" the state. Today the president is popularly elected, but perhaps he'd have been a lot better off if we had an English-type system, in which the Prime Minister is chosen by the Commons (and the King or Queen). But our president is stuck, as head of state, alone facing millions of expectant plebs: "What have you done for us lately?"

The democratic connection can now be forged in milliseconds, not hours or days. The Internet, a milestone for President Barack Obama's 2008 campaign, will be the new "normal" for his successors, yet its essence was bequeathed by the Roosevelt Revolution. The president became the elected monarch that all the original Founders feared; but presidents are not just monarchs, but also servants, in the worst sense. I have called them "plebiscitary presidents." In fact, I had planned to title my 1985 book on this subject The Plebiscitary Presidency: Power Invested, Promise Unfulfilled. But my editor convinced me that "you should never give a book a title that you have to explain." And most, even among learned scholars, would need to have an explanation. So, I lost my favorite title and settled for *The Personal President*—yet plebiscitary they all are. Each president must stand alone to be judged by the millions of plebs: yes or no. It's deadly. Yet again, *Power Invested, Promise Unfulfilled.* The end of presidential power.

Theodore J. Lowi,
John L. Senior Professor of American Institutions
Cornell University

Introduction

Exploring the Scope of Presidential Power

Raymond Tatalovich and Steven E. Schier

The Presidency and Political Science is a unique study of scholarship on the presidency. Although solid histories of the presidency are not hard to find, most volumes chronicle historical events as affected by specific presidents. This book focuses instead on the nature of presidential power as conceived at the Founding and the practice over time as assessed by students of the presidency.[1]

No single methodological perspective can capture the essence of this office. The presidency is too complex, too protean, and very much subjected to historical and political developments. Only by looking comprehensively across American political history can we separate the fundamental truths about presidential power from the many transient beliefs that have been, and are still, fueled by ideology or partisanship. This study differs from scientific analyses or triumphal histories because, in our view, the presidency manifests too many problems still seeking remedy to be a model or an end. This intellectual history affords an opportunity for genuine reflection about the constitutional, political, and personal strategies necessary for the successful conduct of the office.

At first glance, the ebb and flow of scholarly opinion about the presidency may be perceived simply as a function of whether your own policy agenda is represented by the in-party of the White House or the out-party in Congress. Such an easy explanation seemingly accounts for the divergent views of Hamiltonians versus Jeffersonians, Progressives versus Whigs, or New Deal Liberals versus Conservatives. But the story of the presidency is more complicated than this. We need to look through the lenses of constitutionalism, history, and politics to untangle intellectual causes and effects in the evolution of presidential power. Ultimately the authors came to identify three presidential paradigms: Hamiltonianism was the Founders' vision, which sought a strong but limited national government with a strong executive. The Jeffersonians of the nineteenth century embraced a weak national government with a weak executive, since they sought to guarantee and strengthen local

liberties and state autonomy. The turn-of-the century Progressives and the New Deal Liberals of the twentieth century sought a strong and unlimited national government with a strong executive. They envisioned a fully national and scientific society and believed that the president was the natural leader of the modernizing administrative state. Each of these paradigms is comprehensive in its view of the office and is radically different from the others.

An Overview of the Book

In the twelve chapters that follow, we discuss the views of major thinkers and presidential scholars in terms of historical position and philosophical leanings. It was readily apparent which thinkers should be included in our discussion of the first 150 years of the office, but the choice became problematic in discussing the contemporary era, which is dominated by new scholarly directions. While the quantity of information available has increased, relatively few recent works warrant inclusion.

We begin our intellectual excursion by revisiting the celebrated debate between two ideological adversaries who seemingly defined the meaning of liberalism and conservatism in terms of presidential leadership during the 1950s and 1960s: James MacGregor Burns and Willmoore Kendall. But we review their arguments not to praise but to condemn them, because their ideas perpetuated a lasting myth that the Constitution mandated an ineffectual presidency. In retrospect, their debate did a disservice to our collective understanding of republicanism and executive energy. Burns mischaracterized James Madison, and Kendall gave Madisonianism a bad name, so we begin our argument with this misinformation as background for a more thorough and truthful rendering of Original Intent.

Chapter 2 discusses Original Intent with respect to Article 2 of the Constitution, mainly by laying bare the opposing arguments of Alexander Hamilton and Thomas Jefferson. Our review begins with the Founding, when the Federalists (who favored a strong executive coupled with a strong national government of limited scope) did ideological battle with the Anti-Federalists (who favored a weak executive coupled with a weak national government of limited scope).

Chapter 3 explores the Jeffersonian legacy and the advent of Whiggism. We begin with Supreme Court justice Joseph Story, who faithfully echoed Federalist arguments, and proceed to Alexis de Tocqueville's assessment of presidential decline during the Jefferson-Jackson era. To illustrate the extremes to which the Jeffersonian doctrine could reach, we touch on two commentators who defended the weak executive—Frederick Grimke and George Ticknor Curtis—before considering Lord James Bryce, whose highly celebrated *The*

American Commonwealth presented a more positive view of presidential power. We conclude with another minor figure, Henry Clay Lockwood, whose strong Whiggish sentiments led him to advocate the abolition of the presidency.

Chapter 4 discusses the fundamental indictment of the constitutional presidency by the Progressives and their reconstruction of the American regime. We devote most of our attention to the seminal writings of a young political scientist named Woodrow Wilson, showing how his assessment of the presidency was fundamentally transformed between the years 1885 and 1908. A close reading is given to Henry Jones Ford, one of Wilson's closest advisers, and to Theodore Roosevelt, before concluding with brief attention to three highly influential intellectuals: J. Allen Smith, Charles Beard, and Herbert Croly.

Chapter 5 shows that the Progressive critique of the Founding provoked a counterattack by constitutionalists early in the twentieth century. William Howard Taft penned his observations on the presidency to defend his own record as well as to disparage Teddy Roosevelt's, but arguably the best scholarly assessment of the origins of Article 2 was authored by Charles C. Thach Jr. in 1923. Although Thach did not challenge the Progressives by name, he did so implicitly by providing a powerfully detailed argument that Article 2 was crafted to allow executive energy to emerge unencumbered by Congress. The Progressives had argued that the separated-powers system posed an obstacle to effective government. Calvin Coolidge assumed the presidency in 1925 and subsequently published his autobiography, which included his personal statement about presidential leadership. Coolidge is informative not only because he was a constitutionalist but also because he is so regularly named as a wholly ineffectual president.

Chapter 6 recalls that almost every president seemed ineffectual in the wake of Franklin D. Roosevelt, according to the liberal academics who dominated the field of presidential scholarship during the post–World War II period: James MacGregor Burns, Richard E. Neustadt, Herman Finer, and Clinton Rossiter. But as early as 1940, this view was expressed by British scholar Harold Laski, who tied presidential leadership to the grandeur of class warfare and redistributive politics.

In Chapter 7, just as Progressivism fermented a defense by the early constitutionalists, so did liberalism prompt an intellectual backlash with vengeance by writers associated with the "anti-aggrandizement" school of thought: Edward S. Corwin, Alfred de Grazia, and C. Perry Patterson. However, our detailed look at their work suggests that Corwin has been badly misrepresented. Although there are similarities among Corwin, de Grazia, and Patterson, these are outweighed by much more profound differences. Corwin is revisited as one who held a more benign and balanced view of presidential leadership.

Chapter 8 spans the 1960s and 1970s, during which time there were two discordant literatures on the presidency. One was provoked by the Vietnam excesses of Lyndon B. Johnson and was extended to Richard M. Nixon; the other is defined by the presidencies of Gerald R. Ford and Jimmy Carter. Of all the historical eras chronicled herein, these two most blatantly represent political statements driven by the exigencies of the moment, not by any adherence to constitutionalism or historicism. For one group of authors, James David Barber, George E. Reedy, and Arthur M. Schlesinger Jr., the presidency had grown monarchal. They were followed in short order by another group, which bemoaned ineffectual presidents, especially Jimmy Carter, whom both Charles Jones and Erwin Hargrove nonetheless tried to salvage with revisionist interpretations. During this period, when governance seemed implausible and presidential weakness intractable, Charles M. Hardin, Rexford G. Tugwell (a member of FDR's original Brain Trust), and James L. Sundquist advocated fundamental reform of the political system. Both of these schools of thought lasted barely longer than a decade, and both, despite their dissimilar diagnoses of the presidency, believed that the fundamental problem was with the incumbent, and not with the office. For the most part, these groups of critics reflected the liberal persuasion that positive government was good, as long as the right person inhabited the White House.

Chapter 9 identifies yet another strain of intellectual opinion, represented by the Movement Conservatives of the 1980s. These disciples of Original Intent were unlike some previous thinkers who upheld constitutional principles in the name of limited government and a weak executive (such as Willmoore Kendall). These contemporary thinkers embraced strong presidents in the name of limited government: L. Gordon Crovitz, Jeremy A. Rabkin, Gordon S. Jones, John A. Marini, and Terry Eastland. Nothing explains their intellectual arrival more than the election of Ronald Wilson Reagan.

Chapter 10 summarizes the historical record as three paradigms—Hamiltonian, Jeffersonian, and Progressive—and locates George W. Bush and Barack Obama within these traditions. To be sure, both men are very different in their life stories and personalities, and they are polar opposites in their political philosophies. According to liberal critics, the infamous legacy of President George W. Bush will always be 9/11/01, the War on Terrorism, and the use of warrantless wiretaps, rendition, extraordinary interrogation techniques, and the incarceration of foreign combatants at the Guantanamo Bay marine base. President Barack Obama's signature achievement will be Obamacare, or fundamental health care reform, for which critics on the Right accuse him of being the most left-wing president in history, if not a socialist. But those policy goals are not the whole story of either man's political legacy. Barack Obama and George W. Bush represent two endpoints in the

evolution of presidential power over more than 200 years of American history: *strong presidents at the helm of a strong national government are here to stay.* The Jeffersonian ideal of a weak national government headed by a weak executive is irrelevant. Yet, although Bush and Obama both defended strong presidential leadership and presidential power, they did so from very different perspectives. Bush cloaked his assertions of presidential power in constitutional garb; Obama simply defended his leadership in the cause of service to the American people. For that reason Alexander Hamilton would have been proud of President George W. Bush just as the Progressives would have embraced Barack Obama.

Chapters 11 and 12 focus on contemporary presidential research. But rather than a showcase of individual thinkers, the discussion is thematic in an effort to include a wider range of authors and studies. The themes of chapter 11 are, from the incumbents' vantage point, the importance of personality and the qualities of presidential greatness and, from the vantage point of the electorate, the divide between presidential promises and performance (the so-called expectations gap) and the dangers of plebiscitary politics. The theme of chapter 12 is executive-legislative relations. Contemporary scholarship has revisited the adage that "presidents propose, but Congresses dispose" by delineating the prospects and problems of legislative leadership. And because of the frustrations in dealing with Congress, presidents may resort to unilateral executive powers or the "administrative presidency" to achieve their policy and political ends, but these stratagems also pose risks of failure.

Six Questions

Our approach is to analyze the works of the leading authorities on the presidency from the Founding until the present. This interplay reveals how these authors were influenced in their understandings of this constitutional office by their place in history and, therefore, why they offered different answers to the six fundamental questions that guide this study. Six questions are used as intellectual foils to analyze each thinker and unearth the developments that have undergirded the transformation of the presidency.

Does presidential power derive from the prerogatives of office or from the incumbent? We believe this question is most important, cutting to the heart of the nature of presidential leadership. This question was personified in the divergent viewpoints of Edward S. Corwin, who argued that legal authority undergirded presidential power, and Richard E. Neustadt's retort that presidential power is influence. Students of the Founding hold to the belief that prerogative power is more important to presidential leadership than the use of political resources. Prerogative, according to Richard Pious, is "constitu-

tional authority that the president asserts unilaterally through various rules of constitutional construction and interpretation, in order to resolve crises or important issues facing the nation."[2]

Does presidential influence depend on the force of personality, rhetorical leadership, or partisanship? If incumbency trumps prerogative, what political resources do presidents exploit in asserting their leadership? Quite a few thinkers view the president as a solitary figure who must develop fine-tuned political instincts because he alone must make momentous decisions with awesome consequences for himself and the nation. This perspective, characterized as "statecraft," was popularized by Richard E. Neustadt—literally a Machiavellian who offers pragmatic counsel to our modern-day prince.[3] But beyond that, do presidents exude charisma or a cult of personality, depend upon a unified congressional party, or mobilize public opinion behind their cause?

Does presidential leadership depend on historical context or is regime building manifested through political, institutional, and constitutional developments? Was George W. Bush, Barack Obama, or any president a captive of history? Bush reportedly told his advisers that the War against Terrorism was the raison d'être for his presidency. And Obama saw himself as a transformational leader who would set a new political trajectory for America. Or will there be a more lasting political, institutional, and constitutional legacy that flows from the Bush or Obama precedents to their successors in the White House? Regime-building reflects the degree to which the Constitution of 1787 has given way to new constitutional forms of presidential leadership and builds on important "precedents" established by incumbents at key moments in history. For example, presidency scholars recognize the pivotal impact of dramatic historical events, such as the realigning elections of 1860 or 1932, which catapulted into power a different majority party and president with radically new policies.

Does presidential leadership vary between domestic and foreign affairs? The use of roles to study presidential leadership was once popular. Even presidency watchers who did not focus explicitly on roles made explicit their understanding that domestic policy is unlike foreign affairs. During the height of the Vietnam War, Aaron Wildavsky authored his "two presidencies" thesis.[4] Wildavsky's simple story was that Congress is more likely to enact the foreign and military policies that the White House recommends than the president's domestic agenda. Of course the implications of the Wildavsky thesis are much grander than this simple statement. To the degree that presidential leadership via Lockean prerogative power exists, it surely must exist in foreign affairs. Without debating the current view that the modern presidency began with Franklin D. Roosevelt,[5] George Washington can be considered the first modern

chief diplomat because he established virtually all the essential prerogatives in foreign affairs.[6]

Does the president actively or passively engage the legislative process and promote a policy agenda? Legislative leadership is one litmus test of the modern period. To lead Congress presumes that the president has a policy agenda, so this role involves how presidents initiate new public policy and try to influence the lawmaking process. We also want to know whether legislative leadership was an accepted modus operandi before Franklin D. Roosevelt dramatized legislative leadership during his One Hundred Days. The "100-Day" time clock is a benchmark that does more than commemorate the outpouring of legislation in 1933. Today it is used by journalists of all stripes to judge (and usually fail) the legislative leadership of a newly elected president.

Does the organization of the executive branch service presidential leadership? The Executive Office of the President was established by Franklin D. Roosevelt in 1939 on the advice of the famous Brownlow Committee, which declared that the president "needs help" to manage a bigger government. Indeed, the growth of big government that began with the New Deal has spawned the "institutionalized" presidency. Yet Roosevelt's administrative burdens were manageable compared to what came later. Federal budgets were smaller; many federal employees were not protected by civil service (being patronage hires); important federal agencies were newly established with loyal New Dealers appointed by Roosevelt to head them. FDR tamed his administration, but it is an open question whether any of his successors have been able to do so. Max Weber, the nineteenth-century German sociologist, argued that the military chain of command was the "ideal type" of bureaucracy because authority pyramids top-down. But the modern president does not enjoy the kind of authority over his subordinates that Weber anticipated. Thus, in reality the hundreds of agencies and millions of employees in the federal bureaucracy may hinder presidents more than they facilitate presidential leadership.

Notes

1. The first history of the presidency, now a classic but dated, was Wilfred E. Binkley, *The Powers of the President: Problems of American Democracy* (Garden City, N.Y.: Doran, 1937). The best contemporary account is Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776–2007*, 5th ed. (Washington, D.C.: CQ Press, 2008). The work by Forrest McDonald is called an intellectual history, but, although he does a superlative job in tracing the intellectual currents that influenced the American Founding, his chronicle of developments into the twentieth century is more history than intellectual history. See Forrest McDonald, *The American Presidency: An Intellectual History* (Lawrence: University Press of Kansas, 1994).

2. Richard M. Pious, *The American Presidency* (New York: Basic Books, 1979), 16.

3. David L. Paletz, "Perspectives on the Presidency," in "The Institutionalized Presidency," ed. Norman C. Thomas and Hans W. Baade, *Law and Contemporary Problems* 35 (Summer 1970): 438–39.

4. Aaron Wildavsky, "The Two Presidents," *Trans-Action* (December 1966): 7–14. But his assertion has not gone unchallenged. See Brandice Canes-Wrone, William G. Howell, and David E. Lewis, "Toward a Broader Understanding of Presidential Power: A Reevaluation of the Two Presidencies Thesis," *Journal of Politics* 70 (January 2008): 1–16; Stephen A. Shull, ed., *Two Presidencies: A Quarter Century Assessment* (Chicago: Nelson Hall, 1991).

5. Although most contemporary commentators on the presidency regard Franklin D. Roosevelt as the first "modern" president, the scholar who formalized this thesis was Fred I. Greenstein, "Change and Continuity in the Modern Presidency," in *The New American Political System*, ed. Anthony King (Washington, D.C.: American Enterprise Institute, 1978), 45–85. Also see Fred I. Greenstein, "Introduction: Toward a Modern Presidency," in *Leadership in the Modern Presidency*, ed. Fred I. Greenstein (Cambridge, Mass.: Harvard University Press, 1988), 1–6.

6. David K. Nichols extends this argument too far, by arguing that Washington was *the* first modern president in every leadership domain: David K. Nichols, *The Myth of the Modern Presidency* (University Park: Pennsylvania State University Press, 1994). See our rejoinder: Thomas S. Engeman and Raymond Tatalovich, "George Washington: The First Modern President? A Reply to Nichols," in *George Washington and the Origins of the American Presidency*, ed. Mark J. Rozell, William D. Pederson, and Frank J. Williams (Westport, Conn.: Praeger, 2000), 37–76.

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