

BAAS Mini-Lecture Script – Presidential Power

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Thank you so much for joining me, my name is Dr Laura Smith and I am a presidential historian at the University of Oxford. Today I am going to be talking about a topic I am really passionate about and that is the development of presidential power over time. As I am sure you already know we have 3 branches of the U.S. government.

Picture 1: Article 1 you have the legislature, Congress, whose main responsibility is to write the laws

Picture 2: Article 2 you have the executive branch, the presidency. Their main responsibility is to enforce the law. This is their key constitutional responsibility.

Picture 3: Article 3 the Judiciary, the courts and their responsibility is to interpret the law.

So 3 very different branches with 3 very different constitutional responsibilities but as we know things have gotten a lot more complicated over US political history and we see this in our current times. What I am going to do over the next few minutes is talk about a president who had a huge impact on the development of presidential power [picture 4] and I am going to bring in some modern examples do hopefully you can see how he is still relevant – the impact this president had in the 19th century is still relevant to the presidency and its development today. Part of the reason for this is that the Constitution is intentionally vague.

Picture 5: The Founding Fathers wrote the Constitution in an intentionally vague manner in order for it to last the test of time. Their idea was that this would make room for modern interpretation. Obviously this is very debatable and perhaps a debate for another time.

Slide 1: But in terms of the actual development of presidential power I really want to focus back on Article 2 and formal powers. As I'm sure you know the presidency had both formal and informal powers. In terms of the key formal powers we can narrow it down to about four.

Slide 2: First and almost in a chronological order, you have the power to appoint. So one of the first things a president does when they are elected is probably put someone in charge of trying to come up with a team to support them to go into the White House if the nominations are confirmed by the Senate. Of course, even though the president has the power to nominate it is not the power to appoint. The Senate has to confirm, for example, cabinet positions and Supreme Court nominations. There is that oversight, that check and balance. Secondly, executive orders so we have seen with the past couple of presidencies the flip-flop of going Republican to Democrat with Trump to Biden, we have seen presidents use executive order very early on to change the policies of previous administrations to be more in line with their own and their party's. There's a lot to this as it becomes a more frequent occurrence due to gridlock in Congress. It is a really fascinating debate as to whether this is going to be a long

term trend but that formal power of executive orders has been there from the beginning. You then have the power to veto. What the president uses as a last option. A threatened veto is much more likely than an actual veto but this is what I am going to be talking about today.

Slide 3: President Andrew Jackson, president from 1828 for two terms, that's 8 years starting from 1829 when he was inaugurated and he is the one who really changed how vetoes are used by president since then.

He was the nation's 7th president. You may have seen his picture controversially on the 20 dollar bill. I am going to be talking a lot about how that particular formal power changed and has never returned to its original status as it was interpreted by the Founders.

Return to slide 2: The other power, to finish our discussion of key formal powers of the presidency, is number four that of clemency. So clemency is the power to pardon – here it is chronologically you have the power to nominate, executive orders, veto, and clemency or power to pardon. Most presidents tend to use the pardon power near the end of their term and it is usually not controversial but we have seen that change recently with the Trump administration. Now we see these powers play out at different times during a presidency.

Let's talk about how the veto power changed so dramatically. The Founding Fathers who we have talked about as creating an intentionally vague Constitution, when they interpreted and understood this idea of the veto power, they were very concerned about ensuring that it was not something that was going to be overpowering. It was not going to give this new executive, president figure immense power. Certainly it was always meant to be secondary to Congress. So the idea of the veto was that the president would only veto legislation they believed absolutely unconstitutional. It was going to be a check, to be used in a limited fashion, it was supposed to be the absolute last resort that a president used.

Table 1: Now if you go online and compare different president and how many vetoes they used over their administrations, whether they were single or presidents who served for 8 years, two terms, (or more if you think about FDR and the four term he was elected to), it's really fascinating as to how many vetoes each used and why. Part of the reason is that Jackson reinterpreted the veto and that has lasted the test of time.

Cartoon: Jackson came into office not as a Founding Father – he was not of that generation. He really believed in the fact that he, as president was the single, the sole individual who was representing the nation at large elected by every American at the time – white male. He was representing the nation, as opposed to every other elected official who was representing a smaller constituency. He therefore thought that he had the responsibility and the right and power to interpret the veto as to whether he agreed with it. It is a lot more personalized. It is much less about the nation and more about as the representative of the nation, I am going to interpret whether this legislation should be enacted or not. It is a lot more personal policy. You can see how party politics can get into this.

Table 2: What this meant in reality is that Jackson had more vetoes than his predecessors, all six, combined and it never went back from there. You had presidents who in the same way interpreted themselves as the nation's representative and not simply as a figurehead but someone with power to use the veto when they saw fit and not in the limited fashion originally envisioned by the Founding Fathers.

It is a really important idea to understand how this precedent, and so much of US politics and political history derives from precedent, because the Constitution was created in such a vague manner, it enabled precedent to fill in the gaps as they have. What has lasted and what might not last if we look into more recent history, for example, I mentioned executive orders and how they are being used more often at the beginning of a president's term. So lots of facets that go into formal powers and how they are used, when they are used and precedent that can last the test of time, some do and some don't. Certainly Jackson's has. This is the idea of understanding these key formal powers and how they develop over time. I hope that's helpful and best of luck with the rest of your course.