

CHAPTER TWELVE

PRESIDENTIAL PRACTICES AFTER 9/11: CHANGES AND CONTINUITIES

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With his characteristic ingenuity and encyclopedic knowledge of American politics on full display, Yale political scientist David Mayhew recently offered a strong case for treating events—and particularly wars—as very real and significant causes of durable changes in American politics.¹ Despite the typical assumption that “interests or preferences are the basic building blocks of an analytic political science,” Mayhew demonstrates that big events like wars are major “producers of problems,” and should be ranked as “equals...in a seriously explanatory political science.” Events, after all, he says, “can create, shape, crystallize, or institutionalize interests and preferences.”² With the events of September 11 now several years behind us, the time is ripe to pursue Mayhew’s insights. Using currently available evidence, to what extent can we say that September 11 created, shaped, crystallized, or institutionalized new presidential practices?

To tackle this big question in a practicable way given space constraints, I confine my investigation to two arenas of domestic presidential politics—albeit two of the arenas that tend to generate the most popular and scholarly interest—institutional relations and partisan politics. Within these two arenas, I think it prudent to zero in on the one presidential practice (or set of related practices) that is most widely seen as being distinctive to, or *new* with, the presidency of George W. Bush. This serves to strike from consideration those practices which could not possibly have been prompted by 9/11. The “new” practices I will consider include assertions of broad executive powers in presidential signing statements (institutional relations); and innovations in GOP party building (partisan politics).

* The author would like to thank Matthew Glassman, David Mayhew, Benjamin Page, and Tao Xie for their helpful comments.

¹ Mayhew, “Wars and American Politics”; Mayhew, “Events as Causes.”

² *Ibid.*, 486.

To credibly claim that the events of 9/11 contributed significantly to the emergence of new presidential practices that will endure beyond George W. Bush's tenure, two conditions must be met. First, it must be shown that the practice would not have occurred at all, in the same way, or at the same time, were it not for 9/11. That is, 9/11 must have been historically necessary for the new practice to emerge.³ Second, to claim that the new practice constitutes a change in presidential practice, there must be some indication that it will be replicated by future presidents. If not, then the change was only temporary, and may have simply left office with George W. Bush on January 20, 2009.

This chapter examines each presidential practice in turn. For each, I discuss what the practice entails and why it was widely perceived as "new." Then, I interrogate the extent to which the practice can credibly be attributed to 9/11, considering alternative explanations. Finally, I discuss whether the practice is likely to be replicated by future incumbents, and why or why not.

Presidential Signing Statements

Presidential signing statements are simply "official pronouncements issued by the president contemporaneously to the signing of a bill into law."⁴ Historically, according to political scientist Christopher S. Kelley, they have been used for a variety of purposes:

The president can use the signing statement to reward constituents, mobilize public opinion toward his preferred policies or against his political opponents, decline to defend or enforce sections of the bill he finds to be constitutionally objectionable, reward political constituents by making political declarations regarding the supposed constitutional veracity of a section of a bill, and even move a section of law closer to his preferred policy.⁵

³ On using historically necessary conditions to assess the effect of an event on "the *existence, timing, or form* of institutional change," see Whittington and Carpenter, "Executive Power in American Institutional Development," 502. If a significant event, September 11 would need to be, at the very least, part of an "interaction term" that explains the emergence of the new practice. See Mayhew, "Wars and American Politics," 474. For more on counterfactuals, see Tetlock and Parker, "Counterfactual Thought Experiments: Why We Can't Live without Them & How We Must Learn to Live with Them."

⁴ Halstead, "Presidential Signing Statements: Constitutional and Institutional Implications," 1.

⁵ Kelley, "The Unitary Executive and the Presidential Signing Statement," 4.

To be sure, the practice of issuing signing statements for these varied purposes is not new; it dates back to the early nineteenth century.⁶ Recent scholarship and investigative reporting revealed, however, that President George W. Bush used the signing statement in a wholly new way.

Whereas previous presidents used signing statements primarily as a rhetorical or political mobilization tool, and only occasionally “to promulgate the president’s interpretation of a statute, to object to certain provisions of a statute on constitutional grounds, [or] to announce that certain provisions will be implemented according to the president’s understanding of his constitutional duties and powers,” Bush did so persistently.⁷ This new practice became the subject of heightened public scrutiny and concern after *Boston Globe* reporter Charlie Savage revealed in June 2006 that Bush had “quietly claimed the authority to disobey more than 750 laws enacted since he took office, asserting that he has the power to set aside any statute passed by Congress when it conflicts with his interpretation of the Constitution.”⁸ This startling revelation and the depth of Savage’s reporting won him a Pulitzer Prize in April 2007.⁹ By the end of his presidency, Bush had used signing statements to challenge at least 1,168 provisions of laws passed by Congress, “more than all previous presidents combined.”¹⁰

The laws that Bush objected to involved “military rules and regulations, affirmative-action provisions, requirements that Congress be told about immigration services problems, ‘whistle-blower’ protections for nuclear regulatory officials, and safeguards against political interference in federally funded research,” among many other areas of governance.¹¹ Constitutional objections have been made on more than seventeen different legal grounds, according to Philip J. Cooper, with the most common kind of objection involving provisions that are said to impinge on the president’s foreign policy prerogatives; that require the executive branch to submit proposals and recommendations or disclose information and deliver reports to Congress; that

⁶ *Ibid.*, 59-60; Cooper, “George W. Bush, Edgar Allan Poe, and the Use and Abuse of Presidential Signing Statements.”

⁷ Halstead, “Presidential Signing Statements: Constitutional and Institutional Implications,” 1.

⁸ Savage, “Bush Challenges Hundreds of Laws.”

⁹ <http://www.pulitzer.org/year/2007/national-reporting/>, accessed May 19, 2008; http://www.boston.com/news/specials/savage_signing_statements/, accessed May 19, 2008; and see also “Globe’s Savage wins Pulitzer Prize for national reporting.”

¹⁰ For the latest numbers, see <http://www.users.muohio.edu/kelleycs/>. The quotation is from Savage, “U.S. Agencies Disobey 6 Laws That President Challenged.”

¹¹ Savage, “Bush Challenges Hundreds of Laws.”

allegedly infringe on the president's authority to make executive appointments; and that imply a "legislative veto."¹²

But because a majority of the laws challenged were not of high public salience, Bush's unusual use of signing statements went largely undetected for some time. The issue only came to a head when, after initially opposing, then threatening to veto, and then reluctantly negotiating with high-profile senators over the McCain Amendment to the Detainee Treatment Act (which prohibited the military from engaging in torture or cruel, inhuman, or degrading treatment of prisoners), Bush finally agreed to sign the law, and then in a move that "seemed sneaky and subversive,"¹³ attached a signing statement with language that reserved for the president the right not to follow the law:

The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief...[for the purpose of] protecting the American people from further terrorist attacks.¹⁴

As this clause evidences, it was more than the dramatic rise in the *number* of provisions challenged that made Bush's use of the signing statement so novel. It was the *nature* of the objections Bush raised. According to a report issued by the nonpartisan and highly respected Congressional Research Service (CRS), the "large bulk" of Bush's statements "do not apply particularized constitutional rationales to specific scenarios, nor do they contain explicit, measurable refusals to enforce a law." Rather, like the statement attached to the Detainee Treatment Act, they "make broad and largely hortatory assertions of executive authority that make it effectively impossible to ascertain what factors, if any, might lead to substantive constitutional or interpretive conflict in the implementation of an act."¹⁵ These vague, sweeping claims of power, more than anything else, were

¹² Cooper, "George W. Bush, Edgar Allan Poe, and the Use and Abuse of Presidential Signing Statements," 522; Halstead, "Presidential Signing Statements: Constitutional and Institutional Implications," 10.

¹³ Quote from Mayer, "The Hidden Power: The Legal Mind Behind the White House's War on Terror." For background, see Diamond, "Bush Backs McCain Bill Opposing Torture."

¹⁴ "Presidential Statement on Signing the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006."

¹⁵ Halstead, "Presidential Signing Statements: Constitutional and Institutional Implications," 11.

said to constitute a “qualitative difference” in Bush’s use of the signing statement.¹⁶

If these were mere differences in style or approach, that might be the end of it. But what seemed in one light a stylistic innovation appeared in another as a concerted effort to alter the institutional balance of power in America. For Bush, the signing statement became integral to his administration’s broader strategy to advance the theory of the “unitary executive,” the idea that every branch of government is co-equal with regard to constitutional interpretation and that the president’s political control over the executive branch is absolute.¹⁷ In addition to the signing statement, the administration used executive orders, claimed executive privilege, and asserted other constitutional authorities in order to promote “its broad view of presidential prerogatives and to assert functional and determinative control over all elements of the executive decision making process” as well as to alter “the conception of presidential authority...with respect to Congress, the courts, and the public.”¹⁸ When seen “through the prism” of these wider efforts, CRS noted, Bush’s signing statements appeared to aggrandize the power of the presidency and alter the balance of power within the American constitutional system:

The often vague nature of these constitutional challenges, coupled with the pervasive manner in which they have been raised in numerous signing statements could thus be interpreted as an attempt by the Administration to systematically object to any perceived congressional encroachment, however slight, with the aim of inuring the other branches of government and the public to the validity of such objections and the attendant conception of presidential authority that will presumably follow from sustained exposure and acquiescence to such claims of power.¹⁹

Bush’s signing statement objections did not, in and of themselves, have the force of law. They merely offered a public explanation of how the president intended to carry out (or not) portions of bills that he signed into law. As such, critics experienced a good deal of difficulty coming up with an appropriate response. First and foremost, there was the problem that Bush’s claims could

¹⁶ *Ibid.*, 10

¹⁷ On the “unitary executive” theory, see Calabresi et al., “The Unitary Executive in the Modern Era, 1945-2004”; Yoo et al., “The Unitary Executive During the Third Half-Century, 1889-1945”; Calabresi et al., “The Unitary Executive During the Second Half-Century”; and Calabresi and Yoo, “The Unitary Executive During the First Half-Century.”

¹⁸ Halstead, “Presidential Signing Statements: Constitutional and Institutional Implications,” 10-11.

¹⁹ *Ibid.*, 11.

only be contested in court if there existed a “genuine ‘case or controversy’ that arises out of a decision to carry out the threat of non-enforcement made by his signing statement...by someone with the constitutional standing to press such a challenge against what amounts to an executive omission to act.”²⁰ According to the distinguished Harvard legal scholar Laurence Tribe, there seemed to be nothing Congress could do that would be capable of “generating a ripe ‘case or controversy’...out of the president’s mere issuance of the underlying threat”; it was dubious whether the legislature could endow anyone with the constitutional standing they would need to challenge the act.²¹

To be sure, the legal issues involved in the controversy were complex and the ‘what if’ scenarios were many. Nevertheless, it seems prudent to inventory the various types of objections that were raised against Bush’s new practice. Critics were concerned:

- that, for all intents and purposes, it would provide the president with an otherwise unconstitutional line-item veto,²²
- that Courts would consider the president’s objections contained in the signing statement as part of, or equivalent to, the legislative history of the bill and grant it legitimacy as such in rendering decisions;
- that, even if the practice continued to be ignored by the Courts (as it seemed likely to be),²³ subordinates in the executive branch would view the president’s statements as authoritative and would fail to administer the law as it was written;
- that fostering a norm of obeisance to the president’s views within the executive bureaucracy would effectively give the president the power “to structure and to regulate the overall conduct of officials in the executive branch,” a power reserved at least in part to Congress in the “Necessary and Proper” clause of the Constitution, thus permitting the president to exercise “lawmaking authority that is not part of ‘the executive power’ vested by Article II in the president”;²⁴
- that, when taken all together, the practice would undermine the system of checks and balances and arrogate more power to the presidency vis-à-vis the other branches.

Bush’s novel use of signing statements therefore amounted to nothing short of a “constitutional crisis,” wrote the bipartisan Constitution Project:

²⁰ Tribe, “‘Signing Statements’ Are a Phantom Target.”

²¹ Ibid.

²² The line-item veto was struck down by the Supreme Court in *Clinton v. New York*.

²³ Halstead, “Presidential Signing Statements: Constitutional and Institutional Implications.”

²⁴ Tribe, “‘Signing Statements’ Are a Phantom Target.”

By signing a particular bill into law, but then issuing a signing statement that declares that he will not give effect to it, or to a provision of it, the President is effectively vetoing the law without affording Congress the opportunity to override the veto, as the Constitution requires. He is effectively asserting unilateral power to repeal and amend legislation. He also displaces the judiciary as the final expositor of the Constitution and undermines the principle of judicial review crucial to our system of checks and balances.²⁵

Did the Emergence of the New Practice Depend on 9/11?

By most accounts, Bush's practice of advancing the theory of the "unitary executive" through any means at his disposal was born in the aftermath of September 11. An investigative report in *The New Yorker* magazine, for example, revealed that the administration's legal strategy, "which was put in place after the attacks of September 11th," had a name: "the New Paradigm." "In the days after September 11th," White House lawyers held lengthy, heated meetings to discuss "how to frame the Administration's legal response" to the terrorist attacks. Led by David Addington, legal counsel to Vice President Cheney, a "bunker mentality" developed among the legal counselors; the existing criminal justice system was perceived as "insufficient," and a new "warfare model" was developed.²⁶ The New Paradigm holds, in short, that "the President, as Commander-in-Chief, has the authority to disregard virtually all previously known legal boundaries, if national security demands it."²⁷

On September 25, 2001, the Office of Legal Counsel issued a now-famous memorandum (written by John Yoo) declaring that the President had "inherent" and "broad" constitutional authority to take whatever military action he deemed necessary to retaliate against and prevent future attacks by terrorists.²⁸ Subsequent memos employing the "New Paradigm" legal framework sanctioned the invasion of Iraq; the use of torture whenever the President deemed it necessary; and the establishment of military commissions to try suspected terrorists while denying them habeas corpus or appeal, so long as the president labeled them "enemy combatants."²⁹ According to Bruce Fein, who served as

²⁵ Remes et al., "Presidential Signing Statements: Will Congress Pick up the Gauntlet?"; see Website The Constitution Project, www.constitutionproject.org.

²⁶ Mayer, "The Hidden Power: The Legal Mind Behind the White House's War on Terror"; see also Gellman and Becker, "A Different Understanding With the President"; and Gellman and Becker, "Pushing the Envelope on Presidential Power."

²⁷ Ibid.

²⁸ For text, see Department of Justice website, <http://www.usdoj.gov/olc/warpowers925.htm>, accessed May 19, 2008.

²⁹ For the "new paradigm" in Attorney General Alberto Gonzales' writings, see

associate deputy attorney general under Ronald Reagan: “In the aftermath of 9/11, Mr. Bush maintained that he could pluck any American citizen out of his home or off of the sidewalk and detain him indefinitely on the president’s finding that he was an illegal combatant. No court could second-guess the president.”³⁰ In addition, the administration used “New Paradigm” legal reasoning to launch a secret surveillance program to spy on suspected terrorists—even if the suspects were American citizens—despite an existing statute (FISA) prohibiting such practices.³¹ In these and related instances, signing statements were used as one important vehicle for promulgating the president’s broad claims of authority.

In a signing statement issued on December 20, 2006, for example, Bush wrote that he could open any piece of mail “in a manner consistent, to the maximum extent permissible, with the need to conduct searches in exigent circumstances, such as to protect human life and safety against hazardous materials, and the need for physical searches specifically authorized by law for foreign intelligence collection.”³² Another typical instance in which Bush reserved the right to keep executive branch information confidential from Congress, despite explicit language in the bill to the contrary, was as follows:

The executive branch shall construe §530D of title 28, and related provisions in §202 of the Act, in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties.³³

Bush’s forceful assertion of the “unitary executive” theory and his advancement of the “New Paradigm” through signing statements could, it appears, be traced back to the legal discussions which followed on the heels of the 9/11 attacks. In the new post-9/11 context, a new legal framework was deemed necessary to justify new tactics in response to a new threat; signing statements became a primary vehicle with which to promulgate the new framework. Available data would seem to confirm this.

“Excerpts from Gonzales’s Legal Writings.”

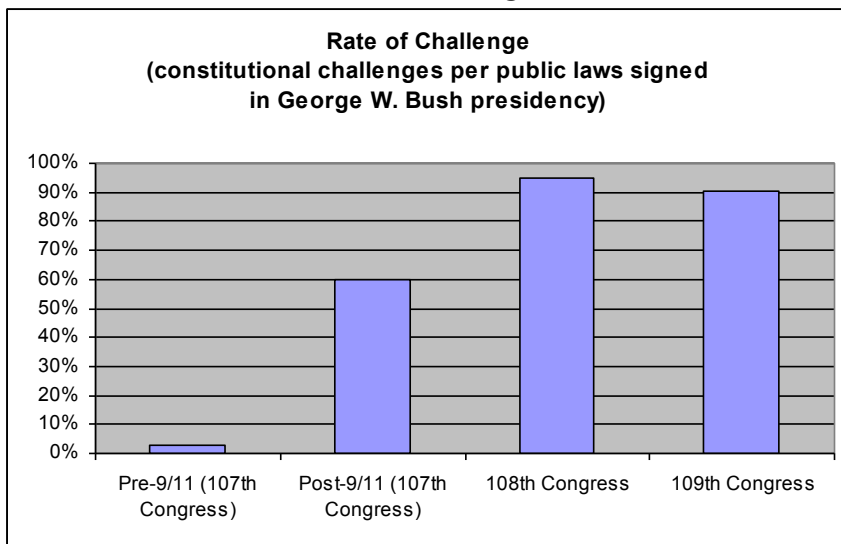
³⁰ Fein, “Restrain this White House.”

³¹ For Fein’s view of this practice, see Fein, “Trusting the White House.”

³² “Statement on Signing the Postal Accountability and Enhancement Act,” December 20, 2006.

³³ “President Signs Justice Approps Authorization Act: Statement by the President,” November 2, 2002.

Figure 12-1
Rate of Challenge



(Pre-9/11 N=36; Post-9/11 107th Congress, N=341; 108th Congress, N=498; 109th Congress, N=482.)

By my calculation, out of a total of 36 public bills he signed into law between January 20, 2001 and September 11, 2001, Bush issued only one constitutional challenge via signing statement (see Figure 12-1 above). Despite the small number of bills signed before 9/11, that single constitutional challenge constitutes a 2.8 percent “rate of challenge” (number of constitutional challenges per total bills signed) in the pre-9/11 period.³⁴ For the remainder of the 107th Congress, using Christopher S. Kelley’s coding of constitutional challenges, Bush objected to 205 provisions of laws, increasing the proportion of challenges to bills signed sharply to 60.1 percent.³⁵ In the 108th Congress, his

³⁴ Note that the unit of analysis is the number of challenges to provisions to laws, of which there may be—and often are—more than one challenge contained in a single signing statement. Thus the focus is not the number of signing statements or even the number of challenges *per* signing statement, but rather the number of constitutional challenges per total number of bills signed.

³⁵ The figures for the post-9/11 period rely on Christopher S. Kelley’s coding of constitutional objections and my count of public laws passed. I thank Kelley for sharing these data. See Kelley and Marshall, “Going It Alone: The Politics of Signing Statements

rate of challenge increased to 94.8 percent; in the 109th Congress that statistic was only slightly lower, at 90.2 percent. By this measure, 9/11 appears to mark a rather dramatic shift in Bush's practice.

It may be tempting to conclude on the basis of these figures that 9/11 was the *cause* of the new presidential practice: after all, the change in practice corresponded perfectly with the critical juncture of 9/11. But in practice, it was not that simple. We must consider the fact that both the *theory* and the *motivation* to use signing statements to build a stronger presidency predated 9/11 by many years.

The main proponents of the "unitary executive" theory in the administration, including John Yoo, Dick Cheney, Alberto Gonzales, Paul Wolfowitz, Timothy Flanigan, David Addington, and I. Lewis "Scooter" Libby, had long sought to rebuild executive power. In the wake of Watergate, actions taken to restrain and check presidential power had gone too far, they believed. Thus, the plan to restore a strong presidency was *already in the works* when the terrorists struck Manhattan and DC.³⁶ In January 2002 on ABC, for example, Cheney said: "In 34 years, I have repeatedly seen an erosion of the powers and the ability of the president of the United States to do his job...I feel an obligation...to pass on our offices in better shape than we found them to our successors."³⁷ And in January 2001, then-White House Counsel Alberto Gonzales told the administration's new legal team that the newly elected president wanted "to make sure that he left the presidency in better shape than he found it."³⁸ The motivation to strengthen the presidency—whether through signing statements or any other vehicle—appears to have been born of Watergate, not 9/11.

Beyond the administration's enthusiasm and outspokenness on behalf of the unitary executive theory, the theory itself is actually quite old.³⁹ As Stephen Calabresi and others have shown, ever since George Washington's administration, presidents of all parties have advanced precisely the same broad claims of executive power as George W. Bush, with hardly less intensity.⁴⁰

from Reagan to Bush."

³⁶ See for example: Daniel, "Power Play: Why Bush is Facing a Backlash Against his 'Imperial' Presidency"; Yoo, "How the Presidency Regained its Balance." Also see Savage, "Commanding Heights."

³⁷ Quoted in Savage, "Hail to the Chief—Dick Cheney's Mission to Expand—or 'Restore'—the Powers of the Presidency."

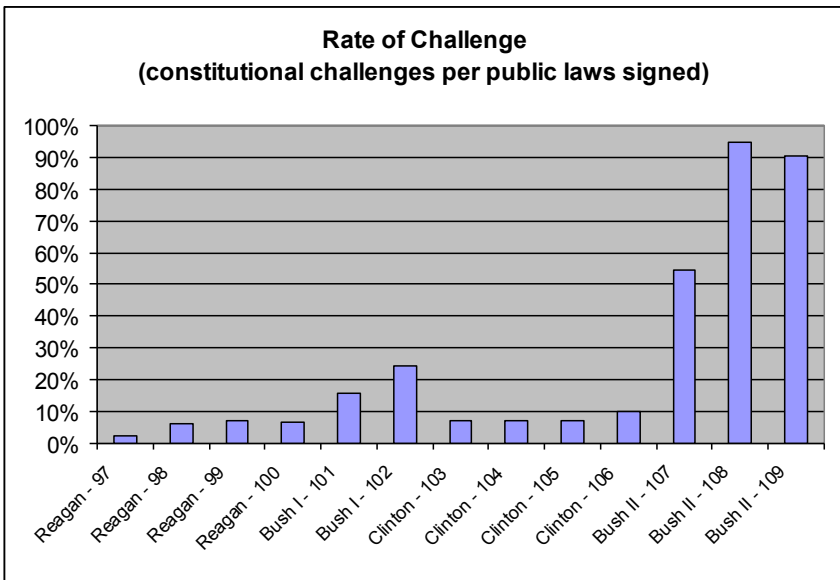
³⁸ Savage, "Commanding Heights."

³⁹ See note 18 above. Also see Mansfield, "The Law and the President: In a National Emergency, Who You Gonna Call?"

⁴⁰ *Ibid.* See also see Clinton Office of Legal Counsel Walter Dellinger, memorandum for the Honorable Abner J. Mikva, Counsel to the President, November 2, 1994, Website Department of Justice, <http://www.usdoj.gov/olc/nonexecut.htm>; and Kassop, "Bush and Cheney and the Separation of Powers Ledger: Will They "Leave the Presidency Stronger

What was more, since Ronald Reagan’s presidency in the 1980s, signing statements had been systematically and strategically used to voice objections to bills that the president otherwise signed, and both Bush’s father and Bill Clinton happily followed in Reagan’s footsteps.⁴¹ A cursory glance at history, therefore, suggests that 9/11 neither created the motivation to strengthen the presidency vis-à-vis the other branches nor did it generate the strategy of using the signing statement as a vehicle with which to promote this view. Bush’s aggressive use of the signing statement for these purposes, therefore, would seem to be more of a *culmination* than an *innovation* in practice.

Figure 12-2
Rate of Challenge



But we cannot rest content with this conclusion, either. The data suggest that Bush’s use of signing statements represented something more than just the culmination of a gradual change in presidential practice observed over the years. After all, if the strategy of using signing statements as a primary outlet for

Than They Found It?,” especially note 1.

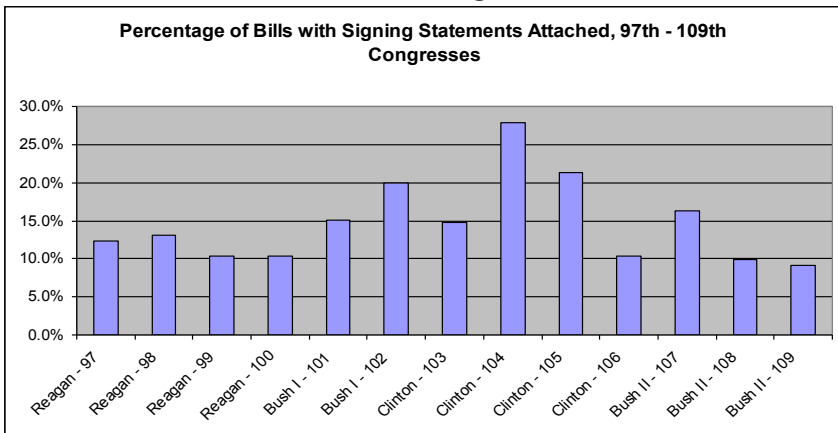
⁴¹ Halstead, “Presidential Signing Statements: Constitutional and Institutional Implications”; Kelley and Marshall, “Going It Alone: The Politics of Signing Statements from Reagan to Bush”; Cooper, “George W. Bush, Edgar Allan Poe, and the Use and Abuse of Presidential Signing Statements.”

expansive claims of executive power was already well on its way to becoming a major presidential practice before 9/11, then we should observe a gradual slope upward over the years, not a dramatic spike under George W. Bush. However, as seen in Figure 12-2, while Bush I issued challenges at nearly twice the rate of either his predecessor or his successor, no president in recent history came close to matching the magnitude of George W. Bush's use of signing statements.

It is of course true that September 11 did not create the unitary executive theory; nor did it create the motivation among key Bush administration officials to promulgate it forcefully; nor did it introduce the signing statement as a vehicle. But 9/11 *did* clearly mark a critical juncture in the development of how the presidential signing statement was used. After 9/11, the signing statement was converted into the primary vehicle for registering multiple constitutional challenges to public laws: that is, the *purpose* of the signing statement as an institutional form changed dramatically after 9/11.

Indeed, the *frequency* with which Bush used the signing statement did not increase significantly after 9/11, nor was his overall usage of this device any greater than his predecessors. Before September 11, Bush attached five signing statements to the 36 bills he signed into law (13.9 percent). For the remainder of the 107th Congress, he attached 50 more signing statements to the remaining 341 bills he signed (14.7 percent). This was perfectly average for the period under consideration: from the 97th Congress through the 109th Congress, the percentage of bills with signing statements attached averaged 14.5 percent (standard deviation 5.3 percent), as shown in Figure 12-3.

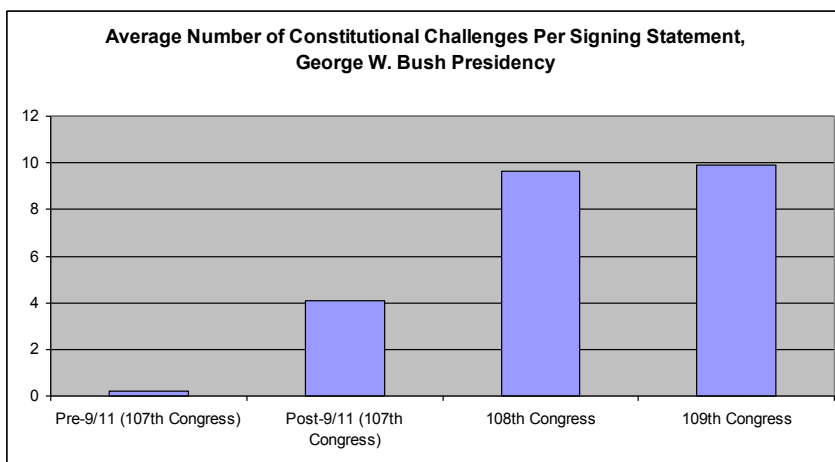
Figure 12-3
Percentage of Bills With Signing Statements Attached,
97th-109th Congresses



Given historical trends, the frequency with which George W. Bush issued signing statements was more or less what might have been expected.

But the *manner* in which Bush used the signing statements changed dramatically after September 11. After that date, a rapidly increasing number of constitutional challenges were included in each signing statement. These changes are illustrated in Figure 12-4.

Figure 12-4
Average Number of Constitutional Challenges Per Signing Statement,
George W. Bush Presidency

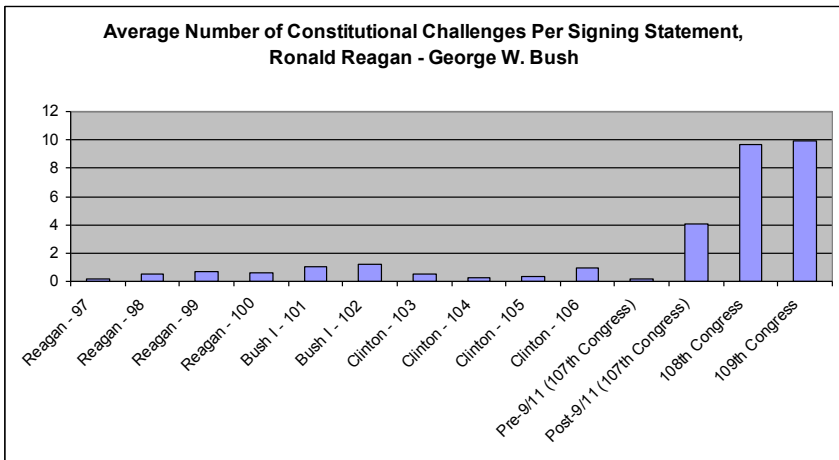


Before 9/11, only one constitutional objection appeared in five signing statements—an average of 0.2 challenges per statement. For the rest of the 107th Congress, 205 constitutional challenges appeared in the remaining 50 signing statements, raising that average to 4.1 challenges per statement. In other words, he issued ten times more signing statements, but two hundred times more constitutional challenges. During the 108th Congress, 472 challenges were packed into 49 statements: an average of 9.6 challenges per statement—another dramatic jump. In the 109th Congress, the rate of challenges per signing rose again, to 9.8 challenges per statement (435 challenges in 44 statements).

Clearly, the manner in which Bush used signing statements after 9/11 was, indeed, “qualitatively different” from the manner in which they had been employed prior to 9/11. Bush began loading an enormous number of constitutional objections into his otherwise average number of signing

statements. None of his predecessors came even close to matching this record; there was no antecedent in recent history for this particular manner of employing signing statements (see Figure 12-5).

Figure 12-5
Average Number of Constitutional Challenges Per Signing Statement,
Ronald Reagan-George W. Bush



Bush's unprecedented use of signing statements to promulgate expansive claims of executive power therefore represented a novel *strategic adaptation* of a prior practice – one that owed its *timing* and *form* directly to the confluence of events surrounding 9/11. In the unsettled period following the terrorist attacks, the presidential signing statement became a favorite vehicle for asserting and formalizing the administration's "new paradigm" legal framework. Without the events of September 11, 2001, this novel practice would not, it seems safe to say, have emerged in the way and time that it did.

Is the New Practice Durable? Will it Last?

At the time of writing, the question of whether this presidential practice will remain beyond the presidency of George W. Bush is still less than entirely clear. On one hand, Bush's method of using the presidential signing statement does not appear to be susceptible to legal challenge; the act of announcing the president's views on a law in a signing statement does not seem judicable. As Laurence Tribe has written, "on the contrary, signing statements, which a

president can issue to indicate the way he intends to direct his administration to construe ambiguous statutes, are informative and constitutionally unobjectionable.”⁴² In order for the signing statements to be judicable, a “genuine ‘case or controversy’” would need to arise out of an executive branch official’s “decision to carry out the threat of non-enforcement made by his signing statement,” where someone with “constitutional standing” made a legal challenge “against what amounts to an executive omission to act.”⁴³ It would need to be shown that a statute (or provision within a statute) had purposefully not been implemented as a direct consequence of the president’s signing-statement directive.

Recent events have opened the door to this kind of legal case. In June 2006, the prestigious American Bar Association’s Task Force on Signing Statements and the Separation of Powers issued a bipartisan report that unanimously “‘oppose[d], as contrary to the rule of law and our constitutional system of separation of powers, a President’s issuance of signing statements to claim the authority or state the intention to disregard or decline to enforce all or part of a law he has signed, or to interpret such a law in a manner inconsistent with the clear intent of Congress.’”⁴⁴ A few weeks later, on July 26, 2006, Senators John Kerry (D-MA) and Arlen Specter (R-PA) cosponsored a bill to “roll back” the president’s use of signing statements. Had it been passed, the legislation would have instructed judges not to view a signing statement as part of the legislative history of a law or cite it when reviewing a law under dispute. It would also have paved the way for Congress to submit to the court additional information on the meaning of a statute in any legal proceeding in which the constitutionality of that law is under dispute.⁴⁵ The bill failed, however, to reach the Senate floor during the life of the 109th Congress, and therefore died at the end of 2006. Soon thereafter, the Government Accountability Office (GAO) was asked to conduct an audit on a sample of laws to which the president had objected in signing statements. In June 2007, it reported that of the nineteen laws it examined, six—32 percent—had not been implemented according to the law. Administration opponents viewed this finding as “the first evidence that the government may have acted on claims by Bush that he can set aside laws under his executive powers.”⁴⁶

The GAO report, combined with the reintroduction of the Specter-Kerry legislation to blunt the force of signing statements, gave the opposition

⁴² Tribe, “‘Signing Statements’ Are a Phantom Target.”

⁴³ *Ibid.*

⁴⁴ See American Bar Association Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, “Recommendation” and “Report.”

⁴⁵ Stanton, “Specter Pushes Bill to Rein In Presidential Signing Statements.”

⁴⁶ Savage, “U.S. Agencies Disobey 6 Laws That President Challenged.”

movement some reason for hope. This report did not, however, prove to be the magic bullet opponents sought. The GAO committed the common error of selecting on the dependent variable: by examining only the implementation of those laws to which the president objected, the GAO report made it difficult for critics to draw any sound conclusions as to cause and effect. To determine whether the signing statement objections made a significant difference in the implementation of laws, the GAO would have had to conduct a comparable study of laws that did *not* involve a presidential signing statement. In other words, it might simply have been that 32 percent of *all* laws are routinely not implemented as written, and the fact that Bush objected to these specific laws was only incidental to their maladministration. To determine whether the signing statements made any difference, it would first be necessary to know the “normal” baseline of statute implementation.⁴⁷

As Tribe observed, moreover, any resulting judicial proceeding would almost certainly deal not with the practice of issuing signing statements, but rather with the administrative failure to implement the law as written: “such a challenge would not be to the signing statement that arguably predicted those individuals’ fates, but instead to the conduct that made good on the president’s threat.”⁴⁸ The president’s actions—his directives to subordinates—are judicable, but the signing statement itself is not. In directing their fire at the signing statement, Tribe and others noted, critics such as the American Bar Association were barking up a “constitutionally barren tree.”⁴⁹ The reintroduced Specter-Kerry bill never emerged from committee, and died once more when the term of the 110th Congress expired. As matters stand, it seems unlikely that legal action will put a stop to the post-9/11 presidential practice of aggressively using signing statements to promulgate broad claims of executive power.

Yet, just because future presidents will, in all likelihood, be legally allowed to use the signing statement for various purposes does not mean that all of Bush’s successors will choose to do so. Given all the negative public attention the signing statement has attracted in recent years, public relations-conscious presidents—particularly those hailing from the opposing party—might well think twice before using the signing statement as Bush had.

Interestingly, in 2008 the leading presidential candidates from both parties agreed in principle with the “unitary executive” theory. None appeared willing to cede the key authorities claimed by the current or any previous incumbent president.⁵⁰ Much as Democratic president Bill Clinton was unwilling to forfeit

⁴⁷ Thanks are due to Katherine Glassmyer for pointing out the GAO’s error.

⁴⁸ Tribe, “‘Signing Statements’ Are a Phantom Target,”

⁴⁹ *Ibid.*

⁵⁰ Though an interesting survey by the *Boston Globe* revealed some important differences as to how the various candidates viewed the signing statement as an instrument for

any of the institutional prerogatives claimed by his Republican predecessors, all of Bush's potential successors appeared equally unlikely to play the part of a twenty-first century William Henry Harrison, the first Whig president, who promised to roll back the power of the presidency in 1840. Both the signing statement and the tendency of presidents to claim broad executive powers seem likely to endure in the future.

There may, however, be an ironic twist on the horizon of this story. Those who challenged Bush's use of the signing statement sought transparency, clarity, accountability, and strict adherence to the rule of law. But the future might easily bring exactly the reverse of these demands. Currently, the president's signing statements are published in the Federal Register—his interpretation of the law is printed for the entire world to see; how he wants a statute to be implemented by executive agencies is transparent. But because the presidential use of signing statements has become so stigmatized, future incumbents may opt to use less public means of objecting to statutes and communicating their implementation directives to executive branch officials. Executive memoranda, presidential directives, and national security directives, for example, can serve the same purpose as the signing statement, but are significantly less visible.⁵¹ Other informal devices might likewise be devised by creative incumbents. In other words, insofar as future presidents may want to promulgate constitutional objections to laws, they may find other vehicles that are less susceptible to public scrutiny; and these alternatives, of course, are even less likely to be contestable in court. The irony, then, is striking. By challenging Bush's use of the signing statements, critics might very well have driven future presidents to employ more secretive means of aggrandizing executive power; rather than killing the "imperial presidency," they may simply have been feeding the beast.

Building the Republican Party

George W. Bush's efforts to strengthen and expand the Republican Party were often cited as a distinguishing feature of his presidency. Beyond making stump speeches for fellow partisans' campaigns, Bush and his team undertook a concerted effort to enhance the party's organizational capacities to register and mobilize voters; recruit candidates; enlist activists and volunteers; raise and distribute funds; run campaigns; and develop and articulate ideas. His active and

asserting broad executive powers. Savage, "Candidates on executive power: a full spectrum."

⁵¹ Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action, Studies in Government and Public Policy*; Cooper, "Power Tools for an Effective and Responsible Presidency."

energetic party leadership was widely depicted as part of a larger strategic plan (designed by Karl Rove) to build a “durable Republican majority” that would last at least a generation.⁵²

According to most observers, Bush’s dedication to party building represented a distinctly new and uncommon phenomenon in presidential practice. Political scientists have found that historically, presidents have either ignored their parties or have “intentionally sought to reduce the effectiveness of their party organizations” while they pursue their more immediate self-interest.⁵³ If modern presidents bother with their parties at all, writes distinguished scholar James MacGregor Burns, it is “not to create new party structures...but to disintegrate and pulverize political power” in the organization.⁵⁴ Presidents are focused on short-term goals and self-interested purposes, such as policy accomplishments, reelection, and securing a historical legacy; they do not have time to worry about their party’s collective competitive strength. As a result, modern presidential-party interactions are said to range from indifference and neglect at one end of the spectrum, to hostile exploitation and purposeful destruction at the other.

But whereas “most modern presidents have neglected their partisan duties,” write political scientists Sidney M. Milkis and Jesse Rhodes, “Bush has been a uniquely vigorous party leader.”⁵⁵ What was more, not only was Bush attentive to party matters, but most observers found that he had been particularly successful in his endeavors. According to journalist David Shribman, for example, Bush’s unusual attention to party building was “one of the (many) reasons George W. Bush infuriates Democrats: He’s a great party leader.”⁵⁶ In a similar post-2004 election analysis, political scientist Harold Bass argued that Bush exhibited extraordinary talents in the realm of party leadership and now “stands poised to reach rarified heights of repute as a presidential party leader, rivaling Franklin Roosevelt.”⁵⁷ Milkis and Rhodes concurred that:

Bush has surpassed Reagan with his dramatic and unprecedented efforts to build his party at the congressional, grassroots, and organizational levels...These

⁵² Green, “A ‘Great Society’ Conservative”; Lawrence and Keen, “To Dems, Rove ‘more dangerous’ outside West Wing: With less time devoted to Bush, political whiz can strengthen GOP”; see also Edsall, “Bush Taps Campaign Manager to Lead Party”; and Murray, “Bush Speech Shows U.S. Conservatism Has a New Playbook.”

⁵³ Harmel, “President-Party Relations in the Modern Era: Past, Problems, and Prognosis,” 250.

⁵⁴ Burns, *Leadership*, 327-328.

⁵⁵ Milkis and Rhodes, “George W. Bush, the Party System, and American Federalism.”

⁵⁶ Shribman, “Party Man Bush has Concentrated on Party Leadership Like Few Other Presidents.”

⁵⁷ Bass, “George W. Bush, Presidential Party Leadership Extraordinaire?”

efforts helped produce a remarkable string of electoral victories for Republicans at all levels of government; indeed, until the 2006 elections, the party was as strong as at any point since the 1920s.⁵⁸

It remains to be seen whether Bush will succeed in his efforts to durably transform the American political landscape according to his own designs. Future appraisals of his presidency, however, will not fail to miss his concerted and intensive efforts to strengthen the organizational capacities of the Republican Party and expand its electoral reach.

A prime illustration of Bush's party building was the concerted effort to integrate his 2004 reelection campaign with the formal Republican Party apparatus. In the years leading up to the campaign and throughout 2004, Bush's independent reelection committee worked side-by-side with the Republican National Committee (RNC) and state and local party committees to integrate and coordinate their operations for mutual benefit.⁵⁹ Together the president and his party registered 3.4 million new Republicans to vote, and over 1.4 million volunteers and 7.5 million online donors and activists made a reported "102,000 calls into talk radio shows, 411,989 letters to the editor, 9.1 million volunteer door knocks and a total of 27.2 million volunteer phone calls."⁶⁰ Rather than run against his party or run his campaign apart from his party, Bush and his team seized the opportunity of the campaign to strengthen and enhance the party's organizational capacities to run even more effective campaigns in the future.

After winning reelection, Bush's deputies at the RNC launched a four-year plan to "internalize the mechanics" of the successful presidential campaign operation in the formal party apparatus.⁶¹ Special and off-year elections in 2005, particularly the party's midterm election losses in 2006, provided opportunities for Republicans to measure their organizational performance, make incremental improvements to their operations, and rededicate the party to organizational development.⁶² RNC chairman Mehlman called the GOP's losses in 2006 a

⁵⁸ Milkis and Rhodes, "George W. Bush, the Republican Party, and the 'New' American Party System," 461.

⁵⁹ Bai, "The Multilevel Marketing of the President."

⁶⁰ Mehlman, "Republicans and the Future." See also Cook, "GOP Turns Out A Win."

⁶¹ "To: Republican National Committee Members, From: Ken Mehlman, Republican National Committee Chairman, Re: Special Elections Confirm the Importance of Grassroots Turnout Efforts."

⁶² RNC chairman Ken Mehlman described the 2006 midterm election losses as an opportunity to "expand and perfect what we did well, and identify and correct what we didn't." In rededicating the RNC to a program of party building, he said: "if we want to win the presidency and gain back the House, the Senate, and a majority of statehouses in 2008, we will need a ground game better than anything we saw in 2006, 2004, or ever before. We will need dedication to the mechanics of campaigning. We will need those

“brief interruption in a generational effort to build a center-right majority,” and Bush reminded his party leaders that even in defeat, the story remained the same: “you win votes by organizing and turning out the vote.”⁶³ Even with Rove gone from the White House, the long-term proposition of building the party’s infrastructure and expanding its electoral coalition appeared likely to define the GOP’s activities into the foreseeable future.⁶⁴

Whether Bush’s enthusiasm for party building was due to a genuine sense of commitment to the GOP or more to instrumental considerations, the fact remained that Bush dedicated significant resources to building organizational capacities to enhance the party’s electoral competitiveness, both during his presidency and in the future. Bush and his team invested in several critical areas: in the party’s *physical assets*—meaning such assets as computer technology, communications systems, local party infrastructures, and operational divisions⁶⁵; in its *human capital*—meaning the knowledge, skills, and social networks of party activists and campaign managers⁶⁶; and in its *strategic commitments*—meaning programs dedicated to reaching out to such underrepresented groups as African-Americans, Hispanics, middle-class women, and Jews.⁶⁷

Many have viewed September 11 as a motivating event in the story of Bush’s party building. The terrorist attacks endowed Bush with the rare authority of a wartime leader; his popularity ratings rose sky-high. In American politics, popularity is often fleeting and difficult to store—in general, it must be utilized before it dissipates. After 9/11, of course, Bush had an enormous amount of political capital available to spend, and he chose to direct it to party building. According to a Democratic strategist, “the 9/11 attacks offered Bush

armies of volunteers who, by calling their neighbors and friends, are so much more effective than out-of-town, paid grassroots workers. We will need those new technologies that allow us to reach out to Republicans, independents and discerning Democrats in just the right ways to make them understand what our Party and our candidates have to offer. We will need to expand and perfect what we did well, and identify and correct what we didn’t.” Mehlman, “RNC Chairman Ken Mehlman Addresses The Republican Governors Association.”

⁶³ Baker, “Rove Remains Steadfast in the Face of Criticism”; “Remarks by the President After a Meeting with the General Leaders of the Republican National Committee.”

⁶⁴ See, for example, Lawrence and Keen, “To Dems, Rove ‘more dangerous’ outside West Wing: With less time devoted to Bush, political whiz can strengthen GOP”; Cillizza, “Martinez Will Reach Out to Latino Voters, Party Donors.”

⁶⁵ West, “New Republican chairman urges permanent GOP campaign”; see also Allen, “Meet the Mavericks, Sons of the Pioneers.”

⁶⁶ Barone, “Bush Looks to Master Strategist to Build on GOP Momentum.”

⁶⁷ See, for example, Dao, “G.O.P. Is Grooming Black Candidates.”

and Rove ‘a chance to change politics in a way that would have helped Republicans for a generation.’”⁶⁸

With the 2002 congressional elections fast approaching, Bush decided to lend his public prestige to support Republican candidates’ campaigns and to replenish state party coffers. His goal was to use the aura of wartime leadership to help elect and reelect Republicans to Congress. As political scientists Keele, Fogarty, and Stimson explained:

Presidents sometimes put their personal standing on the line and campaign for their partisans. And sometimes they sit quietly by and let events take their course. The Bush White House chose to use the president’s standing—largely a residue of public support gained for decisive action against terrorism after the incidents of September 11th—for Republican gain. With party control of both houses of Congress in doubt going into the election season, the Bush political team decided to use—i.e., risk—the president’s standing to solidify the Republican position.⁶⁹

The president’s public efforts included 108 campaign appearances on behalf of 46 House and Senate candidates; he raised unprecedented amounts of money for candidates and state parties; and throughout, he unabashedly used patriotic imagery and symbolism to conjure up patriotic sentiments.⁷⁰ At a dinner in May 2002, for example, Bush raised \$33 million for Republican campaign committees—a record amount for a single evening—by “selling donors a photo of Bush calling Vice President Cheney from Air Force One on Sept. 11.”⁷¹ Clearly Bush’s greatest political strengths stemmed from his ‘wartime leadership’ and association with 9/11. Milkis and Rhodes find that the administration encouraged all party actors to use 9/11 for partisan gain: Karl Rove encouraged candidates to “run on the war,”⁷² and White House political director Ken Mehlman “argued in a presentation to Republican officials that the party’s greatest advantages in the campaign were the president’s high public approval ratings and the increased salience of national security issues.”⁷³ All told, his efforts represented an “unparalleled effort to lend the popularity he

⁶⁸ Lawrence and Keen, “To Dems, Rove ‘more dangerous’ outside West Wing.”

⁶⁹ Keele et. al., “Presidential Campaigning in the 2002 Congressional Elections.”

⁷⁰ Milkis and Rhodes, “George W. Bush, the Republican Party, and the “New” American Party System,” and Cook, “Bush Mines for Gold at GOP Fundraiser,” and Mike Allen, “GOP Takes In \$33 Million At Fundraiser: Dinner Shatters Record.”

⁷¹ Ibid.

⁷² Milkis and Rhodes, “George W. Bush, the Republican Party, and the “New” American Party System,” 473; also see Clarke, *Against All Enemies*.

⁷³ Milkis and Rhodes, “George W. Bush, the Republican Party, and the “New” American Party System,” 469.

enjoyed in the wake of the September 11 terrorist attacks to his congressional partisans.”⁷⁴

Efforts to parlay Bush’s post-9/11 strength into Republican electoral successes did not cease with the 2002 midterm elections. According to reporters Dan Balz and David Broder, “the events of Sept. 11, 2001, and their aftermath played out in two national elections, in 2002 and 2004, as President Bush and his team skillfully used the issue of terrorism to expand Republican congressional margins and to retain the White House.” Perhaps not surprisingly, congressional campaigns in 2006 followed the same playbook. Although the bungled war in Iraq made association with Bush problematic for some candidates, a credible survey experiment run in late 2006 by political scientist Shanto Iyengar for the *Washington Post* found that “Sept. 11 still resonates politically, with fears of terrorism and memories of a nation bound together in shock and sadness capable of affecting the attitudes of some voters.”⁷⁵

It is therefore far from surprising to observe that throughout both his terms September 11-related themes characterized Bush’s and the RNC’s outreach efforts to attract African-Americans, Hispanics, women, and other groups to the Republican Party. According to Harold Bass, “heightened national security concerns post-9/11 afforded Bush opportunities to exercise his unifying roles of head of state and commander-in-chief, enhancing his efforts to extend his party base by bringing new electoral constituencies into the party coalition.”⁷⁶ Overall, Bush and his team clearly seized on the favorable political environment created by 9/11 to pursue an aggressive party building program, in both the public arena of campaigns and the more subterranean sphere of organization-building.

Was the New Practice Caused by 9/11?

The idea that Bush exploited September 11 for partisan gain, however, is altogether different from the notion that 9/11 somehow renewed the relationship between presidents and their parties in a durable way. The question turns on the ostensible ‘newness’ of Bush’s practices. As shown above, many observers found the intensity and comprehensiveness of Bush’s party building surprising, and so they subsequently termed the practice new and unusual. But could it be that Bush’s party building simply attracted more public scrutiny than past presidential party building efforts? Have earlier observers simply overlooked

⁷⁴ Ibid.

⁷⁵ Broder and Balz, “How Common Ground of 9/11 Gave Way to Partisan Split.”

⁷⁶ Bass, “George W. Bush, Presidential Party Leadership Extraordinaire?,” 2-3.

similar efforts by former presidents, albeit activities perhaps undertaken somewhat more discreetly?

This central question of ‘newness’ is essential, because if one can demonstrate that Bush’s party building was not, in fact, a new presidential practice, then 9/11 certainly cannot be said to have caused it. Moreover, if it can be shown that other factors were likely to produce similar party-building efforts at the same time, irrespective of the events of 9/11, then at best 9/11 can only be viewed as an interesting contextual variable. Donning the hat of ‘wartime’ leader may have endowed Bush with an additional reservoir of authority, but that would be all 9/11 could be said to have contributed to this particular presidential practice.

Any evaluation of Bush’s party leadership is liable to pivot on *how* comparisons with previous presidencies are made: what the unit of analysis is, what evidence is brought to bear, and what method of analyzing the data is employed. Previous scholarship, as it turns out, has mischaracterized the relationship between presidents and parties and made a number of methodological errors which have obscured the striking parallels between Bush’s efforts and those of his Republican predecessors. The errors can be summarized as follows:

Unspecified unit of analysis. When asking “how do presidents interact with their party?,” scholars have failed to succeed in defining just what they mean by ‘party.’ The term is variously used to refer to the party-in-government (primarily the president’s fellow partisans in Congress); the party-in-the-electorate (the people who vote for the party’s candidates); the party-as-organization (the formal party apparatus); or as a brand, symbol, label, or set of ideas. When the definition of party is not specified, anything and everything presidents do may be characterized as *party building*—any speech, policy proposal, or positive statement about his party or fellow partisans, if intended to help the party’s fortunes, may be considered an attempt to build, or not to build, his party. But this will not suffice: we ought not conflate a president’s overt displays of partisan loyalty with purposeful actions undertaken to affect his party’s organizational capacities—these are clearly two different things. Some presidents, such as John F. Kennedy, Ronald Reagan, or George W. Bush, have presented themselves and as more “partisan” in their political identity than others, like Dwight D. Eisenhower or Bill Clinton. But this does not mean that those presidents will necessarily wish to expend valuable resources on strengthening the party apparatus. Less overtly partisan types, such as Eisenhower or the elder George Bush, may in practice be more likely to undertake the quieter business of organizational party building. So long as we lack a clear picture of what “the party” is and fail to specify what party “building” entails, it will be impossible to make credible cross-case comparisons

of presidential behavior. How can one compare one president's partisan rhetoric with another president's nuts-and-bolts party building efforts? These activities differ in kind, and ought not be lumped together.

Recycled secondary sources. Too often, scholars rely on secondary sources when appraising president-party relationships. Richard Nixon is a case in point. Throughout almost his entire first term, he eschewed using partisan rhetoric and even publicly criticized his national party organization. Reliance on his public statements would provide a picture of Nixon as mostly hostile toward his party; we might assume this antagonism informed his various party interactions. But this would be far from accurate. Primary sources from the Nixon presidential library—documents, memoranda, letters, and strategy papers—reveal that the opposite was true: with his explicit support, the Republican Party initiated a series of party building programs to expand and develop its organizational reach. The “New Majority” Nixon envisaged was to be realized through a revitalized and organizationally well-equipped party apparatus.⁷⁷ Were it not for Watergate, he might have succeeded. Yet by recycling conventional wisdom and relying only on secondary sources, previous scholarship has ignored this aspect of Nixon's party relations.

Method of comparative analysis. Because the presidency is by nature unitary—meaning only one person serves at any given time—it is tempting to treat each president's practices holistically. It seems easy and intuitive to compare George W. Bush as a party leader with, say, Bill Clinton. We wish to compare each man with his predecessor, weigh each of their personal characteristics and skills, and reach summary judgments.⁷⁸ At this level of abstraction, though, it is difficult to know specifically what is being compared with what. To develop a true picture of presidential differences, we must be more precise. We must disaggregate presidential behavior into discrete actions that are comparable across time and space. For our purposes, that means also disaggregating “the party” into several different spheres and analyzing what presidents do within each. Are their actions constructive, destructive, or neutral? For each presidential action under consideration, we can ask: does the action aim to strengthen, ignore, or undermine the party's organizational capacities? Along any given sphere of party activity (registering voters, recruiting candidates, and so on), then, we can compare and assess presidential actions. When these methodological shortcomings are addressed, we can more accurately appraise how each president has approached his party, and we can identify specific differences and similarities among the various incumbents.

⁷⁷ Galvin, *Presidential Party Building*; see also Mason, ““I Was Going to Build a New Republican Party and a New Majority””: Richard Nixon as Party Leader, 1969–73.”

⁷⁸ Neustadt, *Presidential Power*; Greenstein, *The Presidential Difference*.

In my book *Presidential Party Building: Dwight D. Eisenhower to George W. Bush*, I draw upon archival work, personal interviews, and detailed historical research on every presidential administration since the 1950s to demonstrate that existing scholarship reveals, at best, only half the story.⁷⁹ George W. Bush's predecessors did not, in practice, act in a uniform manner with respect to their parties; in fact, the full scope of their party interactions reveals striking contrasts between them. While it is true that each of these presidents sought to "presidentialize" their party and *use* it instrumentally for their self-interested purposes, Republican presidents did something more. At least since Eisenhower, Republican presidents persistently and purposefully worked to *build* their party, to expand and develop it into a stronger and more durable political organization. Their instrumental use of the Republican Party organization did not prevent them from simultaneously developing new organizational capacities through new structural forms, new self-sustaining processes, and new large-scale activities to expand the party's reach and competitiveness.

Interestingly, the conventional wisdom is more accurate as an exclusively Democratic story. Democratic presidents worked assiduously to personalize their parties, altering and reconfiguring them to maximize immediate political benefit to their administrations, but took few, if any, steps to leave behind a more robust party organization able to persevere over the long term. Whether we choose to view all presidents in the modern period as a group or look within individual presidencies at the different kinds of party-changing activities that each undertook, the stark partisan contrast is clear. Republican presidents have typically acted in a constructive fashion toward their party while Democratic presidents did precisely the opposite.

The most important reason for this partisan difference, I argue, is that Republican presidents from Eisenhower through Bush had an incentive to rescue their party from its ostensible minority status—to reverse its minorities in Congress, in the electorate, and in the states. Even Bush, who enjoyed unified government for much of his presidency, has viewed his party's newfound electoral strength as, at best, the *beginnings* of a future Republican majority—a durable majority was still thought to be on the horizon.⁸⁰ Democratic presidents, as leaders of the ostensible "majority party" (though technically no such thing exists in the United States, given its separated constitutional system), had no comparable incentive to build their party's organizational capacities. Unlike their Republican counterparts, Democratic presidents simply saw no urgent need to make long-term investments to build a new majority; the condition of their party organization was a second-order concern.

⁷⁹ See Galvin, *Presidential Party Building*.

⁸⁰ Kornblut and Shear, "'Architect' Envisioned GOP Supremacy"; Lemann, "The Controller."

Republican presidents recognized that in order to win, they would have to “repair the undercarriage of the car,” as it were. Building their party’s organizational capacities promised a higher chance of winning more elections, both immediately and in the future. Furthermore, to the extent that each president had grand designs on a particular historical legacy (Eisenhower’s “Modern Republicanism,” Nixon’s “New Majority,” Reagan’s “New Beginning”), infusing his party apparatus with his brand of politics was indeed a tempting inducement. Thanks to the generally favorable institutional conditions they inherited from their predecessors, they also had the opportunity or option to engage in party building. Republican presidents repeatedly discovered that earlier investments in physical assets, human capital, and strategic commitments had created an environment that offered ample opportunities to party build. Making incremental improvements to ongoing party-building programs was relatively cheap and easy to accomplish. Presidents’ cost-benefit calculations were thus shaped by the party building that had preceded them, meaning that over time organizational development within the Republican Party proceeded incrementally and cumulatively. In this respect, party building shared characteristics with path-dependent processes: the reproduction of party structures, processes, and activities was sustained by presidential expectations and calculations, which were shaped by their inherited environments.⁸¹

For a time, 9/11 magnified Bush’s popular appeal and gave him yet another reason to believe that the Republican tradition of party building would yield positive results. But given that Bush’s party-building efforts are not, in fact, *new*—Bush followed the pattern of party building undertaken by his partisan predecessors in an almost lockstep fashion—it seems safe to conclude that 9/11 was not a historically necessary condition for the emergence of his party-building behavior. Irrespective of 9/11, in this area he would probably have undertaken precisely the same activities. One may venture to add that, historically, it has not mattered whether the Republican president had previously been a general, a congressman, a governor, or an actor, or found himself a “wartime” leader: despite significant differences in their backgrounds, personalities, and challenges, all became deeply engaged in party building.

Party building during the Bush presidency was not about Bush, *per se*, and it was not about 9/11; it reflected the mix of incentives and constraints facing an ambitious president. The likelihood that future presidents will emulate his practices in this area, therefore, depends on the combination of incentives and constraints confronting them.

⁸¹ Mahoney, “Path Dependence in Historical Sociology”; also Pierson, *Politics in Time*.

Conclusion

Despite the “N=1 problem” of having only one single incumbent president with which to test the effects of 9/11 on presidential behavior, the preceding pages have attempted to identify clues and marshal evidence, where available, to form preliminary judgments. Clearly, the test of the durability of Bush’s new presidential practices must await the decisions of future incumbents. But in the meantime, some summary observations can be made.

In the two particularly salient areas of presidential practice examined here, Bush did not develop wholly new theories, ideas, or leadership strategies as a result of 9/11. He did, however, adapt, evolve, and modify an existing technique (signing statements) to express an old theory (the unitary executive), and followed an old pattern (Republican presidential party building) to expand the GOP in new directions.

With regard to signing statements, September 11 did represent a critical juncture. After 9/11, the administration began to assert its aggressive claims of expanded presidential powers through this device; the durability of the new practice, however, remains questionable given the political stigma associated with its use. From a legal standpoint, however, the signing statement itself appears rather impervious to challenge in court.

September 11 was not a critical juncture, however, with regard to the president’s party building. It provided a rhetorical boost in the campaigns of 2002, 2004, and 2006, but Bush’s aggressive party-building actions were prompted by the confluence of other factors. The tenuous electoral status of his party and his inheritance of robust party structures and processes from previous rounds of party building gave Bush the incentive to continue party building in a fashion strikingly similar to his predecessors.

These two arenas of presidential practice—institutional relations and partisan politics—represent only the tip of the iceberg. To discern the long-term impact of 9/11 on the presidency, one would need to consider other important arenas in which presidents routinely act. First and foremost, one would have to examine the changes Bush brought to American foreign policy, with an eye to the stickiness of Bush’s pre-emptive doctrine and other national security policies. What were the long-term implications of his war on terror, the interventions in Afghanistan and Iraq, and the military and economic commitments they entailed? One would also need to scrutinize closely such significant areas of domestic policymaking as entitlement reform, tax reform, regulatory reform, and fiscal policy. How much path dependence and ‘policy feedback’ was triggered by Bush’s ability to push through parts of his agenda in the wake of 9/11? In the areas of education policy, environmental policy, health

policy, and the like, what impact did the Bush presidency have on the future of American politics?

As the preceding pages have attempted to show, not every new initiative of Bush's presidency can be so easily attributed to 9/11. But more work must be done. With limited data at our disposal, the conclusions we draw must necessarily be somewhat tenuous. Even so, it is still possible to hold certain factors constant—Bush's personality, historical trajectories, emergent patterns of behavior—and identify the relative impact of 9/11 on specific presidential practices.

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