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*Presidential Power: Assessing the Unitary Executive as the Strongest Determinant of
Presidential Success*

By Maxwell James Fuerderer

A master's thesis submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Master of Arts, The City University of New York, 2019.

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Presidential Power: Assessing the Unitary Executive as the
Strongest Determinant of Presidential Success: A Case Study

By

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This manuscript has been read and accepted for the Graduate Faculty in Political Science
satisfying the thesis requirement for the degree of Master of Arts.

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Abstract

“Presidential Power: Assessing the Unitary Executive as the Strongest Determinant of Presidential Success”

By

Maxwell J. Fuerderer

Faculty Advisor: Charles Tien

The Unitary Executive Theory, which implies that the president should have plenary authority over executive branch functions, and is the sole arbiter of executive power, can be attributed to increasing the powers of the presidency and overall making a president more successful in his policy endeavors. I have concentrated my research to contextualize different variables for presidential success, including prior experience, bureaucratic loyalty, historical context, and, most importantly, the unitary executive. I apply these determinants to two case studies to determine which are most effective. Using the examples of Andrew Jackson and Jimmy Carter, I show how their contrasting uses of a unitary executive contributes most to their respective successful and unsuccessful presidencies. While other determinants of success for presidents can be considered, I find that a strong application of the unitary executive is the most influential for presidential success.

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Table of Contents

I. Introduction: Determining What Constitutes Presidential “Success”.....	8
II. Domestic Success Measurements	
a. Reelection and Public Support.....	13
b. Legislative Success and Veto Issuance.....	16
III. Success in Foreign Policy	
a. Inherent Powers.....	18
b. Conducting Warfare as Commander-in-Chief.....	19
IV. The Unitary Executive: The Strongest Determinant.....	23
V. Other Determinants: Prior Experience, Bureaucratic Loyalty, and Historical Context	
a. Prior Experience.....	38
b. Bureaucratic Loyalty.....	47
c. Historical Context.....	54
VI. Case Studies	
a. The Strong Unitary Executive: Andrew Jackson.....	60
b. The Weak Unitary Executive: Jimmy Carter.....	66
VII Conclusion.....	76
VIII. Bibliography.....	79

List of Tables

Table 1: Presidents with Military Experience.....	32-34
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Introduction: Determining What Constitutes Presidential “Success”

There are many ways that presidents can achieve success. Sometimes success is measured by the number of policy and legislative actions, supported by the president, that are passed and made into law. Success can also come in the form of good foreign policy initiatives, such as ending a conflict or engaging in international deals that greatly benefit the United States socially, economically, or militarily.

If we can measure success of the executive, what then, are strong sources of a president's success? Scholars have pointed to experience, both military and political, of the individual in office as a contributing factor.^{1 2} Additionally, loyalty of the bureaucracy that serves the president is considered an influence.³ Perhaps the most likely factor, to many, is the idea that

¹ Simon and Uscinski (2012), for example, note that while it is assumed that “experienced” presidents perform better, such good performance is attributed more to previous experience relative to specific policy realms. Presidents with military experience, according to the authors, can fare better in situations of military exercise, while former congressmen have extensive experience in dealing with the legislative branch, which can lead to increased cooperation with Congress. Nevertheless, they attribute experience to success. See: Simon, Arthur M., and Joseph E. Uscinski. “Prior Experience Predicts Presidential Performance.” *The Canadian Journal of Chemical Engineering*, Wiley-Blackwell, 19 July 2012, onlinelibrary.wiley.com/doi/pdf/10.1111/j.1741-5705.2012.03991.

² Conversely, Mukunda (2012) takes a different view, believing that “unfiltered” presidents, characterized as outsiders, are either the most or least effective leaders, while “filtered” individuals with extensive experience normally land in the middle in terms of effectiveness. See: Mukunda, Gautam. *Indispensable: When Leaders Really Matter*. Harvard Business Review Press, 2012.

³ Some scholars, notably Rourke (1987) and Hammond and Knott (1996), while finding that control over the bureaucracy is split between presidents and Congress, nevertheless acknowledge that the bureaucracy does not retain great degree of autonomy from a president that attempts to reform it. In cases where presidents have relented on bureaucracy reform, it becomes more autonomous.

Full studies available at:

Hammond, Thomas H, and Jack H Knott. “Who Controls the Bureaucracy?: Presidential Power, Congressional Dominance, Legal Constraints, and Bureaucratic Autonomy in a Model of Multi-Institutional Policy-Making.” *Journal of Law, Economics, & Organization*, vol. 12, no. 01, Apr. 1996, pp. 119–166

Rourke, Francis E. “Bureaucracy in the American Constitutional Order.” *Political Science Quarterly*, vol. 02, no. 02, July 1987, pp. 217–232.

historical context of when the president is serving, including the makeup of Congress and its level of interference in the business of the executive branch, is the most important determinant.⁴

All of these factors, while they can contribute to success, are not the strongest factors in a successful presidency. While factors such as experience, bureaucracy loyalty, and context can greatly determine a president's success, I find that the greatest source of presidential success is strong expression of plenary control over the executive branch, and use of inherent executive powers granted by Article II, also known as the Unitary Executive Theory.

The Unitary Executive Theory is a concept in constitutional law regarding the proposition that the President has the inherent power of complete control over the executive branch of government. This theory is grounded, according to adherents such as Steven G. Calabresi and Christopher S. Yoo, on the Vesting Clause of the Constitution, which they interpret as implying complete singular control of the president over executive branch functions. The theory of the unitary executive holds that Vesting Clause of Article II, which provides that “the executive power shall be vested in a President of the United States of America,” is “a grant to the president of all of the executive power, which includes the power to remove and direct all executive branch officials.”⁵ Overall, in addition to powers specifically enumerated in Article II of the

⁴ See Edwards (1985) and Marshall (2003) regarding context and Congressional influence on the presidency, in the domestic and foreign policy spheres, respectively. Both authors, while acknowledging that individual attributes of a president can affect his relationship with Congress and government institutions, also claim that circumstances can result in situations out of a president's control, in some cases:

Edwards, George C. “Measuring Presidential Success in Congress: Alternative Approaches.” *The Journal of Politics*, vol. 47, no. 02, June 1985, pp. 667–685., doi:10.2307/2130902.

Marshall, Bryan W. “Presidential Success in the Realm of Foreign Affairs: Institutional Reform and the Role of House Committees.” *Social Science Quarterly*, vol. 84, no. 03, Sept. 2003, pp. 685–703.

⁵ Calabresi, Steven G., and Yoo, Christopher S. *The Unitary Executive: Presidential Power from Washington to Bush*. New Haven, CT: Yale University Press, 2008. Pp. 5

Constitution, there are implied powers of the president that are intended to encompass control of subordinate members of the executive branch.

While contemporary scholarship has come to agree on the general concept of the unitary executive as being legitimate, arguments arise regarding its scope and reach. Most scholars attest to the fact of its use, but disagree as to the extent to which the Constitution provides for its plenary authority over the executive branch, as well as presidential justification for its use. The latter view is largely taken by scholars such as Lawrence Lessig, Cass R. Sunstein, and Jonathan P. Mackenzie.⁶ It is the opinion of this author that the argument of Calabresi and Yoo supersedes that of Lessig, Sunstein, and Mackenzie (and others who oppose the theory), and that the question of Constitutional support for the Unitary Executive is not only answered, but evidence of support for the theory is evident in presidential practice.

A focus on the attributes of an individual executive, which can procure a successful presidency, will show why a strong unitary executive expression results, above other factors mentioned, in a presidency that is successful. Not only does a strong unitary executive lead to a successful presidency, but efforts to inhibit the unitary executive, both by a president and other political forces including Congress, greatly lower the chances of a President's success as well. In addition, other factors of success aforementioned, including bureaucracy loyalty, historical context, and personal experience, are shown to directly affect presidential success if we examine their effect on bolstering or weakening the unitary executive.

⁶ See Lessig, Lawrence, and Cass R. Sunstein. "The President and the Administration." *Columbia Law Review*, vol. 94, no. 1, 1994, pp. 1–124., doi:10.2307/1123119. Web, MacKenzie, John P. *Absolute Power: How the Unitary Executive Theory Is Undermining the Constitution*. Century Foundation Press, 2008.

To show the direct effects of the unitary executive on presidential success, the first goal will be to fully explain the unitary executive, in theory. I will point to specific sources of inspiration for the theory. Statements of the Founders, notably Alexander Hamilton, as well as Constitutional justification, that the president has the exclusive power to remove executive branch officials, will be mentioned. I will also make note of contrasting arguments to the Unitary Executive, including those of Lessig and Sunstein (as co-contributors), and John P. Mackenzie. While these arguments do have merit, they come up short in my view for two reasons.

The first is their claim that the unitary executive has no historical support, either in the Constitution and Founding Documents, nor in practice. Calabresi and Yoo's claim that certain Founding Fathers, namely Hamilton, supported the theory, is disputed by the other authors, with Mackenzie going so far as to state that the theory is non-existent. Second, is their equating of the unitary executive, if we are to determine it as legitimate, with what has become termed the "imperial presidency," a concept coined by Arthur M. Schlesinger Jr., to refer to the overreach of powers exhibited by Nixon and second Bush Administrations. While the actions of both administrations initially exhibited a unitary executive, most scholars have agreed that both Bush and Nixon performed actions that expanded their powers, and constituted executive overreach compared to all other presidents. The comparison of Nixon and Bush to other unitary executives, by opponents of the theory, is therefore miss-placed.

A full analysis detailing differences of the theories of the unitary executive, by the Calabresi/Yoo and Lessig/Sunstein camps, will be given in this regard. I will show how the arguments in favor of the unitary executive supersede those against it. Before noting the merits of the unitary executive, as a valid theory grounded in constitutional law and practice, my first goal is to determine how the theory applies to presidential success. To do so, presidential success

must be clearly defined and determined. After finding what constitutes presidential success, other notable factors that determine presidential success will be discussed. The factors chosen here are (1) presidential experience and background; (2) bureaucratic loyalty to the president; and (3) historical and political context of the president's time of taking office.

While each of these factors can contribute to a successful presidency, I aim to show that the unitary executive, over these factors, is more essential to a successful presidency, and two case studies, with at least two of the aforementioned factors held constant, will be used to exemplify this claim. Overall, these case studies will show that despite having similar attributes, the most important variable that determines presidential success or failure is a strong or weak expression of the unitary executive. The two case studies used are one strong practitioner of the unitary executive, and a successful president, Andrew Jackson, and a weak practitioner and unsuccessful president, Jimmy Carter.

What exactly is presidential "success?" Success itself should be broken up into different components. The president, though head of only one branch of government, must work with (and in some cases, against) Congress to enact policy, and is seen by the American public as the main arbiter of policy initiation or destruction during their term. The president, as head of state, is also tasked with responsibilities in the form of foreign policy. How a president deals with issues pertaining to other world powers can greatly affect his success. Therefore, success of a president should be measured in both the realms of domestic and foreign policy, which I will now consider and analyze.

Domestic Success Measurements

Reelection and Public Support

For any politician in a democratic society, the simplest determinant of success should be obvious: getting elected and staying in office. In other words, reelection is a strong signal of success for a president. If a president is reelected, it shows that, in most cases, a plurality of their constituents approves of the work the president is doing. But more importantly is the obvious: if a president loses reelection, his success as an executive ends, because his term is over. No more achievements can be procured in a presidency if it is terminated, and the populace at large believes that a president is not worthy to continue serving in executive capacity, considering him a failure. If a president is reelected, however, a converse point can be made: the president, in procuring another term, has more time to enact policy, achieve success and establish a legacy.

It can be argued, however, that the American electoral system is a poor representation of public approval of a president for a few reasons. First is the fact that, even if a nominee wins the popular vote, a candidate can still win election through an Electoral College majority. If a president wins less than half of the popular vote, but wins in the Electoral College, should it be assumed that the president is deemed a failure? Does public support in elections translate as presidential success?

Indeed, without public support, a president cannot get elected or reelected. But cases in which an individual has won the popular vote, but lost the Electoral College, though controversial, are rare. Of fifty-eight quadrennial elections that have occurred in American history, only five have yielded such a result, two of which occurred in the past five elections. Some presidents, even though they won the popular vote, have won their initial election with

only a plurality in cases where multiple candidates ran (Abraham Lincoln, Woodrow Wilson, and Bill Clinton are three examples). However, what is perhaps more important is that, if we are talking about executives, and their popularity, public support for a president can range throughout their term, and the margin by which a president wins election, initially, should not be considered a determinant of their popularity in office, or their subsequent success. Therefore, reelection should be more a determinant of success and popularity than initial election.

No president who has won reelection, it should be noted, has finished behind another candidate in the popular vote, and only three Presidents, Woodrow Wilson (1916), Harry S. Truman (1948), and Bill Clinton (1996), have received less than a majority of the popular vote. It should also be noted that in a two-party system, where the Democratic and Republican parties retain dominance over the electoral system, each of these three presidents was reelected during contests in which third party candidates performed remarkably well, especially in the case of H. Ross Perot. Also, Grover Cleveland, the only individual to serve two non-consecutive terms, was elected to a second term with only 46% of the popular vote, due to a strong showing by Third-Party candidate William B. Weaver.

Because reelection is required for presidents to continue their terms, one can argue that a successful president is one that has served more than one term, and that a president who has failed to be reelected (unless he willingly chose to retire) should be seen as less successful. Notable eras of specific policy and political values have been attributed to presidents that served two or more terms, such as the Jacksonian Era (Jackson), Reconstruction Era (Lincoln), Progressive Era (Theodore Roosevelt), and the New Deal Era (Franklin Roosevelt). But it is not only the reelection of the president that should be attributable to success. Some presidents, notably James K. Polk and Lyndon B. Johnson, achieved great legislative and political success in

their single terms as president, though most one-term presidents, such as John Tyler, Franklin Pierce, and Andrew Johnson, were able to accomplish very little, mainly due to division between them and their own parties.

As the member of their respective parties with the highest-ranking job in government, the president serves as a figurehead of their party. If the president is successful, the party can benefit. If the president's policies or antics fail, the party suffers. Thus, if the president's party continues to hold the White House after he leaves, or gains seats in the congressional elections upon the president's departure, the president can arguably be deemed successful, because the electorate is highly supportive.

Parties holding the White House consecutively for three terms, outside of a death or resignation of the incumbent, however, are rare. The last such time this occurred was when George H.W. Bush succeeded Ronald Reagan in 1988. Prior to Bush, no vice-president had been elected to succeed the president he served since Martin Van Buren succeeded Andrew Jackson in 1836.⁷ Non-vice-presidential candidates that have followed a president of the same party are also rare, with the last such candidate being Herbert Hoover succeeding Calvin Coolidge in 1928, and Taft succeeding Roosevelt in 1908. It should be seen as a sign that if a candidate of the same party is elected, then a president's party is popular, and the president is viewed as successful and transformative.

⁷ Author's note: Richard Nixon, though he served as Eisenhower's Vice-President, failed to directly-succeed him by losing the 1960 election, though he won election in his own right in 1968. Five men who ascended to the presidency following the death of the incumbent, and also won election to a second term are Theodore Roosevelt, Calvin Coolidge, Harry Truman, and Lyndon Johnson. Though each could have run for another election, even though the confines of the 22nd Amendment, none chose to, though Roosevelt attempted a run in 1912, following the first term of his successor, William Howard Taft.

Legislative Success and Veto Issuance

Aside from reelection, other factors can determine presidential success, primarily the success of the president's policies. For policies to be enacted, the Constitution lays out specific procedures for the passage of bills and laws. If the Congress approves a majority of the president's proposals, or if the president signs a great deal of bills into law, the government should be considered, at that time, productive. A highly-active Congress, which passes bills at a high rate, can also mean a similarly-active Executive.

But what about cases where the Congress and president quarrel over policy? If Congress is not putting through a great deal of the president's initiatives, should the president be deemed unsuccessful? As much as signing bills into law is a job of the president, so is rejecting those that they disagree with. The veto power of the president, which allows the president to reject laws of the Congress if he chooses. Exercising the veto power effectively can work to the advantage of the president. It will require the Congress to procure a two-thirds majority to override. Vetoing a bill grants the president the final say on its merits, assuming the veto is not overridden, and can sometimes lead Congress to reset its policy agenda and create a new bill that better fits the president's preferences. In regards to the veto, a president should not be deemed unsuccessful simply because he exercises the veto power often and quarrels with Congress.

But, if the veto is overridden, a failure of the president is evident. presidential vetoes are rarely overridden. Of (as of this writing) 2572 total vetoes issued by presidents, only 110 have been overridden, constituting only 4 percent.⁸ For the first nine presidents, spanning fourteen

⁸ This total includes both regular vetoes, and pocket vetoes. While regular vetoes are issued directly back to Congress while it is in session, pocket vetoes simply represent Executive inaction on a bill, as all a President has to do is not sign a bill when Congress is out of session. If pocket vetoes are not included, however, the success of regular vetoes is still high, as only 7 percent have been overridden. For a full list of presidential vetoes, see the

presidential terms and fifty years, no veto was overridden until the Tyler Administration. John Tyler, already mentioned as one of the most-experienced politicians ever to rise to the presidency, was highly unsuccessful in furthering his legislative agenda, as was Andrew Johnson, who is attributed to having one of the worst legislative records with Congress, as well as an unsuccessful presidency, witnessed more than twice as many veto overrides as all his predecessors combined.

A veto override should also be considered a larger sign of failure if the president's own party controls Congress. Getting bills passed with an opposing party, due to increased polarization of Congress over the years, has been a difficulty for many presidents, notably Barack Obama and Grover Cleveland, with Cleveland himself exercising the veto at a higher rate than any other president (though Franklin D. Roosevelt, having served three terms, had the most vetoes by far). But for Jimmy Carter, John Tyler, and Andrew Johnson, whose own parties controlled one or both Houses of Congress, the veto power was exercised and overridden. Veto overrides do happen for presidents with opposing parties as well, and this number is normally higher. Ronald Reagan, to whom a rise of neoliberal governance and policies can be attributed, served against a Democratic Congress, having his veto overridden nine times, more than any President since (this is also in spite of his being dubbed “the Great Communicator”), but mainly had a great deal of his policies passed during his two terms as president.

database of the United States Senate at: “Vetoes: Summary of Bills Vetoed, 1789-Present.” *U.S. Senate: Contacting The Senate > Search*, 18 June 2018, www.senate.gov/reference/Legislation/Vetoes/vetoCounts.htm.

Success in Foreign Policy

Inherent Powers

Article II of the Constitution tasks the president with a great deal of power and responsibility in foreign policy, which has components that are checked by other branches of government, mainly Congress. The president, though dubbed “Commander-in-Chief” of the armed forces, cannot declare war, as that power is delegated to Congress. Also, the ambassadors nominated by the president are subject to Senate confirmation, giving them the requirement of multilateral approval, and while the president can propose and sign treaties, ratification of treaties also requires Senate consent.

Nevertheless, the president is able to conduct foreign policy with normally less scrutiny than domestic policy. One reason is because the president, as the head of state, is tasked with receiving ambassadors and diplomats of other states, and is thus a main source through which other states conduct foreign policy with the United States. The president may require Senate confirmation for treaties, which according to the supremacy clause of the Constitution are “supreme law of the land” and can carry over to future administrations following their ratification. For executive agreements, however, congressional support is not required, and though they can be overturned or retracted by a future president, they still carry the power of law until that is done, and so long as they do not violate any existing treaties. An example is the Iran Nuclear Deal of President Barack Obama, from which his successor, Donald Trump, immediately retracted.

Conducting Warfare as Commander-in-Chief

In conducting warfare, the president as commander-in-chief is undoubtedly the arbiter of initiative in this realm, rather than Congress. Of the many military conflicts that the United States has become engaged in historically, only five such conflicts have been initiated as a result of a congressional declaration of war. Almost all conflicts have occurred at the order of the president, as commander in chief, and while some have been opposed by Congress (mainly after the War Powers Resolution), most are conducted without congressional overreach. Presidents can make a claim to having precedent over matters of warfare other than the commander-in-chief clause alone. It is also the fact that the president, unlike Congress (save some personal vacations) does not go into recess during his term.

The president, in addition to being the only official in the United States government elected by citizens of the entire country at large is also the only such individual that, indirectly, pledges to be on-call for his position at all times. Any times that the president is incapacitated or cannot fulfill his duties fall under scrutiny of the 25th Amendment, which has only been enforced twice. Both times were during the George W. Bush Administration, in which the president underwent surgery which required sedation. He resumed his duties immediately after recovery. Because the president is always technically “on the clock,” immediate action, when it is required in the case of emergency or threat, can be undertaken by the president. Congress, even if completely assembled, requires a minimum of a majority of votes to take action, while the president, as the sole head of his branch, does not require any such hurdles.

Though Congress has repeatedly attempted to limit the president's authority in conducting war affairs, such limitations are rarely adhered to by presidents. A notable example is the 1973 War Powers Resolution, which requires the president to inform Congress of military action and

remove American military units from hostilities that go on for longer than 60 days without congressional approval. This Resolution, passed as a response to President Richard Nixon's conduct of the Vietnam War, normally without congressional approval, has not been supported by any president since Nixon. Some of his successors, notably Clinton and George W. Bush, have violated the resolution outright. One of the reasons that presidents will not accept the resolution is not only due to restriction of their powers at the moment, but also to not set a precedent of congressional supremacy over war-making.

Even without the ability to declare war, presidents can enter into conflicts in other ways. One notable way is through the Supremacy Clause, which declares all treaties as the “supreme law of the land,” similar to the Constitution itself. If an international body created as a result of a treaty, such as the United Nations, goes forth with a resolution that justifies military action under its charter, the president may take action without congressional approval. This tactic was utilized by President George H. W. Bush during the Persian Gulf War, claiming that his reaction to the Iraqi invasion of Kuwait was justified due to a United Nations Resolution authorizing military intervention.

Thus, in cases of foreign policy, the president is not only given great ability to act, but can also be given credit (as head of state) when things abroad go well for the United States, as well as blame for when problems arise. Since successes in foreign policy are normally attributed to the president, if the United States is successful in foreign policy during the president's term, the president should be deemed successful in that regard. James Monroe, who served during what has been termed the “Era of Good Feelings” can perhaps attribute most of that positive record to his foreign policy achievements, as the Monroe Doctrine established the United States as the dominant force in the Western Hemisphere.

How a president is successful in foreign policy, however, has different determinants. Being at war or involved in war, in and of itself, does not mean that a president is unsuccessful. Rather, it is his conduct of hostilities and efforts to win and/or end the conflict that matter. The strong leadership expressed by Abraham Lincoln and Franklin D. Roosevelt during the American Civil War and World War II, respectively, are prime reasons for their success and high reverence as presidents, while the failures of Lyndon Johnson and Richard Nixon in their conduct of the Vietnam War have been seen as blemishes on their foreign policy records.

Encouraging diplomacy to end hostilities, especially if it results in an end of conflict, should be considered an achievement. Theodore Roosevelt's efforts to end the Russo-Japanese War for example, which culminated in the Treaty of Portsmouth, resulted in his being awarded the Nobel Peace Prize, making him the first incumbent president to receive the award (Barack Obama is the second). Dwight D. Eisenhower's promise to "go to Korea" resulted in a ceasefire of the Korean Conflict and a withdrawal of United States soldiers from the Korean Peninsula. Overall, presidents are granted high foreign policy expectations to protect the interests of the United States. Failure to do so is equated with a poor foreign policy record as well. Presidential success regarding foreign policy, therefore, should be measured by how often the president's stated policies in the foreign sphere, which are implemented, are successful.

In sum, a president's success is measured both in terms of domestic and foreign policy. Domestically, a president is successful if they achieve the goals that they have set out, mainly through passage of legislation and initiatives that can be attributed to them if successful. A president is deemed domestically successful if the public also approves of his actions, and subsequently votes to keep him in power to continue such policies. In a democratic system that

derives its power “from the consent of the governed,” in theory, a president and party that keep their power by that process should be deemed successful.

In the realm of foreign policy, it is the job of the president to serve his own, as well as America’s, interests. Foreign policy success can be seen through treaties, which the president can propose, and relations with foreign leaders, which the president initiates through his duty to receive ambassadors. Simply because war and conflict may start during a presidency, however, does not mean that a president is unsuccessful in foreign policy, especially if the president is able to lead effectively during that wartime. The Civil War may have begun under Abraham Lincoln, yet his strong leadership also led to an eventual reunification of the country in the decades after his death.

With measures of success determined, it is now important to understand the factors that directly affect how presidents can be successful. The factors that will now be investigated are the unitary executive, experience, bureaucracy loyalty, and historical context of the president’s term. While each of these factors are influential to a president’s success, I intend to show how an individual’s experience, historical situation, and bureaucracy loyalty are less important in determining success compared to the unitary executive theory, as well as how the unitary executive theory, moreover, has a direct effect on strengthening each respective factor.

Most important Determinant: The Unitary Executive

While the attributes of personal experience, loyal bureaucracy, and political context each play a factor in the success of the presidency, none of them are as much a determinant of presidential success as strong expression of the Unitary Executive. Holding experience, loyalty, and context constant, a strong and weak expression of the unitary executive can yield contrasting results of success for a presidency.

A full understanding of the unitary executive as a theory, which will now be articulated, is necessary for the understanding of its applicability to the American Presidency. Proponents of the theory, namely Steven G. Calabresi and Christopher S. Yoo, ground their arguments in constitutional validity and applicability of the concept. I believe Calabresi and Yoo provide a stronger argument in favor of the unitary executive than detractors of the theory such as Lawrence Lessig and Cass R. Sunstein give against it.

As a theory must be falsifiable, both sides of the argument of the unitary executive theory will be discussed, followed later by two case studies Andrew Jackson and Jimmy Carter. Respectively, each embodied strong and weak unitary executives and had successful and unsuccessful presidencies, respectively. My goal is to show that a strong expression of the unitary executive is a strong determinant of success for a presidency (merits and morals associated with governance notwithstanding).

Calabresi and Yoo base their support of a strong unitary executive on three major points. First, that the president, through the Vesting and Take-Care Clauses of the Constitution, has broad power to control execution of the law. These clauses state that: "the Executive Power shall be vested in a President," and that "he shall, Take Care that the Laws be faithfully executed,"

respectively. The specific words used in the aforementioned clauses, according to Calabresi and Yoo, show a support of the Framers of the Unitary Executive.

The Vesting Clause, for example, uses the words "in a president" regarding the executive power. This not only implies, but validates the concept, according to Calabresi and Yoo, that the president is the only source of executive power in the United States government. The Take Care Clause, in addition, refers not only to execution of the law in the United States being conferred to the president, but also establishes the president as a government body tasked with interpreting the law. Because he is tasked with carrying it out, they argue, he has not only the right, but the obligation, to utilize his interpretation of the law in conjunction with his execution of it.

Second, the president must have the authority to command the executive officers who assist him. As all executive branch officials carry out functions relating to the president and "faithful" execution of the law, all executive officers act by the president's authority and according to his wishes, Calabresi and Yoo argue. Their decisions and actions *are* the decisions and actions of the President, and he must take full responsibility for any results.

Their third claim is that the removal, of executive branch officials, is an authority vested in the President, rather than any other force in government, namely Congress. Any efforts to separate executive branch subordinates from presidential control, or removal, represent actions that should be deemed unconstitutional. The president should be able to remove subordinates for reasons as serious as incompetence and illegal activity, and for reasons as simple as policy disagreement. Every president from George Washington to George W. Bush has supported this power, in Calabresi and Yoo's view.⁹

⁹ Calabresi, Steven G., and Christopher S. Yoo. *The Unitary Executive Presidential Power from Washington to Bush*. Yale University Press, 2008. Pp. 4-8

Lessig and Sunstein contradict the notion of unilateral removal power of the Executive, however, believing removal power is a *shared* responsibility between the president and Congress, as both parties are responsible for the nomination and approval, respectively, of high-level Executive Officers. They also disagree with Calabresi and Yoo, regarding removal as a common practice of presidential power throughout American history. They argue that removal for political reasons was not only uncommon, but nonexistent during the first few administrations, at least until the rise of Andrew Jackson in the 1830's.¹⁰

Lessig and Sunstein's interpretation of the Vesting Clause is also a noted difference from Calabresi and Yoo, and a major part of their argument. To Lessig and Sunstein, any powers not vested explicitly in the president by Article II of the Constitution should be delegated to Congress under Article I Section 8, or the Necessary and Proper (Elastic) Clause, which gives Congress the power to make laws deemed necessary for carrying out all other powers of the government.¹¹ Congress, not the president, should have the power to set out the provisions through which the president can carry out his duties.

The Vesting and Take-Care Clauses, to Lessig and Sunstein, are not vague and open for interpretation. The authors take a strict, literal reading of the Constitution to back up their claim of a weaker unitary theory. The language of the Take-Care Clause, for example, is viewed by Lessig and Sunstein as a "duty", rather than a function of power, as it is listed in Article II, Section III, among other supposed duties. Powers, such as the ability to grant pardons, are listed elsewhere in the Constitution for a reason, they argue.¹²

¹⁰ Lessig, Lawrence, and Cass R. Sunstein. "The President and the Administration." *Columbia Law Review*, vol. 94, no. 1, 1994, pp. 1–124., doi:10.2307/1123119. Web.

¹¹ Lessig and Sunstein, *Ibid.*, 43

¹² Lessig and Sunstein, *Ibid.*, 15

Regarding the theory that the president has complete control over all executive branch officials, Lessig and Sunstein carry their view of the Elastic Clause even further, claiming that Congress, and not the president, has the power to pose on any executive officer "any duty they may think proper", so long as it is "not repugnant of rights secured by the Constitution."¹³ They are not, however, completely dismissive of a unitary theory. Lessig and Sunstein *do* believe that the president should have a degree of authority and directive over executive branch officials. Their argument is the *extent* to which such power reaches. Overall, Lessig and Sunstein believe that the presidency became more powerful over time, and that the unitary concept was not intended by the Framers of the Constitution, the First Congress, or even prominent individuals at the dawn of the new republic.

To support their claims, the authors first turn to the origins of the executive branch, upon its creation by the Constitution, and actions taking place directly after. To Calabresi and Yoo, the Framers favored a more powerful, single executive, following the disastrous example presented by the Articles of Confederation, which only provided for a "President of the Congress Assembled", who could only act under direct control of Congress. Executives of state legislatures, in addition, were weak because of plural leadership. Each legislature had multiple executives who were forced to split their powers. This system of government even prompted James Madison to proclaim early state Executives as "little more than Cyphers; the legislatures omnipotent".¹⁴ The Constitutional Convention thus created a single executive, intended to have its own unitary powers.

¹³ Lessig and Sunstein, *Ibid.*, 59

¹⁴ Calabresi and Yoo, *Ibid.*, 25

Lessig and Sunstein contradict this notion, believing the early republic was wary of the potential for abusive executive power, as the American Revolution itself constituted a reaction to the excessive use of power by a monarch.¹⁵ Nevertheless, the concept of executive power, as aforementioned, was carved in stone with Article II laying out the Take-Care and Vesting Clauses. But how would presidents put executive power into practice, especially regarding interaction between the president and executive branch officials, during the first years of the American Republic?

In the first-ever meeting of Congress, later called the "Decision of 1789", the Congress dealt directly with the issue of presidential removal power, notably while creating the Department of Foreign Affairs (now the State Department). In the initial proposal presented at this meeting, the Secretary of Foreign Affairs is "removable from office by the President of the United States". This preliminary concept was rejected by Representative Egbert Benson, on the grounds, Calabresi and Yoo contend, that Benson believed the language of this proposal, in addition to the fact that the proposal came from congressional statute, implied that Executive removal power would only be conditional on congressional statute, not Article II of the Constitution.¹⁶ Thus, the power of removal would be relative to congressional, as well as executive, intuition.

This provision was later removed, and the cabinet position was created, with the Decision of 1789 supposedly implying that Congress, even at its first meeting, agreed that the president alone can remove an executive official. Though the initial proposal had enough support to pass, is it not possible that the first Congress, in representing a new nation created as an alternative of

¹⁵ Lessig and Sunstein, *Ibid.*, 13

¹⁶ Calabresi and Yoo, *Ibid.*, 29.

authoritarian rule, would have been skeptical of a president with authority to remove officials at his leisure? Why would Congress forfeit the opportunity to impose a further check on the executive, by limiting removal power?¹⁷

To Lessig and Sunstein, the Decision of 1789 does not designate uniform removal power to the president. As the Decision of 1789 is an act of Congress confirming or establishing a power of the executive, they argue, this "decision" attests more to the idea that the Elastic Clause, rather than the Vesting Clause, determines powers not expressly already laid out in the Constitution. If the Vesting Clause is read to imply a broad understanding of executive power, does it not then "render superfluous much of the balance of Article II", as Lessig and Sunstein believe?¹⁸ Nevertheless, the Decision of 1789 is notable because it provided a framework for loyalty of executive branch officials to the president, by tying the removal power (and the respective jobs of each officer) to the president himself. Thus, all actions made by executive branch officials, arguably, are very much tied to the president, as actions by officers that go against wishes of the president would result in their removal.

Calabresi and Yoo use examples, from the Washington Administration, to support the idea that the unitary executive has existed since the American Presidency's beginning. Washington, upon his inauguration in 1789, nominated executive officials to help carry out the functions of his branch. These officials included department heads, from the Secretaries of State and Treasury, to the Attorney General. In undertaking the task of overseeing the executive branch, Washington, himself a former General of the Armies and an individual accustomed to a

¹⁷ A study by Saikrishna Prakash, of the Cornell Law Review, delves more thoroughly into the specifics of this decision. The final vote of the Decision of 1789, in the House of Representatives, was 30 to 19, indicating that just a little over half of the chamber supported the measure. For full text of Prakash's work, see: <http://cornelllawreview.org/files/2013/03/Prakash-1021.pdf>.

¹⁸ Lessig and Sunstein, *Ibid.*, 49

hierarchical order structure, commanded cabinet officers to report to him on all actions made by their respective agencies.¹⁹

Washington, as the first president, had no precedent from which to base his decisions, including how he handled business with his executive officers. Because an executive branch with department heads serving under a president was a new concept, Washington took it upon himself to oversee the actions of each department upon its creation. He rendered the executive branch heads his subordinates, separating them from the control and influence of Congress, and his contacts with these officers was "close and unremitting". Then-Secretary of State Thomas Jefferson, also a future President, noted that Washington was "always in accurate possession of all facts and proceedings in every part of the Union, and to whatsoever department they related...."²⁰

This is illustrated by the loyalty to Washington expressed by his cabinet officers, notably his Secretary of the Treasury, Alexander Hamilton. Writing in the *Pacificus Letters*, penned for the purpose of supporting Washington's Neutrality Proclamation during the war between Britain and France in the 1790's, Hamilton claims that "the general doctrine of our Constitution... is that the *executive power* of the nation is vested in the President; subject only to the *exceptions and qualifications* which are expressed in that instrument".²¹ Hamilton had previously expressed support for an executive's power to direct subordinates in Federalist No. 72, stating that all executive officers should be "subject to Executive superintendence".²² Though the relationship of

¹⁹ Washington supposedly complained repeatedly about the "inconvenience of depending upon a number of men and different channels" for orders to be carried out while he was in the army. See Calabresi and Yoo, *Ibid.*, 31, *supra* note 1; Glenn A. Phelps, *George Washington and American Constitutionalism* (1993)

²⁰ Calabresi and Yoo, *Ibid.*, 31-32.

²¹ Hamilton, Alexander. *Pacificus No. 1*. First written 29 June, 1793. For full text, see: http://press-pubs.uchicago.edu/founders/documents/a2_2_2-3s14.html

²² Calabresi and Yoo, *Ibid.*, 56

Hamilton and Washington may simply be one of mutual respect and different from other examples of relationships between a president and a cabinet officer, Hamilton's views are of striking importance, as he was the primary author of the Federalist Papers, and thus a source of prominent views of the dominant Federalist Party in the early years of the American Republic.

Lessig and Sunstein are quick to point out a major flaw in Hamilton's supposed support of a unitary theory: his statements regarding executive removal in Federalist 77, that the consent of the Senate "would be necessary to displace as well as appoint" officers chosen by the president to serve the republic.²³ Even if this is the true view of Hamilton, his *Pacificus* statements non-withstanding, is the Senate supposed to have the authority to remove officials of a separate branch of government, outside of the rules of impeachment? Would such a power infringe on the Separation of Powers Doctrine? How often would Congress attempt to influence removal of executive officers?

Until the Tenure of Office Act of 1820, Congress would not put forward notable acts limiting executive power over direction and removal of subordinates. The practice of directing and removing executive officials by presidents, Calabresi and Yoo argue, occurred with frequency during the first half-century of the American Republic. George Washington started this trend with his removal of three ministers to foreign nations, among them future President James Monroe.²⁴ Presidents John Adams and James Madison, respectively, removed their Secretaries of State over disagreements about international affairs.²⁵

²³ Lessig and Sunstein, *Ibid.*, 26

²⁴ Washington's three ministers in this case were James Monroe, William Carmichael, and Thomas Pinckney. See Calabresi and Yoo, *Ibid.*, 33.

²⁵ Adams removed Timothy Pickering, a former War Secretary under Washington. Madison removed Robert Smith, though it is possible that Madison removed him due a personal urge to be his own State Secretary, as he had formerly held the post under Jefferson.

Thomas Jefferson took it upon himself to remove district attorneys, even without specific Constitutional authorization to do it, perhaps believing that the power to do so rests in the president. Jefferson also became the first president to remove officials appointed by an opposing party, as he was the first Democratic-Republican president, and most government officials at the time were holdovers from the previous Federalist administrations (he may have also done this to offset John Adams's high number of "midnight appointments," so-named because Adams made them in the last days of his presidency). Jefferson also ordered the investigation that charged his own vice-president, Aaron Burr, with treason against the United States, echoing his ability to exert control over issues regarding all members of the executive branch.

While James Monroe and John Quincy Adams did not remove many officers during their administrations, such lack of removal does not necessarily show a preference of either against unitary power. Monroe likely removed few officers because his Democratic-Republican party completely controlled the United States Government, while the Federalist party was all but eradicated, leaving him few political foes to remove. Adams did remove some officers, but his support of the unitary theory is expressed more by statements and actions he made during his service as Secretary of State for the Monroe Administration, an office he entered "with a suitable impression that my place is *subordinate*."²⁶ John Quincy Adams took such a view so seriously, it can be argued, that in authoring the Monroe Doctrine himself while Secretary of State, he notably gave the name of the doctrine to Monroe, whom he would have considered his superior.

As shown by the examples of the first six presidencies, the unitary theory is a concept likely supported by all presidents from the founding of the American Republic onward. While

²⁶ Calabresi and Yoo, *Ibid.*, 73. Italics made by authors.

the removal of officials, for political purposes, could be seen as an anecdote of a unitary executive that should be feared, none surpasses the removals made by Andrew Jackson in such regard, a claim which the authors agree. Though the authors have disagreed on the origin of the unitary executive, they nevertheless agree that Andrew Jackson's battle over the Bank of the United States represents perhaps one of the strongest expressions of presidential influence over executive subordinates.

The issue over the Bank ended with the Bank's charter not being renewed and no further actions from Congress, a major victory for Jackson, which he achieved by dismissing and appointing Treasury secretaries until he found one willing to withdraw all government funds from the bank, greatly debilitating it. Overall, Jackson's battle with Congress over the Bank of the United States represented perhaps the strongest example of a unitary presidential action that the American Republic had seen in its existence up to that point.

While Calabresi and Yoo look at Jackson's actions as evidence of strong unitary expression, Lessig and Sunstein believe that the Jackson example of removing a high-level officer without Congressional approval, though it is indeed a strong unitary action, represents an overbearing of executive power, not only because Jackson's actions are unconstitutional, in their view, but also because they believe that the Secretary of the Treasury is not a designated member of the Executive Branch, as the Constitution does not list the Treasury Department as an Executive department, unlike the War (now Defense) and Foreign Affairs Departments. Because the Congress has control over power of the purse, is it not possible that the Framers intended the Treasury Department to be more linked to the Congress, instead of the president?²⁷ The Treasury

²⁷ Lessig and Sunstein, *Ibid.*, 27

Secretary notably transmitted annual estimates directly to Congress from 1790 to 1820, with or without first sharing such information with the president, implying a connection between the Congress and the Secretary.²⁸

Indeed, Congress has the power to propose new laws, which may become effective so long as the President signs them into law or the Congress overrides the president's veto, so if Congress makes a law allowing it to impose orders on a specific officer, is such an act a breach of the separation of powers? Even if Congress can find ways to direct officers of other branches, the example of the Secretary of Treasury does not provide enough evidence to support the claim that the office is tied more to the Congress than the president for a couple of reasons.

The first reason is the connection and loyalty expressed by Secretaries of the Treasury to the Presidents they served. As noted before, Hamilton served in his post as Treasury Secretary in full compliance with the wishes of President Washington. At worst, such loyalty can be attributed to the fact that the respective officer (the Treasury Secretary in this case) is aware that the president can remove them from their post at his behest. At best, executive officials, including the Secretary of the Treasury, simply view their office as naturally subordinate to that of the president.

Second, though the Secretary of the Treasury was not designated as an "executive" office upon its inception, as Lessig and Sunstein claim, Congress recognized it as an executive department only nine days after its original designation.²⁹ Though Jackson became, in his removal of multiple Treasury secretaries, the first president to dismiss a Secretary of the

²⁸ Lessig and Sunstein, *Ibid.*, 59

²⁹ This acknowledgment is found in a statute made by the United States Congress on September 11th, 1789, referring to the salary of members of the Treasury Department, which is referred to as "Executive". All acts of the first year of the First Congress can be found at: <https://www.loc.gov/law/help/statutes-at-large/1st-congress/c1.pdf>

Treasury, the fact that Congress seemingly designated the office as executive nearly from the beginning supports the concept that previous presidents could have done the same thing if they had wished.

As mentioned earlier, Congress did attempt to inject its influence into the removal process of executive officials with the Tenure of Office Act of 1820, which limited the terms of executive branch officials serving outside Washington D.C. to 4 years and asserted a congressional right to remove said officers, thus "aiming" to create a blank slate for incoming presidents.³⁰ The act was condemned by former Presidents Jefferson and Madison, because both believed that it would precipitate control of tenure being delegated to the Congress as much as the president. Jefferson warned that it sapped "the constitutional and salutary functions of the president", while Madison saw it as "of a nature to take great root" in the president's power.³¹ Monroe, however, signed the bill without veto. Monroe likely did not fear the law, because he presided over a rare case of unified government, completely composed of only one party, which he believed would not try to intervene on his powers. Or, perhaps the Congress itself was simply trying to create a system that wheedled out incompetent officials?

If the 1820 Act is meant to imply that Congress aimed to control the president's power, or that executive removal was intended to be influenced by Congress as well as the president, what should be more striking is the fact that Congress relented until 1820, over the course of five presidential administrations, before it decided to pass a resolution regarding its control over executive branch officials. Perhaps inaction can imply as much as action, regarding Congress's

³⁰ Prakash gives a similar interpretation of the act in his one of his own works. The full text of the act is found in Prakash's work, so I will be referencing it here. For Prakash's full analysis on Executive Removal, see Prakash, Saikrishna, "*Removal and Tenure of Office*," *Virginia Law Review* 92:1799 (2006), p. 1797

³¹ Calabresi and Yoo, *Ibid.*, 70.

true feelings about the unitary executive? Maybe Calabresi and Yoo are correct that the Founders, and subsequent Congresses, tacitly approved of presidential power over the removal and duties of members of the executive branch?

Overall, Calabresi and Yoo's belief in a strong unitary executive, which has supposedly been prominent throughout the history of the presidency, is supported by examples of unitary expression by Washington and his successors, culminating in the actions of Andrew Jackson against the Bank of the United States. Members of the executive branch outside of the president regard their positions as subordinate, and their actions as intended to be compliant with his orders. Furthermore, Calabresi and Yoo insist that the Vesting Clause of the Constitution, in addition to providing the framework for such an expression of power, also affirms support of the Founders for a unitary executive. Because Congress, itself the body that can issue Constitutional checks on the executive, did not attempt to limit the president's power to remove executive officials until the Tenure of Office Act of 1820, Calabresi and Yoo take such inaction as validating the idea that the unitary executive was taken with more support than dissent, in the early years of the American Republic.

Lessig and Sunstein argue that a lesser unitary power was intended upon inception of the executive branch. In their view, the Vesting Clause is not intended to carry as broad an interpretation as originalists such as Calabresi and Yoo would support. If the Vesting Clause were intended to be read in a way that a modern unitarian would interpret it, any other parts of Article II could thus be considered redundant, as such a broad perception would cover all powers of the president in one clause. They further claim that the text of Necessary and Proper (or "Elastic") Clause of the Constitution, on the other hand, further supports the idea that the Framers viewed Executive Power less uniformly than unitarians such as Calabresi and Yoo view

it. Because the Elastic Clause give Congress the power to make all laws necessary for carrying out all powers "vested" by the Constitution, Lessig and Sunstein believe that his includes presidential power. Lessig and Sunstein acknowledge that the president should be given a degree of control over executive branch functions; their contention is that the complete control of the president over the executive branch was not only unintended but has also become too powerful. They do not believe that the unitary executive, as a practice, came to fruition until at least the Jackson Administration.

It is because of Lessig and Sunstein's error in this regard that their argument becomes somewhat flawed. As shown by the strong unitary example put forth by Washington, who presided over executive branch functions with strict control, and whose precedent became followed by his successors, it is more likely that the unitary executive remained a constant in the executive branch, though there is no denying that it has evolved over time. Andrew Jackson's actions regarding the bank crisis may have constituted an overbearing of executive power, but any implication that the Founding Generation of the American government uniformly opposed a unitary executive is weakened by the fact that the Decision of 1789 gave the president more power over removal, and no laws were passed by Congress limiting executive removal, or tenure of officers, until 1820, nearly thirty years and five presidencies into the Republic.

While more examples extending beyond Jackson may further validate Lessig and Sunstein's belief that the unitary executive has become too powerful, their claims on the intentions of the Founders are superseded by the claims of Calabresi and Yoo, who make more effective use of specific examples to validate their conclusions, and thus present a more convincing argument regarding the Unitary Executive Theory. Overall, the unitary executive, in addition to being legitimate in both constitutional law and in practice, is the most important

determinant of presidential success. A unitary executive is not the only factor that leads to success of an American president, but its practice can bolster the effects of subordinate factors, which I will list below, that potentially improve the success rate of presidents in their political and policy endeavors. In a sense, the unitary executive is based as much on personal intuition as it is on circumstance. How a president reacts to certain situations that attempt to threaten his power and influence directly affects his ability to succeed.

Before applying the unitary executive theory to case studies, other determinants of presidential success should be considered. Political and military experience of an individual is considered a strong factor that produces a strong executive, as is strong bureaucracy loyalty and relationship, and historical context of the president's term in office.

First Determinant: Experience Prior to Office

Military Experience

Another factor potentially relative to success is personal experience of the Executive in question. Personal experience, in this context, refers to job experience of the president prior to attaining office. What positions in government did they hold before ascending to the presidency? Did they have military service, an attribute which, due to the hierarchical nature of military training and organization, could have resulted in an individual applying a similar formula to his direction of the executive branch, and possibly stronger self-will? Or did they perhaps have history as a business or corporate owner, giving them a similar level of experience in directing subordinates at their will and being used to having control? Does a multitude, or lack of these experiences greatly determine the way that an individual undertakes the office and controls the executive branch?

With the exception of the 45th President, Donald Trump, every president from George Washington onward has the distinction of having previous military, or political experience before attaining the nation's highest office. Of forty-four such individuals, twenty-nine had some form of military service (with nine serving as generals in the army), and thirty-eight had previous political experience.

I will list presidents below, who are attributed to having military service. The positions that former presidents have held in the military, prior to holding office, ranges from ranks as low as private, in a body as small as a state militia, to Supreme Allied Commander of the United States Army. As the top-ranking position in the military, it is assumed that generals have great leadership qualities, as generals are tasked, above all other military officers, with giving orders to

officers of all lower ranks. In a sense, generals have a similar level of control over their branch as the president does over the executive branch. Colonels and lieutenants, similarly, carry the distinction of being high-ranking, but still subordinate to generals, making them similar in rank to cabinet officers. The lower ranks, such as majors, privates, and members of state militias, can have some level of authority, again in a hierarchical system, but are mainly in positions of taking orders from others who rank higher.

In particular, those serving in a militia, it can be argued, may have lacked the structure and experience seen in the system of the American Army, Navy, or any other branch of national military. Militias are not funded to the level of a national service. Training is far less extensive, and experience in combat is less frequent, though most of the presidents who served in militias during conflicts on American soil, mainly during the War of 1812 and Black Hawk War, experienced a good deal of combat. A complete list of presidents, with their military branches, ranks, and conflicts served, is listed below:

Table 1: Presidents with Military Experience

President:	Military Branch and Highest Rank	Conflict(s) and Years of Service
George Washington	Continental Army, General of the Armies	French and Indian (Seven Year's War) (1756-63), American Revolutionary War (1775-1783).
James Monroe	Continental Army, Major	American Revolutionary War (1775-83).
Andrew Jackson	United States Army, Major General	American Revolutionary War (1775-83), War of 1812, Creek War (1813-14), First Seminole War (1816-1819)
William H. Harrison	United States Army, Major General	Northwest Indian War (1785-95); War of 1812; Tecumseh's War (1810-13)
John Tyler	Virginia Militia, Captain	War of 1812

James K. Polk	Tennessee Militia, Colonel	(Did not see war service)
Zachary Taylor	United States Army, Major General	War of 1812; Black Hawk War (1832); Second Seminole War (1835-1842); Mexican-American War (1846-1848)
Franklin Pierce	United States Army, Brigadier General	Mexican-American War (1846-48)
James Buchanan	Pennsylvania State Militia, Private	War of 1812
Abraham Lincoln	Illinois State Militia, Captain	Black Hawk War (1832)
Andrew Johnson	United States Army, Brigadier General	American Civil War (1861-65)
Ulysses S. Grant	United States Army, General of the Army	Mexican-American War (1846-48); American Civil War (1861-65)
Rutherford B. Hayes	United States Army, Major General	American Civil War (1861-65)
James A. Garfield	United States Army, Major General	American Civil War (1861-65)
Chester A. Arthur	New York State Militia, Brigadier General	American Civil War
Benjamin Harrison	United States Army, Brigadier General	American Civil War
William McKinley	United States Army, Brevet Major	American Civil War
Theodore Roosevelt	United States Army, Colonel	Spanish American War (1898) (Also only Medal of Honor Recipient)
Harry S. Truman	Army Officer Reserve Corps, Colonel	World War I
Dwight D. Eisenhower	United States Army, Army General (WWI); Supreme Allied Commander (WWII)	World War I, World War II
John F. Kennedy	United States Navy, Lieutenant	World War II
Lyndon B. Johnson	United States Naval Reserve, Commander	World War II
Richard M. Nixon	United States Naval Reserve, Commander	World War II
Gerald R. Ford	United States Naval Reserve, Lieutenant Commander	World War II
Jimmy Carter	United States Navy, Lieutenant	World War II; Korean War

Ronald Reagan	United States Army Reserve and United States Army Air Corps, Captain	Stateside during World War II
George H. W. Bush	United States Naval Reserve, Lieutenant	World War II
George W. Bush	Texas Air National Guard, Lieutenant	Stateside during Vietnam War

Source: Information gathered from Military.com, “29 American Presidents who served in the Military.”

Fall 2018, accessed 17 December, 2018. <http://www.military.com/history/29-american-presidents-from-military.html>.

Of all forty-five presidents, twenty-nine are confirmed to have had military training or experience to some degree. Twelve presidents held a rank of Brigadier General or higher. The trend of presidents not having previous military service has peaked and plateaued in different decades and centuries of American history. While it can be claimed that military service is no longer considered an important prerequisite, as three of the current and previous four presidents (Trump, Obama, and Clinton) have no military experience, the longest streak of no presidents having any service actually spanned almost thirty years at the beginning of the 20th century. No Presidents serving between Theodore Roosevelt (1901-09) and Harry S. Truman (1945-53) had military service. However, following Truman, the next eight presidents from Truman to George H.W. Bush (1989-93) served in the military. This can perhaps be more attributed to the large-scale conflicts that occurred ironically during the years that no presidents served in the military, during the first three decades of the 20th century, as the First World War broke out during this time, and the Second World War lasted until Truman's term, a time in which many of the following presidents were of age for drafting into the military, which was compulsory at the time.

Does military experience translate to success in the executive branch? The answer is yes and no, as it depends on the individual. Andrew Jackson and Andrew Johnson both served in the

military, and in high-ranking positions as generals. However, while Jackson was able to utilize the powers of his office successfully and expand the power of the executive branch and achieve his policy goals, Johnson's actions of expressing strong executive power resulted in his near-impeachment from his own Republican Party.

In addition, two presidents who also had extensive military experience, Ulysses S. Grant and Franklin Pierce, endured large-scale corruption and lack of legislative action, respectively, during their terms. While many presidents share the attribute of comprehensive military service, perhaps service in the political realm also plays a large role in creating the type of strong unitary executive personality?

Political Experience

For some presidents, military service has taken the place of political experience for qualification for president, at least in the mind of the electorate. Five presidents, including Ulysses S. Grant and Zachary Taylor, who were also generals and war heroes, did not have any political experience, yet were able to attain the highest office in American politics in their political debut.³² Andrew Jackson, another general-turned-President, had brief experience as Representative and Senator of Tennessee, offices in which he served for only one and two years, respectively (though this was a normal length of service at that time). Military experience, it seems, can serve as a substitute for extensive political experience.

Is this because there is a benefit to having a lack of experience in Washington? For the purposes of getting elected, it has appeared so, especially during times of low public confidence in Congress and the president. During most American election cycles, candidates have a habit of

³² The five presidents without any prior political experience are George Washington (1789-1797); William Henry Harrison (1840); Zachary Taylor (1849-1850); and Dwight D. Eisenhower (1953-1961).

promising to “drain the swamp” and “bring changes” to Washington, branding themselves as tacit outsiders from the political mess going on in the nation's capital. In effect, the best way to run for office is to “run against Washington.” While this tactic may be effective for getting elected, is being a Washington outsider with little experience conducive to presidential success?

For some presidents, it has. Jackson, though having limited political experience, catapulted to the Presidency in a landslide victory over John Quincy Adams (arguably one of the most-qualified individuals to hold the office) in 1828. Considered the first-ever “people's president,” as his support base ranged from individuals in all social and economic levels and across the country, Jackson may have made up for his lack of experience with his widespread popularity with the citizens at-large. When confronted by Congress over issues concerning a breach of his powers, or cases of government overreach into state business, Jackson appealed to voters instead of politicians, shifting the blame on his political opponents for any lack of progress.

In particular, Jackson blamed the Whig-dominated Congress for failures of the Second Bank of the United States, which he aimed to close, and succeeded in doing so through plenary expression of the unitary executive (which I will later explain), and widespread public support for his actions. While his detractors viewed him as a demagogue, Jackson's supporters viewed him as a fervent opponent to overbearing centralized government control in a system which, at the time, had had recent Supreme Court rulings, such as *McCulloch v. Maryland* and *Gibbons v. Ogden*, affirm the supremacy of the national government in cases of interstate commerce.

Other inexperienced presidents have not been as fortunate in expressing the powers of their office to their success. Jimmy Carter, like Jackson, portrayed himself as a Washington outsider, and also had limited political experience. Carter's political experience, prior to

becoming president, amounted to less than a decade, having served only four years in the Georgia State Senate, and as Governor of Georgia, prior to his presidency. Carter's inexperience and lack of connection to Washington insiders showed in his only term as president, being unable to coordinate with a Congress of his own party on policy issues, or direct members of his executive branch to carry out his wishes effectively.

Having extensive political experience has not always translated to a successful presidency, though it can be beneficial. Four presidents have the distinction of having served in all four top elected positions (president, vice-president, senator, and representative) in the United States Government: John Tyler, Andrew Johnson, Lyndon B. Johnson, and Richard Nixon. Of these individuals, Lyndon Johnson easily exhibited the highest amount of legislative success, with a large majority of his proposals being passed by Congress and the 1964 session of Congress being the most legislatively-proactive since the Presidency of Franklin D. Roosevelt.³³

Aside from Lyndon Johnson, other experienced statesmen found a great deal of presidential success during their time, including Thomas Jefferson, James Madison, and James Monroe, whose “Virginia Dynasty” of the White House lasted twenty-four years over six consecutive Democratic-Republican terms, with little opposition from Congress or the public for passage of their policy goals. Franklin D. Roosevelt, a former Assistant Secretary of the Navy, vice-presidential candidate and career statesman from a well-known political family, served a record three terms (and had been elected to a fourth before his death) as president. Roosevelt also

³³ Edwards, *Ibid.*, 669. Johnson’s rate of success, as compiled by the *Congressional Quarterly*, was over seventy-five percent throughout his tenure, and over ninety percent in 1965 alone. No president since Johnson has achieved as much success on votes with Congress.

witnessed the expansion of the executive branch to include the Executive Office of the President (EOP) following the efforts of the Roosevelt-appointed Brownlow Committee.

The Brownlow Committee established what can be termed the “modern presidency,” which has now come to include staff and council positions within the executive branch numbering in the hundreds as of the 21st century.³⁴ Roosevelt's legislative successes are arguably the most numerous in American history, with his New Deal proposals creating dozens of government programs, and shifting extensive social and economic policy power to the Federal Government. Roosevelt also exhibited some of the strongest expressions of executive power, including his effort to combine his nomination power of the president with party control of Congress to “pack” the Supreme Court, in order to have a judicial branch less likely to oppose his New Deal policies.

Conversely, few presidencies have been less administratively successful than Tyler and Johnson, with neither even bothering to seek reelection (after being thrown out of their respective parties) and having many of their proposals rejected by a same-party Congress. Tyler even became the first president to have a veto overridden, an event which had not previously occurred for any of his predecessors, and Johnson became the first president to face impeachment, with his presidency surviving removal from office by one single vote. Nixon, though he won a landslide reelection in his own right, in 1972, and attained many legislative successes in Congress during his first term, found his reputation tarnished by the Watergate scandal and accusations of abuse of power, leading to his subsequent resignation to avoid likely impeachment.

³⁴ For an in-depth summary and analysis of the Brownlow Committee and the creation of the modern presidency, see Pfiffner, James P. *The Modern Presidency*. Wadsworth Cengage Learning, 2011.

While the experience of the individual president can be an important factor in procuring achievement, other factors can exist outside of it and either bolster or inhibit a president's ability to be effective, regardless of his qualifications or lack thereof. Another factor that should be articulated when appraising a presidency for its successes is the actions and effects of the bureaucracy during a president's term. In cases where the bureaucracy has been disloyal or unhelpful to the president, the president's powers and abilities can be weakened.

Second Determinant: Bureaucratic Relations

The Federal Bureaucracy is comprised of all government employees and officials. The Constitution empowers Congress to create positions below cabinet rank, giving them, rather than the president, statutory authority to draft rules and regulations for carrying out laws passed by Congress. This creates a system of "neutral competence" with the bureaucracy, in which the Congress writes laws with very vague terms and conditions, and the bureaucracy is tasked with carrying them out. While the bureaucracy can be considered neutral with respect to partisan politics, bureaucratic units, according to Lyn Ragsdale, "are partisans on behalf of their clients."³⁵ This presents the bureaucracy as a system that is not only separate from the president, but also a system through which organizations and groups achieve their ends, both legal and corrupt.

The bureaucracy has also consistently expanded. Taking the example of 1831, when only 11,491 federal employees were registered, and comparing it to 1981's number of 2,772,000, shows a two-hundred-fold increase of the bureaucracy, despite Congress only doubling in size.³⁶ Even when controlling for population growth, this is still a substantial increase, as the American population has only increased twenty-fold since 1831.³⁷ Presidents, in running for office, notably Jackson, Nixon, Carter, and Reagan, have all criticized the bureaucracy for the red tape it creates, and have made promises and subsequent attempts at its reorganization.

A disloyal bureaucracy, however, does not necessarily mean a weak presidency. In the case of Andrew Jackson, for example, distrust in his presidency from bureaucratic holdovers

³⁵ Ragsdale, Lyn. *Presidential Politics*. Houghton Mifflin, 1993. Pp. 407.

³⁶ Ragsdale, *Ibid.*, 410. Note: The total number of members of Congress, in 1831, was 264, with 28 senators and 213 representatives.

³⁷ The United States population was about 12.8 million, in 1831, and is currently 325.7 million. For full census data of the United States, see <https://www.census.gov/>.

from the Adams Administration only further fueled his ambitions against them. In fact, government officers and the like can actually push a president to express actions more activist in nature to get the results that he wishes. In Jackson's case, it was his removal of career federal bureaucrats from the Adams Administration, and his establishment of the spoils system that reformed the government and enabled Jackson to pursue further interests in changing government functions, notably in regard to the Second Bank of the United States, which will be discussed later. What is most important is that presidents' relations with the bureaucracy depend less on constitutional law than on political strategies of the individual. Presidents can make promises of reform and express anger and frustration at the current system, but actions in response to the bureaucracy, if strong, can lead to having a government system that is supportive of the president and his policies.

This technique has not always worked out smoothly for presidents, however. Included in the bureaucracy is the executive branch, which has increasingly expanded and currently employs over 2,000. While a president having plenary authority over the executive branch can help ensure that it carries out his wishes, even if it is argued that the president controls the *entire* executive branch, such control over every single function of the executive branch becomes less and less feasible. Franklin Roosevelt may have reorganized the bureaucracy and the executive branch through the establishment of the EOP and White House Staff, but now there are now over 600 government officers that serve some title of "advisor to the president," or advisor within one of the departments within the cabinet. The executive branch has been expanding annually, and has increased more than ten-fold in the last century. Thus, the bureaucracy has gotten much larger, and though all presidential advisors are appointed by the president, and therefore assumed to have his approval, being able to control all of its functions is not possible for any president.

Nevertheless, Article II places the president as the head of the executive branch, with all sources of executive power deriving from the president himself, and the powers granted to him by the Constitution. Actions of executive branch officials, thus, should be assumed as a directive of the president. He is responsible for their successes and failures, and thus they should be unequivocally loyal, as their disloyalty can result in embarrassment for the president, at best, and notorious scandal, at worst. Executive branch officials should perform actions with the president's best interests in mind.

Can a strong executive exist when cabinet and executive branch officials that oppose the president are present? Disloyal subordinates notably worked against Carter and Grant, who found their initiatives frequently halted by dissidents within their own branch. While Carter's issue was simply disloyal individuals opposed to his actions, keeping him inactive on certain matters, Grant's was more characterized by lack of communication, and corruption on behalf of the bureaucracy that Grant later claimed to have had no knowledge of. Even if he was innocent in this case, Grant's situation seemed one more characterized by incompetence than anything else, as is mostly the case when a bureaucracy opposes the president.³⁸

The mistakes of Charles Sununu as chief of staff during the George H. W. Bush Administration exemplify this idea. While the President is tasked with serving a constituency comprised of the entire American public, Sununu showed that in the executive branch, some officials can, conversely, exhibit the idea that they only have a constituency of one: the president. Sununu exercised his power and influence as Chief of Staff effectively, yet too aggressively, constantly denigrating other White House Staffers, members of the media, and even president

³⁸ A thorough summary of the scandals and issues, surrounding executive branch officials during the Grant Administration, is found in Rubel, David. *Scholastic Encyclopedia of the Presidents and Their Times*. Scholastic, 2013.

Bush on key ideas. When Sununu or the president made any statements contrary to one another, the press, as well as opponents on Capitol Hill, took note.

One example of Sununu's defection from the president came at a campaign fundraising speech given by Bush in New York, prior to the 1992 election, in which Bush remarked that people in the financial community felt that “interest rates charged on credit cards were higher than necessary,” and that this issue may be helped if they were lowered. Soon after, legislation was introduced in Congress to impose a legal limit on credit card interest rates. The proposal was challenged by the financial community, and the Dow Jones Industrial Average fell 120 points.³⁹

Whether or not the fall of the Dow should be attributed to Bush's statement became less of an issue compared to Sununu's statement on the matter. Sununu claimed that Bush had “ad-libbed” the statement on credit card interest rates, and that it had not been a part of his prepared text for the speech. This attempt to blame the remarks on the president came into conflict with the president's spokesman, Marlin Fitzwater, who claimed that the statements were not “ad-libbed.”⁴⁰

Regardless of the accuracy of the president's statement, the administrative issue at hand was the shifting of blame to the president by a subordinate, an action which if committed by an employee against a boss in other circumstances would likely result in that employee's termination. One of the most important lessons learned when dealing with public scandal or scrutiny, according to Ronald Reagan's White House Counsel A.B. Culvahouse, is to have all members of the White House staff and executive office on the same page. Stories should keep in

³⁹ Pfiffner, *Ibid.*, 80-81

⁴⁰ Rosenthal, Andrew. “Sununu Says Bush Ad-Libbed Comment on Credit Card Rates.” *The New York Times*, 23 Nov. 1991. Accessed online at: <https://www.nytimes.com/1991/11/23/us/sununu-says-bush-ad-libbed-comment-on-credit-card-rates.html>. Accessed 02 November 2018.

line, and if scandals arise, divide up and blame one individual rather than many, but the last individual to blame unless he takes it himself, is the president.⁴¹ Mistakes made by a subordinate executive branch official can be alleviated by a simple dismissal of the individual, which happened in the case of Sununu shortly after.

The president, however, is only removable in cases of impeachment, and every scandal that arises remains a part of the story of his presidency, especially if he is to blame for it. The appropriate behavior of a chief of staff such as Sununu, thus, is to take the heat for the president to protect him. By making statements that put the judgement of the president into question, an official can also hurt the president's success by making the president appear weak, and unable to control those that work directly for him, a weakness that has the potential to be pointed out by political supporters and opponents alike.

Some of the most successful presidents, however, can attribute loyal bureaucracies, and the advice that they give, to their success. Dwight D. Eisenhower is credited with having perhaps the first example of a chief of staff. Appointed and removed at the president's will, the chief of staff is tasked with structuring the president's agenda in many ways, by determining which issues are of most importance to the president, as well as directing other executive branch officials in line with the president's wishes. Cabinet members, as well as other high-ranking members of the executive branch, are also tasked with carrying a degree of loyalty to the president, in addition to executing and overseeing the functions of the department they lead. If officials are not loyal to the president, not only can the president choose to dismiss them, but the individual can also run

⁴¹ Full interviews with former White House Staff officials are compiled by the White House Transition Project. The statements by Culvahouse can be found at Borrelli, Maryanne, et al. "The White House Transition Project Reports. 2009-29: The White House Counsel's Office." www.whitehousetransitionproject.org, 2008, www.whitehousetransitionproject.org/wp-content/uploads/2016/03/WHTP-2009-29-Counsel.pdf. Pp.8. Accessed 15 November 2018.

the risk of shifting blame on the president during an issue that arises. Overall, members of the president's immediate circle should remain on the same page as the president for the benefit of the president.

But does a loyal bureaucracy always translate to presidential success? The president, being human, is not right all the time (though certain individuals to occupy the office, mainly Richard Nixon, may disagree). Cabinet officials, White House staff, and members of the EOP serve in their capacities as “advisors” as well as subordinates to the President. Simply because a member of the executive branch disagrees with the president should not translate to a sign of disloyalty. In fact, going against the president's judgement for the sake of preserving his integrity is sometimes necessary.

The main point is that, while executive branch officials can stray from the same opinion as the president, such action is permissible on the grounds that it does not damage the president or his public reputation. If any issues should arise, the official should take the heat to protect the president. This point is evident in the case of the Iran-Contra Affair, in which Oliver North took almost all blame on behalf of the Reagan Administration, making the president seem, at best, unaware of the actions of the scandal; or completely negligible, at worst. Nevertheless, it absolved the president of much of the blame, and Reagan has been highly revered as a successful president, notably by conservatives, who tout his presidency as a “resurgence” of American conservatism.

At the same time, as stated before, presidential success within a bureaucracy is more due to political skill than constitutional law provisions. A president should be willing to take advice of subordinates, for the sake of consideration of policy initiatives, while at the same time being assertive and undergoing plans with strong directive. The president, as head of the executive

branch, should not be frequently overruled by subordinates. As Abraham Lincoln famously stated, regarding debates within his cabinet in which all members disagreed with him, “so the tally is one aye and seven nays. The ayes have it.”

Overall, since the president cannot be expected to control all parts of the bureaucracy, and its functions, a loyal bureaucracy is not the strongest determinant of presidential success. While a president can attempt to deliver on promises to reform and reorganize it, the bureaucracy is more subject to the aims of Congress, which creates the laws that govern how the bureaucracy functions. But this points to another factor in the success of a president: the context of the situation under which they serve, and this can include the type of Congress in power, which will determine the bureaucracy functions, as well as other factors that can either help or hinder a president in his goals.

Third Determinant: Historical Context

A third affirmative hypothesis to strong unitary executive power is historical context of the president. Mainly, this refers to the current political situation at the time of the presidency in question. Is the Congress comprised of individuals from the same or opposing party of the president? What is the foreign policy situation of the United States? Is it at war, or peace? Is the nation's economy in a crisis, such as a depression or recession? Does the president come into office following a period of widespread scandal by his predecessor(s)? If so, did this greatly impact how this president acted in terms of executive action?

Presidents who have served in times of increased Congressional oversight, which occurs following scandals and supposed abuses of power, have had to exhibit a weaker expression of their executive actions. Doing so, arguably, only results in more attempts by Congress to interfere in the affairs of the executive branch, infringing on the separation of powers doctrine that exists alongside the system of checks and balances in the American government. This notably occurred in the cases of Ford and Carter. Following the Watergate Scandal of the Nixon Administration, Congress established stronger oversight with the passage of provisions such as the Ethics in Government Act (EIGA) and Inspector General Act, aimed at investigating executive branch functions.

But presidencies can even be weakened in cases without recent scandal, and with presidents and Congresses of the same party. Andrew Johnson, who ascended to the presidency following the death of Abraham Lincoln and with a congressional majority of his own party, failed to enact legislation in his favor in most cases. His efforts, some of which even go in line with the unitary executive theory, were blocked by Congress, including his efforts to remove executive branch officials at his leisure, which Congress limited by the Tenure of Office Act of

1867, which required congressional approval for removal of executive branch officials. Johnson subsequently declared the act unconstitutional, and openly violated it with his firing of Secretary of War Edwin Stanton, resulting in his impeachment by Congress. Johnson would barely survive the impeachment, retaining his office by one single vote against his removal.⁴²

But presidencies can be weakened even in cases without recent scandal, and with presidents and congresses of the same party. Andrew Johnson's weak relations, with a Congress of his own party, is perhaps due to him not being a full-fledged Republican. A career politician from the state of Tennessee, Johnson favored more lenient measures against the South during Reconstruction, drawing separation from the party he served. A similar situation occurred in the case of John Tyler, two decades earlier. Tyler, though a member of the Whig Party, similarly ascended to the presidency upon the death of his predecessor, but had only been named vice-president to battle the party ticket; in reality, he was an avowed Democrat with his only agreement with the Whig Party being his disagreement with Andrew Jackson and his policies. Upon becoming president, Tyler found little legislation to agree with the Whig-majority in Congress on, and he became the first president to have his veto overridden. He was later thrown out of his party during the next presidential campaign, later joining the Democratic party and was even elected to a seat in the Confederate States of America, before his death in 1862.

Having a Congress of an opposing party in office, during a term, can also be detrimental to a president's success. Franklin D. Roosevelt, Lyndon Johnson, and Barack Obama can likely attribute most of their legislative successes to having dominant majorities in the both houses of

⁴² Perhaps an even larger sign of the context of Johnson's situation is the fact that, in 1887, President Grover Cleveland was able to convince Congress that the Tenure of office Act was unconstitutional, leading to its repeal. A complete history of the Tenure of Office Act can be found at: <https://www.history.com/topics/reconstruction/tenure-of-office-act>. Web. Date Accessed: 8 November 2018.

Congress during a part of their administrations. Roosevelt and Johnson passed large-scale government welfare and social reforms through the New Deal and Great Society Programs, respectively. Johnson, in particular, is perhaps the most successful president in procuring legislation favorable to his efforts (though this may also be attributable to his success as a former Senate majority leader), having a very high success rate even following the first 100 days of his presidency. Barack Obama, prior to a substantial loss of a majority in Congress in 2010, pushed through a stimulus package and healthcare reform. His second term, however, became noticeably weakened by a Republican majority in both houses of Congress, exemplified by his inability to even get a justice confirmed to the Supreme Court in 2016, following the death of Antonin Scalia.

Party unity is not the only context that assists presidents in their success. Economic issues of a country can shift a great deal of blame and lack of support to the president. Herbert Hoover, known for his success as a former Secretary of Commerce and ability to raise funds for the first World War, found his presidency overwhelmed by the Stock Market Crash of 1929 and the beginning of the Great Depression. His inability to alleviate the issues of unemployment and debt, brought on by the depression, resulted in his landslide defeat to Franklin Roosevelt after just one term, though it can be argued that the Crash and Depression were out of Hoover's control, and required years of reform to fix. Martin Van Buren, a successor to Andrew Jackson following a highly-transformative presidency, found his administration engulfed in solving economic strife following the Panic of 1837, which resulted in recession for over seven years. The Panic, though recovery from it began as soon as 1839, dominated the Van Buren Presidency, as did public reputation of the president that he lived a lavish lifestyle, and he lost reelection in 1840. Both Van Buren and Hoover, who also had party majorities in Congress and followed

popular presidencies of the same party, show how economic context can also inhibit success in a presidency.

While some presidents have been weakened by their situation, other presidents have found great benefit, usually due to circumstances that warranted strong, efficient executive action in the place of prolonged and ineffective Congressional or economic action. This type of event has usually happened in wartime, particularly in the cases of Abraham Lincoln (Civil War), Woodrow Wilson (World War I), Franklin D. Roosevelt (World War II), and George W. Bush (September 11th attacks). In each case, the respective presidents utilized the authorities granted to them in the Constitution to expand their executive power, and in turn achieving a great deal of success in accomplishing their political (as well as military) goals. While examples of executive overreach and abuse of power can certainly be said of each president mentioned, particularly Lincoln for his suspension of habeas corpus and Bush for use of Signing Statements to justify plenary authority in executing torture law, there is less argument that each president was not successful in achieving their political endeavors to a large extent.

To deal with economic woes, presidents such as Franklin Roosevelt and Barack Obama passed large-scale economic and stimulus packages to deal with the Great Depression and Recession, respectively. Though debate continues as to the effectiveness of their programs, with some stating that Roosevelt's economic success is due more to the war effort of World War II, in particular, both presidents nevertheless put forth legislative efforts to combat the economic issues present, while other presidents such as Hoover and Van Buren did not do the same.

In taking the unitary executive theory as a legitimate source of presidential power grounded in constitutional and historical practice, two case studies will now be addressed to show its significance in encouraging presidential success. Andrew Jackson, noted by both unitary

executive supporters and opponents alike as a strong practitioner of the concept, is the first subject of comparison in this regard, and is an example of a successful presidency for that reason, I argue. Jimmy Carter, on the other hand, embodies an example of a weaker and less successful presidency, which can be attributed, more than other variables such as historical context, bureaucracy loyalty, and experience, to his weak exhibition of the unitary executive.

Case Studies: Jackson and Carter

I have chosen Jackson and Carter not only because of the opposite reputations their presidencies have garnered, but also because they hold constant the other factors that I have already listed as potential factors and detriments of Presidential success, making them ideal figures for comparison. Both boast an extensive military background, were fairly-inexperienced in government (and Washington, in particular, with their “outsider” status being a strong factor in their respective elections) and had strong issues against the Federal Bureaucracy that both attempted to reform (and succeeded in doing so, to an extent). However, Carter and Jackson differ in the extent to which they exhibited a unitary executive, and their different expressions of the unitary executive greatly determined their respective successes in office.

I aim to show, through the examples of Carter and Jackson, that insofar as the other factors play a role in the determination of presidential success, that presidential success is most affected by the unitary executive. Bureaucratic relations, historical context, and personal experience are all factors of presidential success, but primarily to the extent, in each individual case, that they affect expression of the unitary executive theory. While bureaucracy, context, and experience could have hindered Jackson, he succeeded despite these factors against him, while Carter, having them against him as well, faltered. I believe it is because of Carter's inability to flex the unitary executive that ultimately hindered his success.

The Strong Unitary Executive: Andrew Jackson

Andrew Jackson's personal experience did not make him appear a viable candidate for the nation's highest office. Orphaned and without relatives by the end of the American War for Independence, Jackson is the first self-made individual to become president, achieving his fortune through an extensive military career. Jackson is also notable for his lack of a formal education, the first president to be without one, and became self-versed in the law, having his own practice in Tennessee. This background, though it made Jackson appear derelict compared to the common crowd in Washington at the time, also created a level of assertiveness that Jackson would carry into office.

Jackson is also an example of a Washington outsider, at least compared to his five predecessors. He had held office as a member of the House of Representatives and Senate, but only for three combined years. Though this length of service was common at the time, only members of the House of Representatives were chosen by popular suffrage, and though Jackson had indeed been elected to a federal position by a legislature, where high-ranked party and Washington insiders congregated, he had not served for a great deal of time, giving him little experience and connections for the presidency position he wanted. This ended up working against Jackson, as he lost the election (despite garnering more popular and electoral votes than anyone else, but with no majority) after it was thrown into the House of Representatives, and party members chose John Quincy Adams over him.

Nevertheless, being a high-ranked member of the military can (though not always), in addition to empowering an individual with leadership qualities and the experience to delegate orders to subordinates, also assist in procuring a quick rise in the ranks of politics. George Washington, himself a career soldier and war hero, can attribute his popularity to the heroics of

his campaigns during the American War for Independence, and the same can be said of Jackson for his service during the War of 1812. Jackson entered the 1824 and 1828 elections as an outsider, but also a popular one, as a result. In addition, his situation as a self-made individual made him popular to the citizenry at large, who were now granted the ability to vote at-large in a presidential election. Jackson's subsequent loss of the 1824 election, due to the supposed "corrupt bargain" of Henry Clay and John Quincy Adams in the House of Representatives, only further expanded his support, and he won office in 1828 as a hero who had been cheated by a corrupt system, which he declared in his inaugural address that he aimed to fix.⁴³

The historical context and federal bureaucracy situation of Jackson's time should have hindered the success of a Washington outsider such as himself, but Jackson undertook both obstacles with a unitary executive mindset. Regarding the federal bureaucracy, which is usually comprised of holdovers and career bureaucrats from previous administrations, Jackson instituted the "spoils system," and reorganized the bureaucracy through large-scale firings and reappointments of individuals.⁴⁴ The spoils system, referring to the concept that "to the winners go the spoils" involved individual party patrons being rewarded with government positions, which Jackson utilized to replace the bureaucracy that he viewed as corrupt.

Jackson also reformed the relationship of the presidency to other members of the executive branch, subordinating officials within his cabinet whom he had disagreements with, particularly Vice-President John C. Calhoun. Rather than conducting meetings with his cabinet, which had mostly been assigned at the advice of his own Democratic party, Jackson preferred to meet in the White House Kitchen with his most loyal and trusted advisors, dubbed the "Kitchen

⁴³ Meacham, Jon. *American Lion: Andrew Jackson in the White House*. Random House Trade Paperbacks, 2009. Pp. 42-53.

⁴⁴ Schlesinger, Arthur M. *The Age of Jackson*. Little, Brown and Co., 1994. Pp. 41.

Cabinet." Operating under the "spoils system", Jackson gave these individuals, including Secretary of State Martin Van Buren, higher positions by frequently shuffling his cabinet, and established strong control over their actions through the unitary executive. Regarding the context of his situation, Jackson had the benefit of beginning his office with a unified government, with Congress comprised of majorities of Jacksonian Democrats, initially supportive of his goals. However, Jackson's ultimate test of presidential prerogative, and strongest expression of the unitary executive, comes in the form of his battle over the Second Bank of the United States.⁴⁵

Jackson expressed his outright dislike for the bank in his speeches to Congress, declaring openly that he found the institution inherently evil, because it was privately-run but technically existed at the behest of the federal government. Under the Bank's charter, the president had the power to appoint five of the bank's twenty executives, and the federal government's reserves in the bank constituted one-fifth of its total. These funds could only be withdrawn by the Secretary of the Treasury, but if withdrawn, they could bankrupt the bank. The Bank's charter was set for another renewal in 1836, but Henry Clay and John C. Calhoun, themselves high-ranking Senators and aware of Jackson's intentions, persuaded bank director Nicholas Biddle to request Congress for a renewal as early as 1832. Both Senators believed that Jackson would not pursue any efforts against the Bank during an election year, but Jackson defied them, and pursued his goals anyway.

Because the Bank's charter authorized the Secretary of the Treasury to remove federal deposits from the Bank, given the Secretary disclosed his reasons for the withdrawal to

⁴⁵ The Bank of the United States, a brainchild of first Treasury Secretary Alexander Hamilton, was created in 1791 with a twenty-year contract, renewable by Congress. Congress allowed the Bank's charter to expire in 1811, but following financial losses of the War of 1812, the Bank was re-chartered in 1816.

Congress, Jackson decided to find a Treasury Secretary willing to carry out his endeavor to empty the Bank's deposits. When Jackson found out that his first Treasury Secretary, Louis McLane, was unwilling to remove the deposits, Jackson simply removed him, and added William J. Duane to the post of Treasury Secretary in the hope that he would carry out Jackson's wishes. Duane, though formerly an ardent opponent of the Bank, refused to immediately remove the bank's deposits as well, indicating his opposition to such action, and requested a delay from Jackson until Congress reconvened in December of 1833. Jackson, in an obvious avoidance of Congressional scrutiny on the matter, dismissed Duane as Secretary of the Treasury on the grounds that his actions of refusal were "inadmissible".⁴⁶ Jackson then appointed Roger B. Taney (future Supreme Court Chief Justice) as Duane's replacement, and Taney announced a removal of the Bank's deposits, in accordance with Jackson's wishes.

A large disagreement between the Congress and the president, over the scope and reach of Executive power, resulted from Jackson and Taney's actions. The Whig-led Senate, led by the "Great Triumvirate" of Henry Clay, John C. Calhoun, and Daniel Webster called for an investigation into the removal of the deposits when it reconvened that same year.⁴⁷ Clay in particular laid great criticism on Jackson for his actions, claiming that Jackson, by being able to remove the Treasury Secretary at his will, had "assumed the exercise over the power of the Treasury of the United States."⁴⁸

⁴⁶ Calabresi and Yoo, *Ibid.*, 85

⁴⁷ Note: John C. Calhoun, though he disagreed with Jackson on this matter, was not a Whig politician. A long-term Democrat Senator from South Carolina, Calhoun had formerly served under the John Q. Adams and Jackson Administrations as vice-president, but broke from Jackson over disputes ranging from issues of nullification to issues of the Bank, as noted above.

⁴⁸ For Clay's full statements regarding Jackson's actions against the Bank, see: "Henry Clay: His Attack on Jackson, 1834." *Bartleby.com*, 2015, www.bartleby.com/268/9/6.html. Accessed 15 November, 2018.

Clay soon put forth resolutions in the Senate, which provided that the Constitution "does not vest in the President power to remove at his pleasure officers under the Government....established by law". In cases where tenure of officers is not prescribed by the Constitution, additionally, the Congress can "prescribe the tenure, terms, and conditions" of the officers in question. Finally, Clay resolved that all officials whose appointment was made by advice and consent of the Senate shall be removed by the president only with concurrence of the Senate.⁴⁹

Jackson vehemently denounced Clay's resolutions on the grounds that it was out of Senate's power to have influence, much less control, over removal of officials outside of impeachment proceedings, because the Vesting Clauses of each respective branch of government limited the Congress to being vested with "legislative" rather than "executive" power. Jackson argued that because Clay's resolutions did not apply to any treaty or nomination, which are the only events in which the President specifically requires the advice and consent of the Senate, in the Constitution, Clay's resolutions were unconstitutional.

Clay's resolutions, though they passed the Senate, fell through in the House of Representatives. Such failure may be attributed to widespread unpopularity of the Bank itself: Jackson took great effort, through personal campaigns, to convince the American public that the Bank was a product of government greed, wealth, and corruption. The issue over the Bank ended with the Bank's charter not being renewed and no further actions from Congress, a major victory for Jackson.

⁴⁹ Calabresi and Yoo, *Ibid.*, 86-87.

Overall, Jackson's battle with Congress over the Bank of the United States represented perhaps the strongest example of a unitary presidential action that the American Republic had seen in its existence up to that point, and one of the strongest-ever examples of executive initiative. While some of the actions of Jackson, particularly his removal of the Cherokee Nation from Georgia, are morally reprehensible, *greatness* is not always synonymous with *success*, in reference to a presidency. Jackson achieved his goals of reforming the bureaucracy, shutting down the Bank of the United States, and reorganizing the executive branch due to his use of the unitary executive, despite having a political situation that was against him, and thus he is a prime example of executive success.

The Weak Unitary Executive: Jimmy Carter

For Jimmy Carter, who served less than four years after the Watergate Scandal, Congress frequently interfered into executive branch actions, to prevent future scandals and abuses of power. This resulted in Carter exhibiting less authority and weaker use of his executive powers, perhaps for fear of receiving a label similar to Nixon as a corrupt politician. Carter, according to numerous scholars, and as he self-proclaimed, attempted to undertake the most transparent presidency in recent memory, openly discussing executive branch functions with Congress. The issue, as it would turn out, was that Carter revealed too much of executive branch function to Congress, putting almost every action he and the executive branch made under congressional scrutiny.

Whether or not Carter wished to devolve executive branch operations may have been out of his control, as congressional oversight, following Watergate, increased dramatically. Certain acts that Congress passed after the Watergate Scandal include the Case Act, which required the president to report all Executive Agreements to Congress, thus limiting backdoor deals with leaders of other nations, and arguably limiting the president's ability to conduct foreign policy, a realm that presidents had previously enjoyed with little congressional interference, save passage of treaties, which require Senate approval. Another act that limited Carter's power is the Inspector General Act of 1978, which not only vested investigative authority of individual executive departments (regarding matters pertaining to their officials) in a separate Inspector General's Office, but also required the president to explain any reasons for removing inspectors general to both houses of Congress. Perhaps the most limiting of congressional actions against executive power, yet accepted (and initially praised) by Carter, is the Ethics in Government Act

of 1978 (EIGA), which provides for a special counsel office to freely investigate functions of other branches of government.

The example of Carter shows however, that even though historical context seems to be the strongest determinant of his success or failure, this consideration only bolsters the importance of the unitary executive. As noted by Calabresi and Yoo, Carter adhered to the unitary executive, but was limited by his situation. However, had he been able to utilize it, or utilized it at all, he may have been more successful in achieving goals over a disagreeable Congress, or by flexing the powers of the presidency itself. This is shown by the fact that his successor, Ronald Reagan, who served against a Congress of Carter's party, achieved much more success due to his unitary actions, directly after Carter. Does this mean that the limitations on Carter could have been prevented by Carter? I argue that they could have, especially if Carter had embraced a stronger unitary executive in his practices as president.

Similar to Jackson, Carter had similar background experience, as a career military officer who served in the United States Navy for almost two decades. Following his military service, Carter returned to his home state of Georgia, taking up an occupation as a peanut farmer before entering local politics shortly after and eventually being elected Governor of Georgia in 1971 and finally the presidency in 1976. While Andrew Jackson can be proclaimed an outsider with little experience in Washington politics, Carter more embodies this distinction.

Prior to his election to the presidency, Carter did not hold any nationwide elected office; the only elected offices he held were Georgia State Senator and Governor of Georgia, serving four years in each capacity. His connection to the political establishment in Washington D.C. was limited at best, and though this proved an effective strategy to get him elected, lack of connections on Capitol Hill proved detrimental to Carter upon taking office, even though he

entered with a congressional majority of his own Democratic Party. This lack of connections made it difficult for Carter to communicate and initiate tasks with congressional leaders, notably fellow party members Ted Kennedy, Tip O’Neil, and Charles B. Rangel in particular, who took notice of Carter’s distance with his own party’s values, stating that Carter’s battles with Congress started “immediately into his term.”⁵⁰

Despite the issues that Carter supposedly had with Congress, this is not to say that Carter did not attain a level of legislative success. In fact, Carter had a higher success rate with Congress than most presidents since Eisenhower, with only Kennedy and Johnson surpassing him.⁵¹ Domestic policy victories of Carter include the creation of the Departments of Energy, the Emergency Natural Gas Act, and the Energy Security Act, all of which were passed in efforts to authorize the government to allocate natural energy.⁵² Carter also persuaded Congress to abolish the powerful Joint Committee on Atomic Energy, which led to construction of less-damaging light water nuclear reactors and the closure of the Clinch River Breeder Reactor, saving over \$4 billion by ending the project.⁵³ In addition to approving policies favored by Carter, some important initiatives regarding factors that can determine the success of a presidency, such a bureaucratic loyalty, were actually passed by Congress during his term.

⁵⁰ Rangel, Charles B., and Leon E. Wynter. --*And I Haven't Had a Bad Day Since: From the Streets of Harlem to the Halls of Congress*. Thomas Dunne Books/St. Martin's Griffin, 2008. Pp. 217-218.

⁵¹ For data showing presidential success with Congress, see findings of the Brookings Institute, at: “Presidential Victories on Votes in Congress, 1953-2016.” Brookings Institute, 2017.

⁵² A detailed summary of the Carter Administration’s domestic policy successes is compiled by Robert A. Strong, of the University of Virginia Miller Center, at: <https://millercenter.org/president/carter/domestic-affairs>. Accessed 05 December, 2018.

⁵³ The savings accrued by ending the project are adjusted for inflation, in 2016 estimates. For a full summary of the closure of Clinch River Breeder Reactor, see: Andersen, Kurt. “Clinch River: A Breeder for Baker.” *Time*, Time Inc., 3 Aug. 1981, content.time.com/time/magazine/article/0,9171,949264,00.html. Web. Accessed: 05 December 2018.

The bureaucracy in Washington presented an issue to Carter as a political outsider, who upon entering office, stated: "I realized and I was warned that dealing with the federal bureaucracy would be one of the worst problems I would have to face. It has been even worse than I had anticipated."⁵⁴ He immediately set out to put forth initiatives to reform and reorganize the bureaucracy, succeeding with the Civil Service Reform Act (CSRA) of 1978, which incorporated the Civil Service Commission (CSC) into the Office of Personal Management (OPM). This was seen as a major domestic victory for Carter, since the OPM would guidance on management to agencies of the executive branch. In addition, the CSRA provides federal employees protection from discrimination based on marital status, political affiliation, and political activity.

In the foreign policy realm, Carter experienced a degree of success as well, notably by brokering the Camp David Accords with Israel and Egypt in 1979, and drew a distinction between US and Soviet Policy in the form of tough policy on human rights, by creating a variation of the Truman Doctrine, dubbed the "Carter Doctrine." Aimed toward the Persian Gulf, the Carter Doctrine states, "an attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of America and such an assault will be repelled by any means necessary, including military force."⁵⁵ The Carter Doctrine was initially proclaimed during Carter's state of the Union Address in 1980, and was a response to Soviet Invasion of Afghanistan in 1979. Not only did the Soviets relent from invading the area further, but Ronald Reagan continued the programs set up by the Carter Doctrine during his term in

⁵⁴ Ragsdale, *Ibid.*, 402.

⁵⁵ Ragsdale, *Ibid.*, 285

office. However, part of the issues arising from Carter's presence happened because of the context of the situation in Washington, post-Watergate, which should be noted.

When Carter entered the Presidency, the country was arising from perhaps the largest Constitutional crisis it had ever experienced. The President had been exposed as responsible for the largest political scandal in American history. The vice-president had resigned over corruption scandals of his own that occurred while he had been Governor of Maryland. Two of Nixon's closest aides had been convicted of conspiracy and obstruction of Justice. Even Nixon's attorney general was convicted of criminal activities, the first attorney general to get such a distinction.⁵⁶ President Richard Nixon had pushed the boundaries of executive power beyond what the Constitution provided, and overreached his abilities to an extent that shifted beyond a unitary executive theory and more toward an imperial presidency, with Nixon even proclaiming that actions performed by a president "are not illegal," implying that the president is above the law. Congressional faith in the executive branch, following Nixon and his loyal successor who granted him a full pardon of perhaps the most notorious presidential crimes, Gerald Ford, was thus minimal at best, and public faith in government altogether was very low.

What Carter failed to do, subsequently, was utilize the strength of the unitary executive while simultaneously maintaining an honest, trustworthy public image. He only succeeded in the latter, but it did not help his popularity. By pledging to be very open with executive branch functions, and doing so, Carter inadvertently made the big mistake of showing the public and congress at-large that the executive branch, under his direction, was undergoing incompetent operations.

⁵⁶ Balmer, Randall Herbert. *Redeemer: the Life of Jimmy Carter*. Basic Books, A Member of the Perseus Books Group, 2014. Preface. xx.

In the few cases where Carter undertook the unitary executive theory in his own way, his way of utilizing it actually backfired on him. His organization of the White House during his first three years in office exemplifies this. With the modern form of the presidency arising during the Franklin D. Roosevelt Administration, the executive branch has notably expanded, with the presidency of the post-World War II era now requiring additional assistance for the sake of organization, especially in the form of a chief of staff.

Every president since Dwight D. Eisenhower has employed a Chief of Staff, but Carter made the mistake of not hiring one until the penultimate year of his term, a time by which the executive branch became terribly disorganized and the president overwhelmed. Carter initially offered the post of chief of staff to Hamilton Jordan, an old friend of his, but when Jordan refused, Carter simply undertook all executive branch and White House functions, even to the point of keeping a log of usage of the White House tennis courts. Carter's action of taking too many tasks at once limited his ability to shift his focus and attention elsewhere, and members of Congress and media consultants alike took notice of Carter's disorganization in this regard.

Carter's weak ability of controlling executive branch officials undermines his successes and exhibits a weak unitary executive. His director of the Office of Management and Budget (OMB), Bert Lance, became embroiled in scandal and had to resign in 1977, the same year that Carter took office. While Congress's increased oversight into the Carter administration can be blamed for some of his ineptitudes, this scandal certainly hurt congressional trust, and aroused suspicion in the inner workings of the Carter Administration. This may have prompted further Congressional intrusion on the power of the executive, notably in the form of the Ethics in Government Act (EIGA), which Carter signed on October 26th, 1978.

The Ethics in Government Act provided a requirement of investigations by the Attorney General in certain situations, particularly where allegations of wrongdoing concern the executive branch. Prior to the EIGA, presidents had appointed special prosecutors to root out high-level corruption, even in the executive branch. The Teapot Dome Scandal of the Harding Administration, which involved Interior Secretary Albert Fall, was uncovered and solved by an investigation ordered by Harding. Though the EIGA tasks the attorney general with appointing the special prosecutor, the prosecutor is actually approved by a three-judge panel of the DC Circuit Court. Between 1978 and 1982, the EIGA was invoked eleven times. The first two times, dealing with accusations of drug use by Carter's Chief of Staff, Hamilton Jordan and his campaign manager, Tim Kraft, did not result in indictments.⁵⁷

Carter's signing of the Ethics in Government Act, according to his statements, is not so much an act of circumstance as it is an act of personal preference. He even applauded the act, declaring it a law that "will not only make [government officials] honest but it will keep them honest" and ensure that "the public has available to them an assessment of whether or not that candidate or that public official is honest."⁵⁸ However, by making the internal actions of the executive branch more public than ever before, the EIGA proved a deadly blow to any chances Carter had of a successful presidency. Between 1978 and 1982, the EIGA was invoked eleven times. The first two times, dealing with accusations of drug use by Carter's Chief of Staff, Hamilton Jordan and his campaign manager, Tim Kraft, did not result in indictments, but made the actions of the executive branch seem corrupt, even though Carter had made a pledge of

⁵⁷ Mokhiber, Jim. "The Office - A Brief History of the Independent Counsel Law." *Www.pbs.org*, WGBH Educational Foundation, May 1998, www.pbs.org/wgbh/pages/frontline/shows/counsel/office/history.html. Accessed 02 December 2018.

⁵⁸ Bryce, Joseph C, et al. "Ethics in Government." *American Criminal Law Review*, vol. 29, no. 03, 1992, pp. 317-342. Pp. 317-318.

honesty. Even worse, a Congress of his own party was initiating the investigations into members of his branch.

Carter could have argued that such an act was unnecessary, based on actions by his administration that proved it was perfectly capable of overseeing investigations. In 1977, a year before the act was passed, Attorney General Bell had undertaken a case regarding allegations of presidential misconduct by appointing his own special prosecutor, subject to his own supervision and removal. The allegations pertained to money laundering schemes involving the Carter peanut warehouse. The special prosecutor in this case undertook the investigation in "exemplary manner that enjoyed widespread public confidence," as the investigation barely aroused public attention and was handled rather efficiently.⁵⁹ But Carter's praise of the EIGA showed that as the purveyor of executive power, he was willing to give up some of his powers, and Congress acted even further.

A second big piece of reform legislation was the Inspector General Act of 1978, which vested the existing audit and investigative authority previously held by each of the executive departments in an independent Office of the Inspector General in various agencies. The Act also required all inspectors general to report results of investigations to all heads of departments, and to Congress on a semi-annual basis. The statute, finally, required the president to explain any reasons for removing inspectors general to both houses of Congress. By making the inspectors general subject to scrutiny of the legislative and executive branches, Carter's Assistant Attorney General for the Office of Legal Counsel, John Harmon, argued that the act constituted a violation of the separation of powers doctrine.⁶⁰ Most certainly, it weakens the unitary executive by

⁵⁹ Calabresi and Yoo, *Ibid.*, 365. Full source of their reference found at: S. Rep. No 97-496, at 5 (1982), reprinted in 1982 U.S.C.C.A.N. 3537, 3541.

⁶⁰ Calabresi and Yoo, *Ibid.*, 366.

splitting a power previously reserved to the president between the president and Congress. However, the Inspector General's Act was passed without Carter's veto.

While it is arguable that Carter had little choice but to acquiesce to the overbearing actions of Congress in a post-Watergate era, there were some actions that he performed in defense of the unitary executive, which show that he could have actually prevented Congress's limitations. In 1978 (the same year that the EIGA was passed), Carter vetoed a bill that would have required "three cabinet officers to report to congress whenever the president's budget requests for their respective departments was lower than what Congress allocated," and explain why higher amounts were not requested. Carter considered this an "unacceptable intrusion," and his veto was not overridden.⁶¹ Carter also expressed repeated opposition to Congress's use of the legislative veto (later ruled unconstitutional by *INS v. Chadha* 462 U.S. 919 (1983)) in signing statements, on the grounds of a unitary executive argument, by stating on more than one occasion that "the execution of the laws is a responsibility reserved exclusively to the president under the Constitution."⁶²

However, Carter's shifting of allegiance to the unitary executive theory became his downfall. Had he been more aligned and unwavering to it, his success may have improved. He may have been more organized. His executive departments would have been less scandalous, and Congress may have followed more of his initiatives. Rather than Carter having to find compromise with Congress, the roles could have been reversed, and Congress may have been the body negotiating, but Carter's lack of a strong unitary executive contributed to his

⁶¹ Calabresi and Yoo, *Ibid.*, 360. The full act was known as the Sikes Act Amendments of 1978. Carter's full veto message can be found at: Veto of the Sikes Act Amendments of 1978: Message to the House of Representatives Returning H.R. 10882 Without Approval, 2 Pub. Papers 1250, 1250 (July 10, 1978).

⁶² Calabresi and Yoo, *Ibid.*, 368-369.

disorganization. This led to his missteps as president, and low public and congressional confidence in his abilities, damaging his presidency arguably beyond repair, as is further exemplified by Carter's attempt to appeal to the American public for support through his infamous "Malaise Speech" of July 14th, 1979.

In his "Malaise Speech," Carter lecture the American people on contributions to what he calls "a fundamental threat to American democracy." This contribution, he declares, is a collapse of public confidence and of faith, in government and in themselves. The speech initially rose his poll numbers by eleven points, but what made Carter fail in capitalizing on the popularity that the speech brought him was his misuse of the unitary executive, which he incorporated incorrectly to his detriment. Just three days after the speech, Carter fired (or asked for the resignations of) almost his entire cabinet, including Attorney General Griffin Bell and Secretary of State Cyrus Vance, in an attempt to relaunch the executive branch. What this actually looked like, however, was a disorganized leader with little direction, unlike Jackson, whose re-organizations of his cabinet were taken as actions of a leader with a specific plan.⁶³

Overall, Carter's failures in office, while they can be attributed to the context of his presidency in a post-Watergate era, which encouraged increased oversight into executive branch functions, should be due more due to his poor application of the unitary executive. Carter made the mistake of bending over to pressures of Congress to limit the privacy and powers of the executive branch, and this greatly limited his ability to perform effective actions, or gain support for his use of them.

⁶³ Klein, Ezra. "Jimmy Carter's 'Malaise' Speech Was Popular!" *The Washington Post*, WP Company, 9 Aug. 2013, www.washingtonpost.com/news/wonk/wp/2013/08/09/jimmy-carters-malaise-speech-was-popular/?utm_term=.00418e7354a8. Accessed 01 December 2018.

Conclusion

The unitary executive theory, in deriving its power from the vesting clause of the United States Constitution, is a stronger determinant of presidential success than other factors such as experience, bureaucratic loyalty, and historical context, if it is used correctly and embraced effectively by a president. While these other factors may influence success, their effectiveness is only dominant insofar as they affect a president's ability to express the unitary executive.

The examples of Jackson and Carter illustrate how a strong or weak unitary executive expression can affect the success of a presidency. Both Jackson and Carter are similar in their experiences prior to office, were able to establish control over their bureaucracy, served against Congresses that attempted to limit their powers. However, Jackson and Carter's similarities for these variables further show that the unitary executive is the most important factor that explains their successes, or lack thereof. Jackson openly embraced the unitary executive, and by declaring that executive branch officials were subordinate to his orders, succeeded in winning a battle with Congress over the Second Bank of the United States. Jackson's appeals to the public were also successful, as he portrayed his actions as efforts against a corrupt agency of the political establishment that procured benefits for the wealthy at the expense of the common people. Finally, and perhaps most importantly, Jackson was able to achieve his endeavors while also keeping the strengths of his office greatly intact, and succeeded in being reelected to a second term in 1832, during his war with the Bank, and his legacy of Jacksonian Democracy dominated the American political system for the next few decades, up to the Civil War.

Carter, though he carried similar attributes to Jackson, of being an outsider that aimed to reform a government system, did not embrace the unitary executive until late into his term. By the time Carter embraced the unitary executive, his actions to increase executive power were too

late, and done incorrectly. In showing support for, and subsequently signing legislation that weakened and publicized executive branch functions, Carter exposed the issues in his administration to members of Congress and the public alike, resulting in a lack of support from either for him.

When Carter attempted to regain some executive power and independence from Congressional oversight, he was only moderately successful, and division between himself and a Congress of his own party ended up being instrumental in his failed reelection campaign, with a strong primary challenge of Senator Ted Kennedy illustrating Carter's division with the party and lack of support. Even when Carter attempted to appeal to the public for understanding, he did so in a way that lectured the American public on their contribution to the lack of confidence and faith in government. Though he got a degree of support for the speech, his subsequent unitary actions, though strong, showed even further disorganization and conveyed panic, rather than reassuring a fresh start. Overall, Carter's failures to embrace the unitary executive are responsible for his lack of success in other realms pertaining to his office, and ultimately resulted in his failure at reelection in 1980 to a more ardent proponent of the unitary executive, Ronald Reagan, who enjoyed a more successful presidency.

The unitary executive does not work in all cases, however. The example of Andrew Johnson, who blatantly ignored acts of Congress to limit his removal power of executive branch officials and faced impeachment over his firing of his Secretary of War, Edwin Stanton, shows that the unitary executive is not always applicable. However, the unitary executive has been embraced, at least to some degree, by presidents from George Washington to the present, and its most ardent practitioners, including Washington, Andrew Jackson, and Franklin D. Roosevelt, have enjoyed successful presidencies in which many of their initiatives were achieved.

Furthermore, evidence of the validity of the unitary executive can be found in theory as well as practice. The Decision of 1789 and subsequent actions of the first Congress, as well as statements by Founders such as Alexander Hamilton and James Madison, point to the fact that unitary presidential power over executive branch functions is not only intended, but to some degree encouraged. Overall, I believe that a strong expression of the unitary executive constitutes a more direct effect on presidential success than other factors such as context, bureaucratic loyalty, and personal experience, and the effectiveness of each of these factors is determined, moreover, by the extent to which each affects expression of the unitary executive.

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