

## 22. Legislative Powers of the President



Photograph by New York Times

**T**HE legislative powers of the President comprise all the legal and political influence that the President is able to impose for or against the initiation or enactment of a law by Congress. These legislative powers include the various means whereby the President may cause a bill to be introduced, promote the passage of a bill, and block the passage of a bill. (Furthermore, he may use the same means to advance or block some special provisions of a bill.) Originally the office of President was intended chiefly for executive purposes; it was supposed to administer the laws that Congress had framed. For a number of reasons the legislative powers of the President have expanded far beyond the intentions of the Founding Fathers, so that today the President has a major positive role in framing as well as in executing the policy of the government. The public expects him to propose and work for a legislative program.

## SOURCES OF THE LEGISLATIVE POWERS OF THE PRESIDENT

### *Constitutional legislative powers*

The sources of the legislative powers of the President are both constitutional and extraconstitutional. By the term "constitutional legislative powers" is meant here those powers given the President specifically for legislative purposes. The President is directed (Art. II, sec. 3) to "from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient"; here the President also is authorized "on extraordinary occasions, [to] convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper." In a different passage (Art. I, sec. 7, cl. 2), in describing the mechanics of enacting a bill, the Constitution sets forth the role of the President in signing or vetoing a bill.

An important legislative power is specifically assigned the President in connection with making treaties with foreign powers. "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; . . ." (Art. II, sec. 2). This clause could be interpreted to mean that the President and the Senate should *together* draft treaties with other nations, but in fact treaty-making has been monopolized by the presidency; on many occasions, leading Senators have been consulted by the President in early stages of the negotiation and drafting of a treaty, but in general the Senate can expect to have a hand in the proceedings only at the point of debate and voting on its approval.

A treaty, once approved by the Senate and ratified by the President, becomes part of the law of the land, like domestic laws. Two other forms of international action express additional legislative powers of the President. One is a statute passed by both houses of Congress and signed by the President, which delegates to the President the authority to engage in agreements with foreign powers in certain areas and under certain restrictions. For instance, under the Trade Agreements Act of 1955 the President is authorized to negotiate rules for the regulation of trade, including exports and imports, with other nations.

Another kind of legislative power of the President in foreign affairs is the power to make executive agreements with other countries concerning matters within the scope of the executive authority. For example, without an act of Congress, the President authorized the Rush-Bagot agreement of 1817 with Great Britain that restricted naval forces on the Great

---

**Presidential Press Conference.** Close-up of a forty-four-year-old American institution, developed to provide a regular channel of communication between the President and the nation's press. Here President Eisenhower listens to a question being posed by a correspondent.

Lakes. Later, the agreement was transformed into a treaty because the British feared that executive agreements were too dependent upon the goodwill of the incumbent President. A more detailed discussion of this and the other international activities of the President is contained in Chapter 48 of this book.

### ***Extraconstitutional legislative powers***

The term "extraconstitutional legislative powers" denotes all the legislative powers that are not directly authorized by the Constitution as parts of the legislative process. Some of these powers are explicitly awarded by the Constitution, but not for legislative ends. For example, the President is empowered (Art. II, sec. 2, cl. 2) to "appoint ambassadors, other public ministers and consuls, and all other officers of the United States. . . ." Although the presidential appointing function is not intrinsically a legislative power, it has been transformed into one under certain circumstances by different Presidents, as shall be shown below.

Other extraconstitutional legislative powers are derived not from constitutional grants but from some political development not formulated in the Constitution but not contradictory to it. One of the most important of these sources is the President's position as party leader. Of course, if the majority in one house or both houses of Congress is of an opposing party, the President cannot exercise his leadership to a very great extent. However, when the President and the majority in both houses are of the same party, the President as leader of this party can wield broad influence over lawmaking. It has been shown previously that the major political parties are not united in their beliefs, and that their members cannot in every case be obliged to vote according to the dictates of party chiefs. However, congressmen and the President have a common aim, that of winning reelection. When the President introduces a widely accepted legislative program, and Congress enacts it, a public atmosphere favorable to both is likely to result.

Another important source of presidential legislative powers resides in the unity of the presidential office. This condition is often cited in justification of the near-monopoly that the President enjoys in the conduct of foreign relations. The unity of direction there is supposed to be beneficial to the delicate problems of treating with foreign powers. At the same time it affords a major advantage in the direction of internal policy. The nature of the presidential office is such that the President cannot be blocked by an adverse vote in the executive branch. In other words, the President is supreme in his own office; every other official in the executive branch is his subordinate. He may be influenced more by some officials than by others, and may at any time be deflected from his course for reasons of political expediency. Yet ultimately every decision is his responsibility. The President, then, is capable of a singleness of aim that Congress cannot rival. The President may appeal to some congressmen for the purpose of influencing some other congressmen, who are their equals. Congressmen may appeal to members of the presidential staff or the cabinet to sway

the President; however, these men are always the subordinates, never the equals, of the President.

### ***Limitations on the legislative powers of the President***

The principal limitation on the legislative powers of the President is the profound congressional separatism that is built into the American system of government. Naturally, when a majority of either house of Congress is not of the President's party, the President is likely to meet great opposition to his legislative projects. However, this circumstance is the exception rather than the rule; for of the forty-five Congresses elected since the end of the Civil War, in thirty, or two-thirds, the presidential party had a clear majority in each house.

Another less apparent, but perhaps more significant, barrier lies in the existence of conflicting groups within the party that may represent sectional, economic, or political interests different from those supporting the President. Such groups may combine with the minority party to make a congressional bloc that is a majority sufficient to defeat the President. Franklin D. Roosevelt from 1938 on was opposed by this sort of coalition, made up principally of midwestern Republicans and southern Democrats; Harry Truman inherited the coalition and never broke it. Dwight Eisenhower, the candidate primarily of eastern Republican leaders, has frequently met resistance from the midwestern members of his party.

The ultimate source of such conflicts, however, lies in the nature of the American government. It is a part of the unending struggle between two groups of American political rulers—the executive and legislative branches of the government—for supremacy, a struggle that may be interrupted only in the event of war or economic catastrophe. The Congress has its own ego, its own sense of autonomy and mission. It tends to resent efforts by the President to introduce a program or to take steps to ensure its passage; Congress interprets such actions as improper encroachments upon what it deems its exclusive area of action. The center of this resistance consists, not surprisingly, of the chairmen of the congressional committees. Most of these chairmen have served in Congress for more than two presidential terms; and many of them have, or at least feel they have, knowledge in the field of their committees equal to or superior to that of the President.

## **THE EXERCISE OF THE PRESIDENTIAL LEGISLATIVE POWERS**

Presidential legislative powers may be divided into the three processes of introducing legislation, promoting legislation, and blocking legislation; they will be analyzed under these three headings. It is important to bear in mind, however, that this division is somewhat arbitrary, since some of the instruments described below may be employed in more than one of the three processes. Figure 40 diagrams what might be called the presidential legislative process; that is, it pictures the legislative process as it operates when the President takes the initiative in it.

## Introducing legislation

Neither the President nor any other member of the executive branch may formally introduce a bill into Congress. Legislation can be initiated only by a member of one or the other house of Congress. However, the President has certain means for procuring, or at least stimulating, such initiation.

*Drafting Bills:* Though Congress at one time was responsible for drafting most bills, today more and more bills are drafted in the executive branch of the government and are subjected to presidential review. In drafting legislation the President can exploit the distinctive nature of his office: its unity; its access to almost unlimited sources of information; the fact that, as one author puts it, the President is "always in session"; and his eminence in the eyes of the electorate.

Although individual bills may be drafted at almost any time, the usual period for drawing up a comprehensive legislative program falls between the sessions of Congress; that allows the President to be ready for the early January meetings in which he delivers his three great messages (see below). In the drafting of bills the President relies upon his many advisers and subordinates in the Bureau of the Budget and the executive branch, especially Department heads and commission chiefs. He also tends to seek counsel from the chairmen of congressional committees, not only because they may have great experience in a particular field but also because by deferring to them the President may win their support in the Senate and House. Furthermore, he consults with party leaders to determine just what sort of program the people want.

Eventually the President and his aides draft a comprehensive group of bills incorporating the whole presidential program. Then they persuade

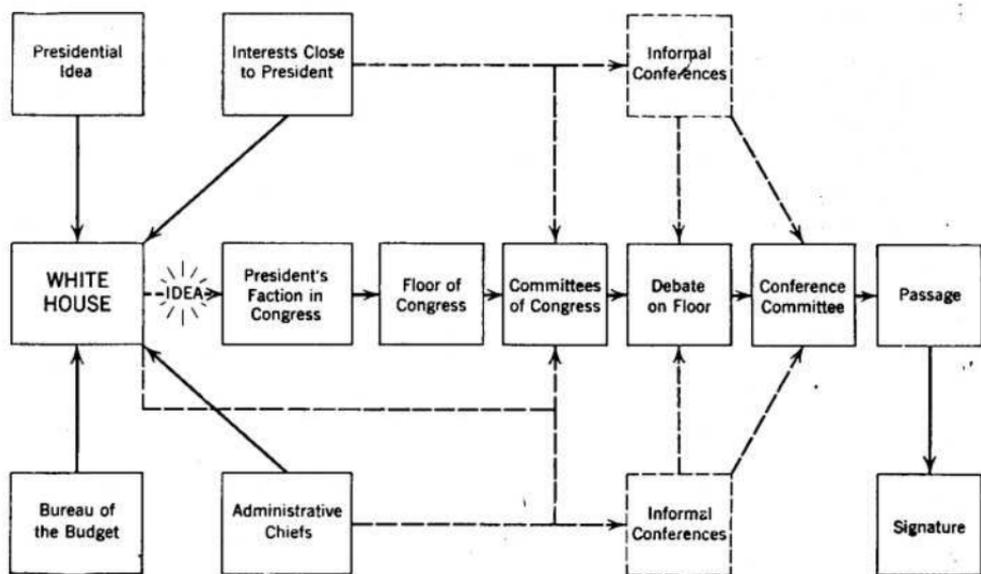


Figure 40. The Presidential Legislative Process.

or permit one congressman or more to introduce this project to Congress, either as a unit or piecemeal, whichever may seem the more expedient. Since the President—apart from the Vice President—is the only official who is elected by the people of every State, he may claim to be in a better position to draft such a group of proposals on the ground that he is the only representative of all the people. He is also in a better position than Congress to frame legislation that will assist in his reelection and in the maintenance of a congressional majority. Indeed, the presidential drafting of legislation provides a mighty instrument for the strengthening of the President's party.

*Presidential Messages:* Presidential messages today exert great influence upon the initiation, and the enactment as well, of significant legislation. The President may deliver these messages in either oral or written form, and as frequently as he thinks necessary and proper. Washington and John Adams presented their messages orally; thereafter, until Wilson, Presidents did not appear before Congress but sent their messages in writing. President Wilson revived the oral message, as another phase of his theory of presidential leadership. However, Wilson's three immediate successors—Harding, Coolidge, and Hoover—relied mainly upon written messages. F. D. Roosevelt, Truman, and Eisenhower appeared considerably more often before Congress to state their aims.

Normally during the first few days of every regular session of Congress the President delivers three cardinal messages. In the first of these, the State of the Union message, the President usually does no more than indicate general conditions across the country, roughly outline the policy he intends to follow in the coming year, and exhort Congress to unified action. Another message deals with the budget; though it can hardly explain all the items in the budget, it does contain a justification of the fiscal policies that the budget reveals. The chief purposes of this message, which is drafted with the advice of the Bureau of the Budget, are to introduce the budget and to urge congressional acceptance, at least in its broad outlines. The third message is an economic report, or "national production and employment budget," as it is termed by the Employment Act of 1946. In this message, written with the assistance of his economic advisers, the President submits the legislation that he believes essential to stimulate the national economy, with especial regard for a high level of employment. Apart from these three customary messages the President may deliver as many as a dozen or more messages related to particular issues of the day. These comparatively irregular messages, however, often are directed at bringing about the passage of bills rather than their introduction. Some messages of the past have presented highly important declarations of policy; for example, President James Monroe in his annual message in December, 1823, set forth the Monroe Doctrine.

### ***Promoting legislation***

That a bill has been introduced into Congress with the aid of the President is no guarantee of its passage, especially if the President has

only a small majority in each house. Hence the President may intervene in any one of several ways to win votes for measures he favors and to procure their enactment.

*Presidential Control over Sessions of Congress:* According to the Constitution (Art. I, sec. 4), and the Twentieth Amendment, Congress has regular annual sessions. The President has no control over the meeting of the regular sessions. He is authorized (Art. II, sec. 3) to adjourn Congress in the event that the two houses cannot agree on a date for adjournment. This is a power that Congress has never allowed the President to exercise, since the houses have always agreed on the day of adjournment; for if the precedent were once established, the President might eventually secure the power to dismiss Congress almost at will. Then the American condition would be like the English: one of the most important legislative powers of the British cabinet is that of dismissing Parliament, in case of an adverse vote, and calling for elections for a new Parliament.

However, the President has often used the power, conferred by the same section of the Constitution, to summon Congress for extraordinary or special sessions. Presidents have convened special sessions before a regular session was scheduled to meet, so as to have a body of proposed legislation enacted as quickly as possible. On other occasions, as in 1939, the extraordinary session was called after the regular session because, with the outbreak of war in September, President Roosevelt wanted neutrality laws altered so that war materiel could be sent to Great Britain and France. Today only the latter type of extraordinary session, meeting after the regular session, may be summoned. Prior to the adoption of the Twentieth Amendment, a Congress did not meet in regular session until the December thirteen months after the November in which it had been elected. Hence a President inaugurated in March would summon Congress in extraordinary session if he had an urgent legislative program. The Twentieth Amendment rearranged the schedule of the national government so that Congress now meets in January, two months after the elections; as a result it is already in session when the President is inaugurated. Consequently the need for a special session at this time no longer exists.

It must be remembered that the President cannot force a special session of Congress to deal with his requests. The members may gather after being called but do nothing that the President has asked. To secure what he wishes from an extraordinary session the President must rely upon his own prestige, his leaders in Congress, and the demands of the people. Normally the President would not call such a session unless he had been assured by congressional leaders that a majority of the members would follow his lead. It is perhaps for this reason that no special session of Congress has been called since the one in 1939.

*Patronage:* Patronage, or the executive appointing power, has become a weighty instrument for promoting the presidential legislative program. The President is in a position to influence congressmen by his willingness or unwillingness to appoint those persons whom the congressmen may

suggest for appointments. It should not be thought that these appointments become actual objects of a bartering process; however, the congressman may be given to understand that his requests for appointments will be honored much more rapidly if he supports the presidential program.

In the future, patronage is apt to be less and less important to the President as a means for promoting his legislative program. This is true largely because a growing percentage of federal appointive positions are being placed under the classified civil service, in which case the incumbents may be dismissed only for such causes as improving the efficiency of the service. It must be remembered that it is the function of the President to classify these appointive positions; by classifying these positions a President just before leaving office may freeze thousands of administrative employees in their offices regardless of party connections.

*Interference in Congressional Elections:* The President may also try to promote enactment of his legislative proposals by interfering directly in congressional elections, in order to remove opponents from office and also to secure the election or reelection of congressional supporters. This kind of activity usually occurs in the midterm elections, since at the time of a presidential election the President is too concerned with his own office to be able to bring much pressure upon congressional contests. The President may direct his attention to either a primary or a general election. He may publicly endorse a candidate, and go so far as to speak in the candidate's district on his behalf. On the other hand, he may as party leader withhold party support from the campaign of an incumbent who has voted against the presidential program. The President's control here is not absolute; the candidate may be supported by the State party leaders and funds in spite of the President.

*Conferences with Congressmen:* In late years the President and his aides have relied more and more upon conferences with congressmen to promote the presidential program. The extent to which a President may employ this instrument, and the degree of success he may expect, depend upon many factors. A President such as Herbert Hoover, who was not a master of the political art, may confer seldom with congressional leaders and may have little success when he does. On the other hand, a President such as Harry Truman, who is a talented politician and who prior to his accession to the presidency was a well-liked member of Congress, may frequently confer with congressmen, sometimes merely because they are personal friends, and may win considerable support through these conferences. Under conditions of emergency, such as war or depression, the President and congressional leaders may confer more often than in more nearly normal times.

Another important group of informal conferences among members of the executive and legislative branches takes place in the Capitol itself. Here the President is absent; he is represented by any one of the leading administrative chiefs, such as a Department head or a commission member, along with White House assistants for congressional relations and others

from the White House staff. The administrator is usually requesting action on some bill relative to his Department or commission, or may simply be trying to secure a larger appropriation after Congress has threatened to pare the President's original figure in his proposed budget. Fundamentally, this type of conference is equivalent to lobbying by the executive branch; in this activity the so-called "presidential lobby" is one of the most potent on Capitol Hill.

*Appeals to the People:* The President has almost countless avenues for appealing to the people. Messages to Congress, for example, through being published may be more effective with the people than with Congress, and may be actually designed chiefly for popular consumption. Too, the President addresses meetings of many organizations, where he can aim his words at a national audience. Today thanks to radio the President can speak to virtually the whole population of the country. F. D. Roosevelt in his first months as President used the radio to inform the people of his plans for dealing with the economic situation; through his so-called "fireside chats" he doubtless won great support, if only by creating the illusion that he was taking the people into his confidence. This means for diffusing the President's words has furthered the rise of a new profession, that of presidential speech-writer; notable members of this profession include Robert Sherwood under Roosevelt, Clark Clifford under Truman, and Kevin McCann under Eisenhower.

The press is another important means through which the President may appeal to the people. The presidential press conferences (see the lead illustration to this chapter), at which representatives of American and foreign newspapers and press associations interview the President, were originated during Wilson's time, and afford another illustration of his concept of presidential leadership. Harding, Coolidge, and Hoover banned spontaneous oral questioning and required that questions be submitted in advance in writing. F. D. Roosevelt reverted to the oral form of interview, a sort of procedure that he obviously enjoyed and that cultivated excellent relations with the press. Truman continued these conferences in the same manner, but, after several unfortunate errors and displays of temper, Truman was persuaded to adopt a more restrained manner than Roosevelt had shown.

President Eisenhower likewise holds regular press conferences at weekly intervals; but perhaps because of his comparative lack of political experience he has conducted these conferences in a quite formal manner. Yet Eisenhower has permitted a significant innovation: his conferences are broadcast over television, and recorded for later radio transmission. These conferences are not so spontaneous as they may seem; the President or one of his aides may have a reporter friendly to the administration ask a question designed to light up some important aspect of the presidential program. However, these press conferences are among the most important means whereby the President acquaints the public with his intentions and seeks to win public backing.

## ***Blocking legislation: the veto***

In order to block legislation the President may impose his veto upon bills, as authorized by the Constitution (Art. I, sec. 7, cls. 2-3). In the veto, the President has a legislative weapon enjoyed by almost every executive chief in a representative government. Depending upon the type of veto used, this presidential action may be either suspensive or final for any given session of Congress.

*Nature of the Veto:* The Constitution requires that every bill, order, resolution, or vote needing the concurrence of both houses of Congress must be submitted to the President for his approval or rejection. Once the measure is in the hands of the President, any one of four sequences of events may follow:

1. The President may register his approval by signing the bill, making it law. On some occasions, he will deem it necessary to sign a bill, thus expressing formal approval, but will accompany his action with a message to Congress stating that he objects to parts of the bill and requests Congress to remedy the alleged defects.

2. He may show disapproval by vetoing it and returning it to the house in which it originated, together with a message stating the reasons behind his disapproval. The message may be phrased simply as an explanation to Congress, sometimes including suggestions for changes that will make the bill acceptable; then again, it may be directed over the head of Congress to the people, appealing for support against the bill. Congress may take no action, in which case the veto stands. On the other hand, Congress may vote in an effort to override the veto, an action that requires a two-thirds majority vote of those present and voting in each house. Failure to muster this majority sustains the veto. Since this type of veto can be overridden, it is suspensive only.

3. The President may do nothing concerning the bill; if Congress is still in session ten days later, the bill becomes law without the President's signature. In this way the President may avoid going on record for having signed legislation of which he disapproves, yet which he fears to veto because of the possibility that the veto may be overridden so as to cause him to lose prestige.

4. The President, as in the above instance, may do nothing with respect to the bill; if Congress adjourns within ten days of his receiving the bill, it is vetoed. This step, which is known as a pocket veto, differs from the regular or messaged veto in that it is final; for since Congress has adjourned, it can do nothing about the bill. It can revive the bill in the next session only by reintroducing it as a new measure. The pocket veto is of course possible only with measures that are sent to the President just before Congress adjourns. However, so many bills are passed by Congress in the last few days of a session that the President has considerable opportunity to impose a pocket veto.

Naturally the President rarely decides in solitude upon a veto or upon the type of veto to exercise. A decision of this kind is usually far too

complicated for such easy determination, especially since, at the end of a session of Congress, he is deluged by up to several hundred bills that have passed Congress and require attention within, at the most, ten days. Consequently, he relies greatly upon the Bureau of the Budget to review and express a considered opinion regarding the legislation he must act upon.

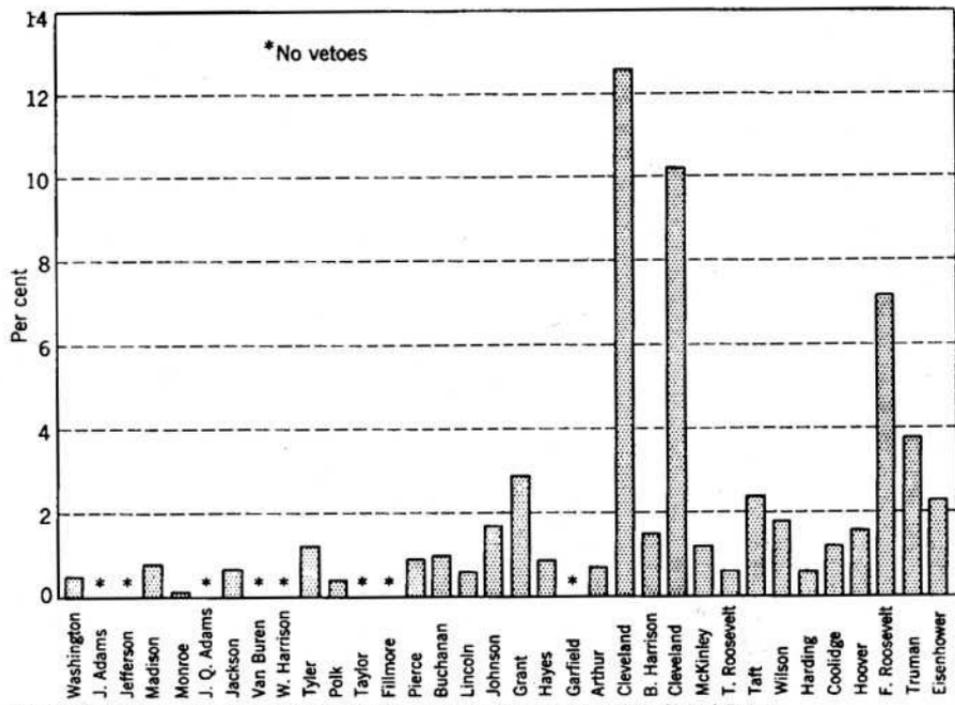
*Use of the Veto:* The authors of the Constitution, according to one of *The Federalist* papers, intended that the President use the veto to defend himself from congressional invasion of his authority, and to prevent undesirable bills from becoming law. Early Presidents appear to have used the veto almost exclusively to block legislation that they thought unconstitutional. Hence the Presidents from Washington to John Quincy Adams imposed the veto only ten times altogether; neither of the Adamses, nor Thomas Jefferson, used the veto at all.

Andrew Jackson introduced a new concept of the use of the veto, that of blocking legislation he opposed for partisan reasons. His twelve vetoes, five regular and seven pocket, displayed his belief that the President was empowered to bar legislation he felt contrary to his principles of government. These vetoes illustrate also Jackson's notion that one function of the presidency is to defend the people against improper legislation by Congress, a function much like that of the tribune in republican Rome. Finally, Jackson more than once employed the veto in a manner calculated chiefly to win public favor for himself, his party, and his ideas. But in spite of the precedent set by Jackson, succeeding Presidents did not often avail themselves of this power.

Since the Civil War the use of the veto has been much more common. The greater use of the veto in recent years shows that the President is taking an increased role in the legislative process, and that the President may sometimes feel that his judgment is superior to that of Congress. The actual proportion of bills vetoed is not large. Even Franklin Roosevelt averaged only slightly more than fifty vetoes per year, at a time when Congress was passing several hundred bills each session.

The overriding of a veto is a rare occurrence; of the 1,190 regular vetoes up to the end of 1952, only seventy-one, or about six per cent, had been overridden. When Congress overrides a veto, the action often reveals that the executive and legislative branches are in the midst of a serious dispute. Probably at no time were relations between the President and Congress more envenomed than in the era of Andrew Johnson; Johnson saw fifteen vetoes overridden, more than any other President. Harry Truman, who had twelve vetoes overturned—three in four days—was also frequently on bad terms with Congress. On the other hand, the fact that five of Franklin Pierce's nine vetoes were overridden intimates, as do many other happenings of his presidency, that he had little effective control over Congress. The number of vetoes that have been overridden may also have been reduced by the fact that the President has refused to veto a bill when he knew his veto would be overridden, but instead permitted it to become law without his signature.

Among the important bills passed over a presidential veto in recent years



Data from Statistical Abstract of the United States and Historical Statistics of the United States

Figure 41. Percentage of All Bills and Resolutions Vetoed by Each President.

were the War Disputes (Smith-Connally) Act of 1943, the Labor-Management Relations (Taft-Hartley) Act of 1947, the Internal Security (McCarran) Act of 1950, and the Immigration and Nationality (McCarran-Walter) Act of 1952. Significantly, each of these acts was opposed by labor union leaders, and each was sponsored by a congressman or congressmen hostile to the administration; only one—the Taft-Hartley Act—was passed by a Congress in which the President's party was in the minority. The graph in Figure 41 shows what percentage of the bills presented to him for his signature each President has vetoed.

*Suggested Changes in the Veto Procedure:* A number of changes have been suggested for the veto procedure. One common suggestion is that the President be empowered to veto single items, or clauses, in bills, especially those appropriating funds, as the Governors of thirty-eight States may now do. As matters stand, the President must accept or reject a whole bill. This situation has given birth to the practice of attaching so-called "riders" at the end of appropriation bills. A rider is a legislative proposal which, if introduced and passed as an independent bill, would probably be vetoed by the President; when attached to another bill favored by the President, it has a better chance of escaping the veto; when attached to an appropriation bill, it is almost certain of receiving the presidential signature, since the President will not often veto a measure providing funds for the operation of the government.

Sometimes the rider constitutes an appropriation for purposes that the President considers unjustifiable. On other occasions the rider may not

appropriate money at all, but have an entirely different function. For example, "fair trade" agreements, whereby manufacturers fix prices on branded goods in interstate commerce in apparent violation of antitrust legislation, were authorized by a rider on the District of Columbia Appropriation Act of 1937. A rider on a general appropriation bill in 1950 that opened the way for an American loan to Spain was vigorously criticized by President Truman, who opposed the Franco regime.

However, giving the President the power to veto items in an appropriation bill would increase his power over the budget and thence over the government's policy as a whole. Whereas those who support the item veto say that the President might then strike down many "undesirable" actions, their opponents can equally well declare that the item veto would empower the President to remove those items he was hostile toward, or his enemies had supported, regardless of the virtue of the items. Up to the present, the efforts of several Presidents to secure the authority to veto items have been unsuccessful.

## QUESTIONS AND PROBLEMS

1. List and describe all presidential legislative powers that come originally from the *executive* powers granted by the Constitution.

2. What legislative powers emanate from the status of the presidency in itself (that is, regardless of its allocated or derived powers)? Use materials from preceding chapters also in answering this question.

3. How might you go about better ascertaining the results of presidential messages, which the text terms "incapable of accurate measurement"?

4. Name one or more of the limitations on each of the President's legislative powers described in the text.

5. The vetoes resemble rifles; the messages and conferences time bombs. In the long run, which do you think make the more important contribution to the powers of the President?

6. Is there any part or action of the American government, according to your knowledge at this point, in which the President cannot conceivably interfere with considerable force? If so, describe it or them. If not, describe the parts or actions most nearly immune to presidential activity.