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Myth of the Presidential Mandate

ROBERT A. DAHL

On election night in 1980 the vice president elect enthusiastically informed the country that Ronald Reagan's triumph was

. . . not simply a mandate for a change but a mandate for peace and freedom; a mandate for prosperity; a mandate for opportunity for all Americans regardless of race, sex, or creed; a mandate for leadership that is both strong and compassionate . . . a mandate to make government the servant of the people in the way our founding fathers intended; a mandate for hope; a mandate for hope for the fulfillment of the great dream that President-elect Reagan has worked for all his life.¹

I suppose there are no limits to permissible exaggeration in the elation of victory, especially by a vice president elect. He may therefore be excused, I imagine, for failing to note, as did many others who made comments in a similar vein in the weeks and months that followed, that Reagan's lofty mandate was provided by 50.9 percent of the voters. A decade later it is much more evident, as it should have been then, that what was widely interpreted as Reagan's mandate, not only by supporters but by opponents, was more myth than reality.

In claiming that the outcome of the election provided a mandate to the president from the American people to bring about the policies, programs, emphases, and new directions uttered during the campaign by the winning candidate and his supporters, the vice president elect was like other commentators echoing a familiar theory.

¹ Stanley Kelley, Jr., *Interpreting Elections* (Princeton, N.J.: Princeton University Press, 1983), 217.

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ORIGIN AND DEVELOPMENT

A history of the theory of the presidential mandate has not been written, and I have no intention of supplying one here. However, if anyone could be said to have created the myth of the presidential mandate, surely it would be Andrew Jackson. Although he never used the word mandate, so far as I know, he was the first American president to claim not only that the president is uniquely representative of all the people, but that his election confers on him a mandate from the people in support of his policy. Jackson's claim was a fateful step in the democratization of the constitutional system of the United States—or rather what I prefer to call the pseudodemocratization of the presidency.

As Leonard White observed, it was Jackson's "settled conviction" that "the President was an immediate and direct representative of the people."² Presumably as a result of his defeat in 1824 in both the electoral college and the House of Representatives, in his first presidential message to Congress, in order that "as few impediments as possible should exist to the free operation of the public will," he proposed that the Constitution be amended to provide for the direct election of the president.³

"To the people", he said, "belongs the right of electing their Chief Magistrate: it was never designed that their choice should, in any case, be defeated, either by the intervention of electoral colleges or by . . . the House of Representatives."⁴

His great issue of policy was the Bank of the United States, which he unwaveringly believed was harmful to the general good. Acting on this conviction, in 1832 he vetoed the bill to renew the bank's charter. Like his predecessors, he justified the veto as a protection against unconstitutional legislation; but unlike his predecessors in their comparatively infrequent use of the veto he also justified it as a defense of his or his party's policies.

Following his veto of the bank's charter, the bank became the main issue in the presidential election of 1832. As a consequence, Jackson's reelection was widely regarded, even among his opponents (in private, at least), as amounting to "something like a popular ratification" of his policy.⁵ When in order to speed the demise of the bank Jackson found it necessary to fire his treasury secretary, he justified his action on the ground, among others, that "The President is the direct representative of the American people, but the Secretaries are not."⁶

Innovative though it was, Jackson's theory of the presidential mandate was less robust than it was to become in the hands of his successors. In 1848 James Polk explicitly formulated the claim, in a defense of his use of the veto on matters of

² Leonard D. White, *The Jacksonians: A Study in Administrative History, 1829-1861* (New York: Free Press, 1954), 23.

³ Quoted in *ibid.*, 23.

⁴ Cited in James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton, N.J.: Princeton University Press, 1979), 160, fn. 58.

⁵ White, *Jacksonians*, 23.

⁶ *Ibid.*, 23.

policy, that as a representative of the people the president was, if not more representative than the Congress, at any rate equally so.

“The people, by the constitution, have commanded the President, as much as they have commanded the legislative branch of the Government, to execute their will. . . . The President represents in the executive department the whole people of the United States, as each member of the legislative department represents portions of them. . . .” The President is responsible “not only to an enlightened public opinion, but to the people of the whole Union, who elected him, as the representatives in the legislative branches . . . are responsible to the people of particular States or districts. . . .”⁷

Notice that in Jackson’s and Polk’s views, the president, both constitutionally and as representative of the people, is on a par with Congress. They did not claim that in either respect the president is superior to Congress. It was Woodrow Wilson who took the further step in the evolution of the theory by asserting that in representing the people the president is not merely equal to Congress but actually superior to it.

Earlier Views

Because the theory of the presidential mandate espoused by Jackson and Polk has become an integral part of our present-day conception of the presidency, it may be hard for us to grasp how sharply that notion veered off from the views of the earlier presidents.

As James Ceaser has shown, the Framers designed the presidential election process as a means of improving the chances of electing a *national* figure who would enjoy majority support. They hoped their contrivance would avoid not only the populistic competition among candidates dependent on “the popular arts,” which they rightly believed would occur if the president were elected by the people, but also what they believed would necessarily be a factional choice if the president were chosen by the Congress, particularly by the House.⁸

In adopting the solution of an electoral college, however, the Framers seriously underestimated the extent to which the strong impulse toward democratization that was already clearly evident among Americans—particularly among their opponents, the anti-Federalists—would subvert and alter their carefully contrived constitutional structure. Since this is a theme I shall pick up later, I want now to mention only two such failures that bear closely on the theory of the presidential mandate. First, the Founders did not foresee the development of political parties nor comprehend how a two-party system might achieve their goal of insuring the election of a figure of national rather than merely local renown. Second, as Ceaser remarks, although the Founders recognized “the need for a popular judg-

⁷ *Ibid.*, 24.

⁸ Although Madison and Hamilton opposed the contingent solution of a House election in the event that no candidate received a majority of electoral votes, Gouverneur Morris and James Wilson accepted it as not too great a concession. Ceaser, *Presidential Selection*, 80–81.

ment of the performance of an incumbent” and designed a method for selecting the president that would, as they thought, provide that opportunity, they “did not see elections as performing the role of instituting decisive changes in policy in response to popular demands.”⁹ In short, the theory of the presidential mandate not only cannot be found in the Framers’ conception of the Constitution; almost certainly it violates that conception.

No president prior to Jackson challenged the view that Congress was the legitimate representative of the people. Even Thomas Jefferson, who adeptly employed the emerging role of party leader to gain congressional support for his policies and decisions

was more Whig than . . . the British Whigs themselves in subordinating [the executive power] to “the supreme legislative power”. . . . The tone of his messages is uniformly deferential to Congress. His first one closes with these words: “Nothing shall be wanting on my part to inform, as far as in my power, the legislative judgment, nor to carry that judgment into faithful execution.”¹⁰

James Madison, demonstrating that a great constitutional theorist and an adept leader in Congress could be decidedly less than a great president, deferred so greatly to Congress that in his communications to that body his extreme caution rendered him “almost unintelligible”¹¹ — a quality one would hardly expect from one who had been a master of lucid exposition at the Constitutional Convention. His successor, James Monroe, was so convinced that Congress should decide domestic issues without presidential influence that throughout the debates in Congress on “the greatest political issue of his day . . . the admission of Missouri and the status of slavery in Louisiana Territory,” he remained utterly silent.¹²

Madison and Monroe serve not as examples of how presidents should behave but as evidence of how early presidents thought they should behave. Considering the constitutional views and the behavior of Jackson’s predecessors, it is not hard to see why his opponents called themselves Whigs in order to emphasize his dereliction from the earlier and presumably constitutionally correct view of the presidency.

Woodrow Wilson

The long and almost unbroken succession of mediocrities who succeeded to the presidency between Polk and Wilson for the most part subscribed to the Whig view of the office and seem to have laid no claim to a popular mandate for their policies — when they had any. Even Abraham Lincoln, in justifying the unprecedented scope of presidential power he believed he needed in order to meet sec-

⁹ *Ibid.*, 84.

¹⁰ Edward S. Corwin, *The President: Offices and Powers, 1789–1948*, 3rd. ed. (New York: New York University Press, 1948), 20.

¹¹ Wilfred E. Binkley, *President and Congress* (New York: Alfred A. Knopf, 1947), 56.

¹² Leonard D. White, *The Jeffersonians: A Study in Administrative History, 1801–1829* (New York: Free Press, 1951), 31.

sion and civil war, rested his case on constitutional grounds, and not as a mandate from the people.¹³ Indeed, since he distinctly failed to gain a majority of votes in the election of 1860, any claim to a popular mandate would have been dubious at best. Like Lincoln, Theodore Roosevelt also had a rather unrestricted view of presidential power; he expressed the view then emerging among Progressives that chief executives were also representatives of the people. Yet the stewardship he claimed for the presidency was ostensibly drawn—rather freely drawn, I must say—from the Constitution, not from the mystique of the mandate.¹⁴

Woodrow Wilson, more as political scientist than as president, brought the mandate theory to what now appears to be its canonical form. His formulation was influenced by his admiration for the British system of cabinet government. In 1879, while still a senior at Princeton, he published an essay recommending the adoption of cabinet government in the United States.¹⁵ He provided little indication as to how this change was to be brought about, however, and soon abandoned the idea without yet having found an alternative solution.¹⁶ Nevertheless, he continued to contrast the American system of congressional government, in which Congress was all-powerful but lacked executive leadership, with British cabinet government, in which parliament, though all powerful, was firmly led by the prime minister and his cabinet. Since Americans were not likely to adopt the British cabinet system, however, he began to consider the alternative of more powerful presidential leadership.¹⁷ In his *Congressional Government*, published in 1885, he acknowledged that “the representatives of the people are the proper ultimate au-

¹³ Lincoln drew primarily on the war power, which he created by uniting the president’s constitutional obligation “to take care that the laws be faithfully executed” with his power as commander-in-chief. He interpreted the war power as a veritable cornucopia of implicit constitutional authority for the extraordinary emergency measures he undertook during an extraordinary national crisis. (Corwin, *The President*, 277ff.)

¹⁴ “Every executive officer, in particular the President, Roosevelt maintained, ‘was a steward of the people bound actively and affirmatively to do all he could for the people. . . .’ He held therefore that, unless specifically forbidden by the Constitution or by law, the President had ‘to do anything that the needs of the nation demanded. . . .’ ‘Under this interpretation of executive power,’ he recalled, ‘I did and caused to be done many things not previously done. . . . I did not usurp power, but I did greatly broaden the use of executive power.’” See John Morton Blum, *The Republican Roosevelt* (New York: Atheneum, 1954), 108.

¹⁵ Woodrow Wilson, *Cabinet Government in the United States* (Stamford, Conn.: Overbrook Press, 1947), orig. publication in *International Review*, 1879.

¹⁶ “He seems not to have paid much attention to the practical question of how so radical an alteration was to be brought about. As far as I know, Wilson’s only published words on how to initiate the English system are in the article, *Committee or Cabinet Government*, which appeared in the *Overland Monthly* for January, 1884.” His solution was to amend Section 6 of Article I of the Constitution to permit members of Congress to hold offices as members of the Cabinet, and to extend the terms of the president and representatives. See, Walter Lippmann, *Introduction to Congressional Government* (New York: Meridian Books, 1956), 14–15.

¹⁷ Wilson’s unfavorable comparative judgment is particularly clear in *Congressional Government: A Study in American Politics* (New York: Meridian Books, 1956; reprint of 1885 ed.), 181. Just as Jackson had proposed the direct election of the president, in his first annual message Wilson proposed that a system of direct national primaries be adopted. See Ceaser, *Presidential Selection*, 173.

thority in all matters of government, and that administration is merely the clerical part of government.”¹⁸ Congress is “unquestionably, the predominant and controlling force, the center and source of all motive and of all regulative power.” Yet a discussion of policy that goes beyond “special pleas for special privilege” is simply impossible in the House, “a disintegrate mass of jarring elements,” while the Senate is no more than “a small, select, and leisurely House of Representatives.”¹⁹

By 1908, when *Constitutional Government in the United States* was published, Wilson had arrived at strong presidential leadership as a feasible solution. He faulted the earlier presidents who had adopted the Whig theory of the Constitution.

. . . (T)he makers of the Constitution were not enacting Whig theory. . . . The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution, — it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and Congress has not. He has no means of compelling Congress except through public opinion. . . . (T)he early Whig theory of political dynamics . . . is far from being a democratic theory. . . . It is particularly intended to prevent the will of the people as a whole from having at any moment an unobstructed sweep and ascendancy.

And he contrasted the president with Congress in terms that would become commonplace among later generations of commentators, including political scientists:

Members of the House and Senate are representatives of localities, are voted for only by sections of voters, or by local bodies of electors like the members of the state legislatures.²⁰ There is no national party choice except that of President. No one else represents the people as a whole, exercising a national choice. . . . The nation as a whole has chosen him, and is conscious that it has no other political spokesman. His is the only national voice in affairs. . . . He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. . . . (T)here is but one national voice in the country, and that is the voice of the President.²¹

Since Wilson, it has become commonplace for presidents and commentators alike to argue that by virtue of his election the president has received a mandate for his aims and policies from the people of the United States. The myth of the mandate is now a standard weapon in the arsenal of persuasive symbols all presidents exploit. For example, as the Watergate scandals emerged in mid-1973, Patrick Buchanan, then an aide in the Nixon White House, suggested that the president should accuse his accusers of “seeking to destroy the democratic mandate of 1972.” Three weeks later in an address to the country Nixon said:

¹⁸ Wilson, *Congressional Government*, 181.

¹⁹ *Ibid.*, 31, 72–73, 145.

²⁰ The Seventeenth Amendment requiring a direct election of senators was not adopted until 1913.

²¹ Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908), 67–68, 70, 202–203.

Last November, the American people were given the clearest choice of this century. Your votes were a mandate, which I accepted, to complete the initiatives we began in my first term and to fulfill the promises I made for my second term.²²

If the spurious nature of Nixon's claim now seems self-evident, the dubious grounds for virtually all such pretensions are perhaps less obvious.²³

CRITIQUE OF THE THEORY

What does a president's claim to a mandate amount to? The meaning of the term itself is not altogether clear.²⁴ Fortunately, however, in his excellent book *Interpreting Elections*, Stanley Kelley has "piece[d] together a coherent statement of the theory."

Its first element is the belief that elections carry messages about problems, policies, and programs—messages plain to all and specific enough to be directive. . . . Second, the theory holds that certain of these messages must be treated as authoritative commands . . . either to the victorious candidate or to the candidate and his party. . . . To qualify as mandates, messages about policies and programs must reflect the *stable* views both of individual voters and of the electorate. . . . In the electorate as a whole, the numbers of those for or against a policy or program matter. To suggest that a mandate exists for a particular policy is to suggest that more than a bare majority of those voting are agreed upon it. The common view holds that landslide victories are more likely to involve mandates than are narrow ones. . . . The final element of the theory is a negative imperative: Governments should not undertake major innovations in policy or procedure, except in emergencies, unless the electorate has had an opportunity to consider them in an election and thus to express its views."²⁵

To bring out the central problems more clearly, let me extract what might be called the primitive theory of the popular presidential mandate. According to this theory, a presidential election can accomplish four things. First, it confers constitutional and legal authority on the victor. Second, at the same time, it also conveys information. At a minimum it reveals the first preferences for president of a plurality of votes. Third, according to the primitive theory, the election, at least under the conditions Kelley describes, conveys further information: namely that a clear majority of voters prefer the winner because they prefer his policies and wish him

²² Kelley, *Interpreting Elections*, 99.

²³ For other examples of claims to a presidential mandate resulting from the election, see William Safire, *Safire's Political Dictionary* (New York: Random House, 1978), 398; and Kelley, *Interpreting Elections*, 72–74, 126–129, 168.

²⁴ See "mandate" in *Oxford English Dictionary* (Oxford, England: Oxford University Press, 1971, compact edition); Safire, *Political Dictionary*, 398; Jack C. Plano and Milton Greenberg, *The American Political Dictionary* (New York: Holt, Rinehart and Winston, 1979), 130; Julius Gould and William L. Kolb, *A Dictionary of the Social Sciences* (New York: The Free Press, 1964), 404; Jay M. Shafritz, *The Dorsey Dictionary of American Government and Politics* (Chicago: The Dorsey Press, 1988), 340.

²⁵ Kelley, *Interpreting Elections*, 126–128.

to pursue his policies. Finally, because the president's policies reflect the wishes of a majority of voters, when conflicts over policy arise between president and Congress, the president's policies ought to prevail.

While we can readily accept the first two propositions, the third, which is pivotal to the theory, might be false. But if the third is false, then so is the fourth. So the question arises: Beyond revealing the first preferences of a plurality of voters, do presidential elections also reveal the additional information that a plurality (or a majority) of voters prefer the policies of the winner and wish the winner to pursue those policies?

In appraising the theory I want to distinguish between two different kinds of criticisms. First, some critics contend that even when the wishes of constituents can be known, they should not be regarded as in any way binding on a legislator. I have in mind, for example, Edmund Burke's famous argument that he would not sacrifice to public opinion his independent judgment of how well a policy would serve his constituents' interests, and the argument suggested by Hanna Pitkin that representatives bound by instructions would be prevented from entering into the compromises that legislation usually requires.²⁶

Second, some critics, on the other hand, may hold that when the wishes of constituents on matters of policy can be clearly discerned, they ought to be given great and perhaps even decisive weight. But, these critics contend, constituents' wishes usually cannot be known, at least when the constituency is large and diverse, as in presidential elections. In expressing his doubts on the matter in 1913, A. Lawrence Lowell quoted Sir Henry Maine: "The devotee of democracy is much in the same position as the Greeks with their oracles. All agreed that the voice of an oracle was the voice of god, but everybody allowed that when he spoke he was not as intelligible as might be desired."²⁷

It is exclusively the second kind of criticism that I want now to consider. Here again I am indebted to Stanley Kelley for his succinct summary of the main criticisms.

Critics allege that 1) some particular claim of a mandate is unsupported by adequate evidence; 2) most claims of mandates are unsupported by adequate evidence; 3) most claims of mandates are politically self-serving; or 4) it is not possible in principle to make a valid claim of a mandate, since it is impossible to sort out voters' intentions.²⁸

Kelley goes on to say that while the first three criticisms may well be valid, the fourth has been outdated by the sample survey, which "has again given us the ability to discover the grounds of voters' choices." In effect, then, Kelley rejects the primitive theory and advances the possibility of a more sophisticated mandate theory according to which the information about policies is conveyed not by the election outcome but instead by opinion surveys. Thus the two functions are cleanly split:

²⁶ Cited in *ibid.*, 133.

²⁷ Cited in *ibid.*, 134.

²⁸ *Ibid.*, 136.

presidential elections are for electing a president, opinion surveys provide information about the opinions, attitudes, and judgments that account for the outcome.

However, I would propose a fifth proposition, which I believe is also implicit in Kelley's analysis:

5) While it may not be strictly impossible *in principle* to make a reasoned and well-grounded claim to a presidential mandate, to do so *in practice* requires a complex analysis that in the end may not yield much support for presidential claims.

But if we reject the primitive theory of the mandate and adopt the more sophisticated theory, then it follows that prior to the introduction of scientific sample surveys, no president could reasonably have defended his claim to a mandate. To put a precise date on the proposition, let me remind you that the first presidential election in which scientific surveys formed the basis of an extended and systematic analysis was 1940.²⁹

I do not mean to say that no election before 1940 now permits us to draw the conclusion that a president's major policies were supported by a substantial majority of the electorate. But I do mean that for most presidential elections before 1940 a valid reconstruction of the policy views of the electorate is impossible or enormously difficult, even with the aid of aggregate data and other indirect indicators of voters' views. When we consider that presidents ordinarily asserted their claims soon after their elections, well before historians and social scientists could have sifted through reams of indirect evidence, then we must conclude that before 1940 no contemporary claim to a presidential mandate could have been supported by the evidence available at the time.

While the absence of surveys undermines presidential claims to a mandate before 1940, the existence of surveys since then would not necessarily have supported such claims. Ignoring all other shortcomings of the early election studies, the analysis of the 1940 election I just mentioned was not published until 1948. While that interval between the election and the analysis may have set a record, the systematic analysis of survey evidence that is necessary (though perhaps not sufficient) to interpret what a presidential election means always comes well after presidents and commentators have already told the world, on wholly inadequate evidence, what the election means.³⁰ Perhaps the most famous voting study to date, *The American Voter*, which drew primarily on interviews conducted in 1952 and 1956, appeared in 1960.³¹ The book by Stanley Kelley that I have drawn on so freely here, which interprets the elections of 1964, 1972, and 1980, appeared in 1983.

A backward glance quickly reveals how empty the claims to a presidential mandate have been in recent elections. Take 1960. If more than a bare majority is essential to a mandate, then surely Kennedy could have received no mandate, since

²⁹ Paul F. Lazarsfeld, Bernard Berelson, and Hazel Gaudet, *The People's Choice* (New York: Columbia University Press, 1948).

³⁰ The early election studies are summarized in Bernard R. Berelson and Paul F. Lazarsfeld, *Voting* (Chicago: University of Chicago Press, 1954), 331ff.

³¹ Angus Campbell et al., *The American Voter* (New York: Wiley, 1960).

he gained less than 50 percent of the total popular vote by the official count — just how much less by the unofficial count varies with the counter. Yet “on the day after election, and every day thereafter,” Theodore Sorenson tells us, “he rejected the argument that the country had given him no mandate. Every election has a winner and a loser, he said in effect. There may be difficulties with the Congress, but a margin of only one vote would still be a mandate.”³²

By contrast, 1964 was a landslide election, as was 1972. From his analysis, however, Kelley concludes that “Johnson’s and Nixon’s specific claims of meaningful mandates do not stand up well when confronted by evidence.” To be sure, in both elections some of the major policies of the winners were supported by large majorities among those to whom these issues were salient. Yet “none of these policies was cited by more than 21% of respondents as a reason to like Johnson, Nixon, or their parties.”³³

In 1968, Nixon gained office with only 43 percent of the popular vote. No mandate there. Likewise in 1976, Carter won with a bare 50.1 percent. Once again, no mandate there.

When Reagan won in 1980, thanks to the much higher quality of surveys undertaken by the media, a more sophisticated understanding of what that election meant no longer had to depend on the academic analyses that would only follow some years later. Nonetheless, many commentators, bemused as they so often are by the arithmetical peculiarities of the electoral college, immediately proclaimed both a landslide and a mandate for Reagan’s policies. What they often failed to note was that Reagan gained just under 51 percent of the popular vote. Despite the claims of the vice president elect, surely we can find no mandate there. Our doubts are strengthened by the fact that in the elections to the House, Democratic candidates won just over 50 percent of the popular vote and a majority of seats. However, they lost control of the Senate. No Democratic mandate there, either.

These clear and immediate signs that the elections of 1980 failed to confer a mandate on the president or his Democratic opponents were, however, largely ignored. For it was so widely asserted as to be commonplace that Reagan’s election reflected a profound shift of opinion away from New Deal programs and toward the new conservatism. However, from this analysis of the survey evidence, Kelley concludes that the commitment of voters to candidates was weak; a substantial proportion of Reagan voters were more interested in voting against Carter than for Reagan; and despite claims by journalists and others, the New Deal coalition did not really collapse. Nor was there any profound shift toward conservatism. “The evidence from press surveys . . . contradicts the claims that voters shifted toward conservatism and that this ideological shift elected Reagan.” In any case, the relation between ideological location and policy preferences was “of a relatively modest magnitude.”³⁴

³² Quoted in Safire, *Political Dictionary*, 398.

³³ Kelley, *Interpreting Elections*, 139–140.

³⁴ *Ibid.*, 170–172, 174–181, 185, 187.

In winning by a landslide of popular votes in 1984, Reagan achieved one prerequisite to a mandate. Yet in that same election, Democratic candidates for the House won 52 percent of the popular votes. Two years earlier, they had won 55 percent of the votes. On the face of it, surely the 1984 elections gave no mandate to Reagan.

Before the end of 1986, when the Democrats had once again won a majority of popular votes in elections to the House and had also regained a majority of seats in the Senate, it should have been clear and it should be even clearer now that the major social and economic policies for which Reagan and his supporters had claimed a mandate have persistently failed to gain majority support. Indeed, the major domestic policies and programs established during the thirty years preceding Reagan in the White House have not been overturned in the grand revolution of policy that his election was supposed to have ushered in. For eight years, what Reagan and his supporters claimed as a mandate to reverse those policies was regularly rejected by means of the only legitimate and constitutional processes we Americans have for determining what the policies of the United States government should be.

What are we to make of this long history of unsupported claims to a presidential mandate? The myth of the mandate would be less important if it were not one element in the larger process of the pseudodemocratization of the presidency — the creation of a type of chief executive that in my view should have no proper place in a democratic republic.

Yet even if we consider it in isolation from the larger development of the presidency, the myth is harmful to American political life. By portraying the president as the only representative of the whole people and Congress as merely representing narrow, special, and parochial interests, the myth of the mandate elevates the president to an exalted position in our constitutional system at the expense of Congress. The myth of the mandate fosters the belief that the particular interests of the diverse human beings who form the citizen body in a large, complex, and pluralistic country like ours constitute no legitimate element in the general good. The myth confers on the aims of the groups who benefit from presidential policies an aura of national interest and public good to which they are no more entitled than the groups whose interests are reflected in the policies that gain support by congressional majorities. Because the myth is almost always employed to support deceptive, misleading, and manipulative interpretations, it is harmful to the political understanding of citizens.

It is, I imagine, now too deeply rooted in American political life and too useful a part of the political arsenal of presidents to be abandoned. Perhaps the most we can hope for is that commentators on public affairs in the media and in academic pursuits will dismiss claims to a presidential mandate with the scorn they usually deserve.

But if a presidential election does not confer a mandate on the victor, what does a presidential election mean, if anything at all? While a presidential election does not confer a popular mandate on the president — nor, for that matter, on congressional majorities — it confers the legitimate authority, right, and opportunity on

a president to try to gain the adoption by constitutional means of the policies the president supports. In the same way, elections to Congress confer on a member the authority, right, and opportunity to try to gain the adoption by constitutional means of the policies he or she supports. Each may reasonably contend that a particular policy is in the public good or public interest and, moreover, is supported by a majority of citizens.

I do not say that whatever policy is finally adopted following discussion, debate, and constitutional processes necessarily reflects what a majority of citizens would prefer, or what would be in their interests, or what would be in the public good in any other sense. What I do say is that no elected leader, including the president, is uniquely privileged to say what an election means — nor to claim that the election has conferred on the president a mandate to enact the particular policies the president supports.

THE DEMOCRATIZATION OF THE PRESIDENCY

It was inevitable that the executive designed by the Framers would be fundamentally altered in response to the powerful influence of democratizing impulses. If the Framers had intended a chief executive whose election and capacity for governing would not require him to compete for popular approval and who therefore would not depend on “the popular arts” of winning public support,³⁵ they seriously underestimated both the strength of the democratic impulses among their fellow citizens and its effects on the presidency. Nothing reveals this more clearly than the amazing speed with which the Framers’ design for the executive was replaced by a presidency dependent on popular election and popular approval.

The consequences of democratization were evident almost at once and gained strength with the passage of time. I have already described one aspect of this process of democratization in some detail: the invention of the theory of the presidential mandate. Jackson’s invention was, however, preceded by decades of democratization that gave plausibility to the theory.

By Jackson’s time the presidency had long since become an office sought by partisan candidates in popular elections. Though political parties had existed in Britain and Sweden as elite organizations in systems with a severely limited suffrage, under the leadership of Jefferson and Madison the Republican party became an instrument by which popular majorities could be organized, mobilized, and made effective in influencing the conduct of government. Henceforth a president would combine his role as a presumably nonpartisan chief executive with his role as a national leader of a partisan organization with a partisan following.³⁶

³⁵ Ceaser, *Presidential Selection*, 47ff.

³⁶ As Ceaser remarks, *Presidential Selection*, 88, 90: “The nonpartisan selection system established by the Founders barely survived a decade. By the election of 1796, traces of partisanship were already clearly in evidence, and by 1800 the contest was being fought on strictly partisan lines.” Like many other innovations, Jefferson’s had unintended consequences. “Jefferson . . . had an abiding distrust of national elections and, except in the case of his own election, never regarded them as the proper

If the presidential office was to be attained by partisan contestation, then in order to reach that office a serious presidential candidate would ordinarily need to gain the endorsement and support of a political party. Though the story of the evolution of the presidential nominating process has often been told, it so vividly reveals the impact of democratizing impulses that I want to summarize it briefly.

The Nominating Process

The first organized system for nominating candidates for president and vice president was the congressional caucus, which both the Republicans and the Federalists introduced in 1800.³⁷ Yet given the emerging strength of democratic ideology, a system so obtrusively closed to participation by any but a small group of congressional politicians was clearly vulnerable. Democratic sentiments we would find familiar in our own time were expressed in a resolution passed in the Ohio legislature in 1823:

The time has now arrived when the machinations of the *few* to dictate to the *many* . . . will be met . . . by a people jealous of their rights. . . . The only unexceptional source from which nominations can proceed is the people themselves. To them belongs the right of choosing; and they alone can with propriety take any previous steps.³⁸

By 1824, when the candidate of the congressional caucus of Democratic Republicans trailed a bad fourth in the election behind Jackson, John Quincy Adams, and Henry Clay, who all ran without benefit of a blessing by the caucus, the outrage to democratic sentiments was easily exploited, most notably by Jackson and his supporters. The congressional nominating caucus came to an end.³⁹

In an obvious extension of democratic ideas, which by then had thoroughly assimilated the concept of representation, in 1831 and 1832 the nominating convention came into existence. But in due time,

[j]ust as once the democratic passions of the people were roused against the Congressional caucus, so now they were turned against the convention system. . . . Away therefore with the delegates, who can never be trusted, and back to the people!⁴⁰

So in a further obvious extension of democratic ideas to the nominating process, from 1901 onward the direct primary was introduced, initially for state and

forum for making decisive changes. . . . The paradox of Jefferson's election in 1800 was that while he was chosen for partisan reasons, he did not intend to institute a system of permanent party competition."

³⁷ Noble E. Cunningham, Jr., *The Jeffersonian Republicans: The Formation of Party Organization, 1789-1801* (Chapel Hill: University of North Carolina Press, 1957), 163-165.

³⁸ M. Ostrogorski, *Democracy and the Party System in the United States* (New York: Macmillan, 1926), 12, fn. 1.

³⁹ Though Jackson gained more votes than Adams, both popular and electoral, he was denied victory in the House of Representatives.

⁴⁰ Ostrogorski, *Democracy*, 342.

congressional nominations, and soon for presidential candidates. The presidential primary system was in turn subjected to the democratizing impulse. “By the election of 1972,” Ceaser remarks, “the election process had been transformed into what is essentially a plebiscitary system.”⁴¹

Reducing Intermediate Forces

The democratization of the nominating process is instructive for many reasons — among others because after almost two centuries of trials employing three major forms with many variations, a sensible method of nominating presidential candidates still seems beyond the reach of Americans. The present system has its defenders no doubt, but they seem to be rapidly diminishing.

The democratization of the nominating process is also instructive because it shows how the relations between the public and presidents or presidential candidates have become increasingly direct. Jeffrey Tulis has described the enormous change that has taken place in the way presidents address the public — presidential speech, if you like. The view that prevailed during the early years of the republic, and for much of the nineteenth century, tended to follow “two general prescriptions for presidential speech.” First, proposals for laws and policies would be written and directed principally to Congress; although public, they would be fashioned for congressional needs and not necessarily for general public understanding or approval. Second, when presidential speech was directed primarily to the people at large it would address general principals rather than specific issues.

The inaugural address, for example, developed along lines that emphasized popular instruction in constitutional principle and the articulation of the general tenor and direction of presidential policy, while tending to avoid discussion of the merits of particular policy proposals.⁴²

Presidents rarely directly addressed the general public, except possibly on official occasions. From Washington through Jackson, no president gave more than five speeches a year to the general public, a total that was not exceeded by half the presidents from Washington through William McKinley. When they did address the general public the early presidents rarely employed popular rhetoric or discussed their policies.⁴³ The great exception was Andrew Johnson, who however scarcely served as a model for his successors.⁴⁴ Moreover, Gil Troy has recently discovered that until Woodrow Wilson no president had ever “stumped on his own

⁴¹ Ceaser describes three phases in the evolution of the presidential selection process since the introduction of the primaries: 1912–1920, a period of the expansion of the primaries and the “plebiscitary model”; 1920–1960s, which saw the decline of primaries and the resurgence of parties; and the period since 1972. See *Presidential Selection*, 215ff.

⁴² Jeffrey K. Tulis, *The Rhetorical Presidency* (Princeton, N.J.: Princeton University Press, 1987), 46–47.

⁴³ *Ibid.*, 64, table 3.1 and 66, table 3.2.

⁴⁴ *Ibid.*, 87ff.

behalf.” Until the 1830s, even presidential candidates did not make stump speeches. “Such behavior,” Troy has written, “was thought undignified – and unwise. Presidential candidates, especially after nomination, were supposed to stand, not run, for election.”⁴⁵

What we now take as normal presidential behavior is a product of this century. The innovators were Theodore Roosevelt and to an even greater extent Woodrow Wilson.⁴⁶ Since their day and particularly in recent decades, the task of shaping presidential speech to influence and manipulate public opinion – if necessary by appealing over the heads of Congress in order to induce the Congress to support the president’s policies – has become a central element in the art and science of presidential conduct.

THE PRESIDENT AND THE CONSTITUTIONAL SYSTEM

Thus the presidency has developed into an office that is the very embodiment of the kind of executive the Framers, so far as we can discern their intentions, strove to avoid.

They did not wish an executive who would be a tribune of the people, a champion of popular majorities; who would gain office by popular election; who as a consequence of his popular election would claim a mandate for his policies; who in order to mobilize popular support for his policies would appeal directly to the people; who would shape the language, style, and delivery of his appeals so as best to create a public opinion favorable to his ambitions; and who whenever it seemed expedient would by-pass the members of the deliberative body in order to mobilize public opinion and thereby induce a reluctant Congress to enact his policies. That is, however, a fair description of the presidency that emerged out of the intersection of the Framers’ design with the strongly democratic ideology that came to prevail among politically active Americans.

One response to this kind of presidency is to argue that these developments are, on the whole, good. They are good, it might be said, because democracy is good, more democracy is better than less democracy, and a more democratized presidency is better than a less democratized presidency. In the immortal cliché of the 1970 McGovern-Fraser Commission, “the cure for the ills of democracy is more democracy.”⁴⁷ Yet this response does not seem to quiet the fears of a growing number of critics. In Arthur Schlesinger’s now popular term, the presidency was transformed into the imperial presidency.⁴⁸ James Ceaser, Theodore Lowi, and others have referred to development of the plebiscitary presidency.⁴⁹ Lowi has also dubbed it the personal presidency, remarking that “the new politics of the president-centered

⁴⁵ *New York Times*, 17 January 1988.

⁴⁶ On Theodore Roosevelt, see Tulis, *Rhetorical Presidency*, 95–116; on Wilson, see *ibid.*, 118–137.

⁴⁷ Ceaser, *Presidential Selection*, 275.

⁴⁸ Arthur Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).

⁴⁹ Ceaser, *Presidential Selection*, 5; Theodore J. Lowi, *The Personal President: Power Invested, Promise Unfulfilled* (Ithaca, N.Y.: Cornell University Press, 1985), 97ff, 134ff.

Second Republic can best be described as a plebiscitary republic with a personal presidency.”⁵⁰ Jeffrey Tulis calls the presidency that was seeded by Wilson and cultivated by his successors the rhetorical presidency.⁵¹

In criticisms of the modern presidency I want to distinguish several different perspectives. From one, what is lamentable is the break with the doctrines, intentions, and designs of the Founders. A rather different perspective, one more pragmatic and functional, emphasizes that the presidency is simply no longer working satisfactorily in its existing constitutional setting. For example, a president claiming a mandate for his policies may be blocked in one or both houses of Congress by a majority of members who in effect also claim a mandate for their policies. The result is not constructive compromise but deadlock or contradictions in policies. Examples are the recent conflicts over the deficit and over American policies in Central America.

From a third perspective, however, the presidency has come to endanger the operation of democratic processes. It is this perspective that I want to emphasize here.

I have alluded to the developments over the past two centuries as the *pseudodemocratization* of the presidency. I have no wish, much less any hope of adding to the other epithets another even more cumbersome and more ugly; but the term does speak directly to my concerns. By pseudodemocratization I mean a change taken with the ostensible and perhaps even actual purpose of enhancing the democratic process that in practice retains the aura of its democratic justification and yet has the effect, intended or unintended, of weakening the democratic process.

In the case of the presidency, I have two adverse consequences in mind. One, the more obvious, is a loss of popular and congressional control, direct and indirect, over the policies and decisions of the president. A president endowed with the mystique of a mandate — which may sometimes be deepened in a democratic country by the majesty and mystery generated by his popularity and his capacity to evoke and reflect popular feelings, yearnings, and hopes — may encounter resistance to a particular policy in Congress, perhaps even in the public. So the president exploits all the resources of his office to overcome that resistance: his rhetorical resources, his unique capacity to influence or even manipulate public opinion, and all the power and authority derived properly or factitiously from the Constitution — including his power as commander-in-chief, his unique authority over foreign affairs, his right or claim to executive privilege and secrecy, his authority and influence over officials in the executive branch, over the objectives they are obliged or induced to seek, and over the moneys and other resources necessary to reach those objectives. Whatever term we may wish to apply to an executive like this, we can hardly call it democratic.

The other consequence, though more elusive and not wholly independent of the first, is equally important. Now on one view — which I would describe as either simplistic or hostile — democracy means rule by public opinion. This view is mis-

⁵⁰ Lowi, *Personal President*, xi.

⁵¹ Tulis, *Rhetorical Presidency*.

taken both historically and theoretically. Democracy cannot be justified, I think, and its advocates have rarely sought to justify it as no more than the triumph of raw will. It can be and is justified because more than any feasible alternative it provides ordinary people with opportunities to discover what public policies and activities are best for themselves and for others, and to insure that collective decisions conform with—or at least do not persistently and fundamentally violate—the policies they believe best for themselves and for others.

I cannot undertake to explicate the complexities in the notion of discovering what is best for themselves and for others, nor do I need to. For it is obvious that discovering what is best for oneself or others requires far more than announcing one's raw will or surface preferences. Imagine this extreme situation. Suppose we were called upon to vote in a national plebiscite on a proposed treaty governing nuclear weapons that had been secretly negotiated between the president and the leader of the Soviet Union. Suppose further that the plebiscite is to be held one day after the agreement between the two leaders, and that we are to vote yes or no. The very perversity of this example serves to emphasize the crucial importance of opportunities for *understanding* as a requirement in the democratic process and illustrates why in the absence of such opportunities we should speak instead of a pseudodemocratic process.

Many writers have stressed the importance of *deliberation*. While some associate it with classical republicanism, deliberation is surely central to the idea of a democratic decision making. What I have referred to elsewhere as enlightened understanding is an essential criterion for the democratic process. Deliberation is one crucial means, though I think not the only means, to enlightened understanding. Others include systematic research and analysis, experimentation, consultation with experts, orderly discussion, casual and disorderly discussion, day-dreaming, and self-inquiry.

The modern presidency all too often impairs not only deliberation but also other means to a more enlightened understanding by citizens and the Congress. Nelson Polsby's conclusions about the presidential selection process should be extended to the presidency as a whole. The increasing directness of relationships between a candidate or president and the public means that the traditional "intermediation processes," to use his term, have become less effective. Face-to-face groups, political parties, and interest groups are less autonomous and now rely heavily on the mass media.⁵² For example, some nice experiments have recently shown that in assessing the relative importance of different issues, citizens are strongly influenced by television news.⁵³ I share Polsby's judgment that not only are deliberative processes weak in the general public's consideration of candidates and presidents, but they are also insufficiently subject to extensive review and appraisal by their peers.⁵⁴

⁵² Nelson W. Polsby, *Consequences of Party Reform* (New York: Oxford University Press, 1983), 134, 170–172.

⁵³ Shanto Iyengar and Donald R. Kinder, *News That Matters: Television and American Opinion* (Chicago: University of Chicago Press, 1987).

⁵⁴ Polsby, *Consequences*, 134, 170–172.

I also share his judgment that “the directness of direct democracy in a very large scale society seems . . . illusory.”⁵⁵

CONCLUSION

How serious a matter is the pseudodemocratization of the presidency? What, if anything, can and should we do about it? To answer those questions responsibly would obviously take us far beyond the slender limits of an article. Among friends and colleagues I think I detect rather sharply differing perspectives. Let me list several.

First, the problem is not serious.

Second, though the problem is serious, the solution is to elect one more great president.

Third, the problem is serious but there isn't much we can do about it.

Fourth, the problem is serious but can be corrected by fairly modest incremental changes, possibly including a constitutional amendment, say one providing for an American equivalent to the question hour in the British or Canadian parliaments.

Last, the problem is so profoundly built into the interaction between the constitutional framework and democratic ideology that it cannot be solved without a fundamental alteration in one or the other. This is the conclusion to which I find myself increasingly drawn.

However, given that conclusion, a solution—assuming one is attainable—could require either that Americans transform their constitutional framework or give up their democratic beliefs. I think some critics may hope that Americans will reject their democratic ideology in favor of what these critics believe to be eighteenth-century republican doctrines that would restore the Constitution to its pristine condition in the form the Framers presumably intended. I think this alternative is not only morally wrong but politically and historically illusory.

A goal more suitable to the democratic beliefs of Americans would be to begin the arduous task of rethinking constitutional needs in order to determine whether they may not design a form of government better adapted to the requirements of democracy and less conducive to pseudodemocratization. Among other rethinking, Americans need to consider how to create better opportunities for deliberation and other means by which citizens might gain a more enlightened understanding of their political goals.

To achieve the daunting goal of rethinking the Constitution will not be easy and no one should believe that, properly done, it can be accomplished quickly. But begun now, it might be achieved before this century is over. It would be an appropriate undertaking to commence now that the bicentennial of the American Constitution is behind us.*

⁵⁵ *Ibid.*, 147.

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