The assertion that the presidency is coequal in power to the other branches in the American system of government is often heard, has been suggested by all recent presidents, and has even made its way into political science. But tracing the history of the concept demonstrates that this assertion is an invention of quite recent vintage. Those who wrote and favored the Constitution did not make such claims, nor did early presidents. Even Andrew Jackson’s famous and, to his generation, shocking assertion of coequality coincident with his censure was not really a claim of equal power between branches. According to our systematic analysis of presidential rhetoric it was Richard Nixon and Gerald Ford who initiated and popularized the idea of interbranch coequality. They did so to defend themselves in two episodes of substantial presidential vulnerability: Watergate and the ensuing midterm elections. Subsequent presidents have elevated something that would have seemed wrong and absurd to any founder into a blithe truism. This belief harms governance by creating both artificially high expectations for the president and a presumption of institutional stasis. The “second constitution” based on popular beliefs about interbranch relations continues to evolve, as much a product of happenstance as of rational design.

Power is the most frequent lens through which political scientists view the United States presidency. Much of the research and debate within the field is a response to Richard Neustadt’s famed assertion of presidential weakness: in a difficult leadership environment, where those with whom the president interacts have their own independent bases of support, the executive’s primary power is persuasion (Neustadt 1990, 11). As a result we have numerous informed studies of how the president...
operates in a separated system of government (Jones 1999, 2005; Mayhew 1991; Peterson 1990; Thurber 2009). We have plumbed the issue of whom and where the president might be able to persuade (Edwards 1989). There are reinterpretations stressing openings for the president to exercise command (Mayer 2001). We have an appreciation of how time affects presidential power through the operation of regime cycles (Skowronek 1993), and we have valuable studies of how presidential power has been expanded or reinterpreted over the years (e.g., Adler 2006; Fisher 2004; Schlesinger 1973).

As a result, our understanding of presidential power is undoubtedly much richer and more sophisticated today than when Neustadt wrote *Presidential Power*. Clearly there is a great deal to know about presidential power and the many factors that contribute to its shape and development. However, a popular counter-narrative about presidential power has achieved wide currency, in large part because of its stunning simplicity. In this view there are no finely nuanced contours to presidential power, no logic or trajectory of its development, and no elaborate evolutionary interplay with Congress. There is simply an ideal that is either met or unmet. We refer to the concept of a “coequality” of power between branches of government. While foreign to most institutional literature within the American government subfield, this is a concept that is taught to schoolchildren in the United States on a near daily basis. It is blithely asserted as the ideal for American political institutions, touted as having a history as long as the Constitution itself and an impeccable provenance. But the reality of this idea is quite different. As our research will show, interbranch coequality was first seriously claimed for the presidency during the Watergate era as a tactical means of staving off constitutional procedures that would damage the governing prospects of Presidents Richard M. Nixon and Gerald R. Ford. Every president since Ronald Reagan has echoed this ideal and American citizens dutifully repeat their claims. Congress itself has now weighed in on the issue by introducing itself to the public as a coequal branch of government at the new U.S. Capitol interpretive center.¹

This viewpoint has even appeared in the political science literature in the form of Charles O. Jones’ (1999) well-known compilation of articles on interbranch relations titled *Separate but Equal Branches*. There Jones suggests that “ours is not a presidential system, as is commonly thought. By design it is, and has been from the start, a separated system with three coequal branches sharing, sometimes competing for, powers” (Jones 1999, viii). Jones does much to qualify this very assertion, acknowledging that many prefer legislative or presidential primacy and that institutional power varies substantially over time (Jones 1999, 3–5, 20, 31–32, 106–113). Nevertheless, the prevalence of divided government in recent decades suggests to him that “a balance” has been “restored: one that encourages Congress to restrain the executive, not substitute for it” (Jones 1999, 19). Thus to Jones we are in a longstanding era of coequality, a development that we should not lament because it squares with how the system was set up and because it works.
This article summarizes the evolution of the concept of interbranch coequality by chronicling its usage by all 44 U.S. presidents. To conduct this research we systematically searched all the documents electronically archived in the University of California–Santa Barbara’s American Presidency Project. This archive includes all major presidential speeches and writings, as well as a wide variety of other president-generated documents. Its two main compilations are the *Messages and Papers of the Presidents*, issued in multiple volumes several times by order of Congress, ultimately spanning the years 1789–1913, and the *Public Papers of the Presidents*, which begins at the inauguration of Herbert Hoover and continues through today. This collection totals more than 100,000 primary documents related to the presidency.² We ran a comprehensive word search using the terms “coequal,” “coequality,” “equal,” and “equality.” When a sitting president used any of these words to refer to interbranch relations, we counted it as a “hit” (see Table 1).

With popular support, presidential rhetoric, and even help from a prominent political scientist, an important change in how Americans view interbranch power has been layered on top of other views, including the one enshrined in the Constitution. This brings to mind *The Rhetorical Presidency* by Jeffrey K. Tulis (1988), which examined the disparity between the “Founders’ Constitution,” with its prescribed executive, and the wildly high expectations for presidents in the modern age set in place by Woodrow Wilson. Wilson attempted to reshape the American system to favor presidential leadership despite the fact that the separated system remained a constitutional reality. Tulis points out that most subsequent presidencies have suffered because the leadership expectations for the president set by our “second constitution” are not compatible with the constitutional realities wrought by the founding generation. We wish to add that public expectations for the presidency have continued to evolve substantially after Wilson’s presidency. Coequality has only recently become a part of the popular vocabulary about government—and it is now part and parcel of the rhetorical presidency as well. Coequality was not born of fine constitutional analysis, nor did it have its origins in presidential strength. As our analysis will show, the idea of coequality was born as a desperate defense in times of substantial executive weakness.

The next two sections of this article observe how seldom the idea of coequality was broached in the first 150 years of the presidency’s existence. The Founders’ comparisons of interbranch power stressed asymmetry. A distinct minority among the Founders did want the president to be coequal to other institutions. However, theirs was a distinctly different version of coequality than the modern variant, and they recognized that they had failed to convince others to write coequality into the Constitution. In addition, the few pre-modern presidents who asserted presidential equality were not making a global assertion about interbranch power but something much more circumscribed. A third section establishes the pivotal role Presidents Nixon and Ford played in stressing this idea. Nixon used coequality in an attempt to shield himself from congressional investigation and adverse
### Table 1. Presidential References to Interbranch Coequality

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<thead>
<tr>
<th>President</th>
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<td>Andrew Jackson</td>
<td>April 15, 1834</td>
<td>Protest Message to Senate</td>
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<td>James Buchanan</td>
<td>March 28, 1860</td>
<td>Protest Message to House</td>
</tr>
<tr>
<td>Rutherford B. Hayes</td>
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<td>Dwight Eisenhower</td>
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<td>Richard Nixon</td>
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<td>Richard Nixon</td>
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<td>Letter to House Judiciary Committee</td>
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<td>Gerald Ford</td>
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<td>Gerald Ford</td>
<td>October 16, 1974</td>
<td>Remarks in Indianapolis, Indiana</td>
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<tr>
<td>Gerald Ford</td>
<td>October 19, 1974</td>
<td>Remarks in Louisville, Kentucky</td>
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<td>Gerald Ford</td>
<td>November 2, 1974</td>
<td>Remarks in Grand Junction, Colorado</td>
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<td>Gerald Ford</td>
<td>January 29, 1975</td>
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<td>Gerald Ford</td>
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<tr>
<td>Gerald Ford</td>
<td>January 12, 1977</td>
<td>Address to Joint Session of Congress</td>
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<tr>
<td>Ronald Reagan</td>
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<td>Ronald Reagan</td>
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<td>Ronald Reagan</td>
<td>February 6, 1986</td>
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<td>Ronald Reagan</td>
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<td>Ronald Reagan</td>
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<td>Ronald Reagan</td>
<td>October 27, 1988</td>
<td>Remarks in Springfield, Missouri</td>
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<tr>
<td>Ronald Reagan</td>
<td>November 2, 1988</td>
<td>Remarks in Milwaukee, Wisconsin</td>
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<tr>
<td>Ronald Reagan</td>
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<tr>
<td>Barack Obama</td>
<td>May 21, 2009</td>
<td>Remarks at the National Archives</td>
</tr>
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decisions of the Supreme Court. Ford employed the idea for electoral effect, as part of his stock stump speech during the 1974 midterm election. Except for Jimmy Carter, every president since Ford has made the claim. How it has come to be used and expanded by them is the subject of a fourth section. Our conclusion stresses that at the same time coequality is widely used, it is too imprecise to be an accurate portrayal of interbranch relations and it is productive of pathology. Much more accurate is an understanding that the three branches are serially and contextually unequal in power as each performs the roles prescribed for them.
THE FOUNDING AND COEQUALITY

The Founders were clearly aware of the word “coequal.” The word appears several times in The Federalist, but tellingly, it is never used to refer to the relationship between branches of the federal government. How could it be when Alexander Hamilton wrote that “the judiciary is beyond comparison the weakest of the three departments of power,” (Federalist 78, Cooke 1961, 523) and James Madison observed that “in republican government the legislative authority, necessarily, predominates,” (Federalist 51, Cooke 1961, 350)? To these two architects of the American polity, splitting power equally between three branches was simply unthinkable. The different functions possessed by each branch ensured that there would not be coequality of power among them. Both Madison and Hamilton endorsed a substantial presidential role in legislating precisely because they felt that, otherwise, the presidency would be massively overmatched by the legislature.

To Madison and most members of the founding generation lawmaking was the foremost power of government. Lawmaking entailed a more proactive and independent role than enforcing the law or adjudicating under its auspices. Madison used the word coequal to refer to the relative power of each partnering state in a confederation (Federalist 20, Cooke 1961, 124). A hallmark of confederation is the retention of sovereignty by constituent states. A confederation automatically entailed an alliance among equals. Each constituent region of the United Netherlands, for instance, retained its sovereignty and was therefore equal to each of the six other states in it. Each nation state also had equal standing in the community of nations by virtue of its sovereignty. This kind of usage played a significant role during Madison’s presidency, as he insisted that the British government treat the United States as its equal. During the War of 1812 he issued a “Day of Prayer” proclamation, which insisted that the United States was “a coequal member of the great community of independent nations,” (July 23, 1813). Britain could not bully the United States merely because of her superior size or military power. To Madison, each state within the United States was equal in its internal capacities. Virginia was much larger than Delaware, but in its own domestic politics it could not do more than Delaware, as both wielded the same array of powers.

In The Federalist Madison made careful note of the instances in which states were coequal on the national stage: their strength in the Senate was equal; a portion of the formula for determining each state’s electors treated the states as equals; and during presidential runoffs in the House of Representatives each state would be coequal since each would vote as a single unit (Federalist 39, Cooke 1961, 255). Meanwhile Hamilton used “coequal” to refer to concurrent powers shared between the national government and the states. To counter the Antifederalists’ arguments that the national government would swallow up the states, he noted that state legislatures had an equal power to tax domestic goods as the national government. Only in taxing imports and exports did the nation have exclusive rather than joint and coequal authority with the states (Federalist 32, Cooke 1961, 201). In addition,
Hamilton used the word to describe British political development: the House of Commons had “raised themselves to the rank and consequence of a coequal branch of the Legislature” (Federalist 71, Cooke 1961, 485). This was evidence to Hamilton that popular legislatures gain power over time while executives lose power to them. Those who feared a loss of popular control because they thought the executive was too powerful did not understand that executives needed to be protected from legislative encroachment.

Hamilton and a few others of the founding generation viewed Britain as a model of good government, one the United States should emulate (Farrand 1911, vol. 1, 287–289). This group included important figures such as John Adams, George Mason, and Elbridge Gerry. Whether by design or by accident, Britons had come to realize that a legislature with an exclusive hold on legislative power would come to dominate government and tyrannize its citizens. The system was kept stable because the British monarch had a significant share of legislative power. The British king’s unqualified veto meant that terms of legislation could not be dictated to him and executive power could not be encroached upon by the legislature. Thus coequality, in the view of these Anglophiles, meant that the lower house of the legislature, the upper house of the legislature, and the executive all had a unilateral ability to stop any proposal from becoming law. The founding generation’s version of coequality was, therefore, circumscribed in two important ways: it was confined to the legislative process and it was conceived as purely negative in nature. Coequality was not a measure of positive power to those Founders who embraced the concept, nor did it encompass all that government did.

Diverse political commentators such as James Harrington, Baron de Montesquieu, and Jean-Louis de Lolme had meticulously argued for something resembling this tripartite arrangement as the epitome of good government. Hamilton, Adams, Gerry, and Mason, among others, knew political theory and were influenced by them. While this is a vision of interinstitutional coequality, it is not the kind of coequality asserted by modern presidents or those who echo them. Instead of the executive being coequal to the legislative and the judicial branches, in this earlier version the two legislative houses are considered separately. The institutions involved are coequal only in their ability to stop the legislative process. The executive would still be the sole executor of the law—the legislature would not share in that function at all. It did not need to. If it did, the lawmakers would come to dominate the system. Hamilton was more aggressive than the others in the amount of executing and prerogative he felt a republic needed. Despite these idiosyncrasies, the only coequality he ever endorsed was like the others: within the legislative process and between the president, the Senate, and the House.

The Constitutional Convention did think enough of this view to violate a strict separation of powers and grant the president a substantial legislative role. However, their work ultimately disappointed the “coequalist” Founders. Hamilton and the others of this mindset felt that the president needed an unqualified veto, one that could not be overridden, to protect his authority. John Adams lamented the qualified
nature of the presidential veto for the rest of his life. In a letter to Roger Sherman, for instance, he confided that “the house and senate are equal, but the third branch, the essential, is not equal,” (Carey 2000, 449). As a result, Adams believed that “the legislative power will increase, [and] the executive will diminish,” (450). Adams may not have been entirely prescient about interinstitutional power dynamics, but the salient point is that he believed that the Constitution had created a presidency that was too weak, because it was not coequal to the House and the Senate in the legislative arena.

Only a minority of Founders wanted coequal institutions. Their vision of coequality differed substantially from the form of coequality asserted today, and their vision was not built into the structure of the Constitution. Nevertheless, the vocabulary required to shape a new version of coequality was present during the founding generation.

### Earliest Uses of Coequality

In the first 170 years of the presidency’s existence, there were only three presidential uses of the words equal or coequal which referred to interinstitutional dynamics. The first of these is easily the most famous. A fervent opponent of the National Bank, Andrew Jackson ordered his secretary of the treasury to remove assets from the bank and transfer them to state institutions. When two successive secretaries refused to do so, Jackson fired them and found an acting secretary who would do his bidding in the person of Roger Taney. The Whig-controlled Senate reacted by passing a “sense of the Senate” resolution which censured the president for “assum[ing] upon himself authority and power not conferred by the Constitution and laws, but in derogation of both,” (March 28, 1834 (23rd Congress, 1st session), vol. 10. part 1, p. 1187).

Jackson’s response to the censure has long been considered a watershed moment in the development of presidential power. In emphasizing that he was elected by the people and represented all of them, many suggest that Jackson was arguing that his authority was equal to or even above Congress.’ This “tribune of the people” reading of the speech mischaracterizes Jackson’s argument. A more careful reading of his April 15, 1834, protest message reveals that he did not claim that presidential power was equal to legislative power. Instead, Jackson focused his argument on the proper division of roles between the branches.

One of the main themes in Jackson’s protest message—and the one that prompted his assertion of coequal status—is that the Senate overstepped its proper constitutional bounds in issuing the censure resolution. Jackson describes the Constitution’s presentation of the “powers and functions of the various departments of the Federal Government” as “clearly defined or result[ing] by necessary inference.” The legislative power is “vested in the Congress,” but “subject to the qualified negative of the President.” The “executive power is vested exclusively in the President,
except that in the conclusion of treaties and in certain appointments to office he is to act with the advice and consent of the Senate.” The judicial branch adjudicates, except “that the Senate possesses a high judicial power”—trying the president after an impeachment. Thus there is a clear division of roles, with each branch having primary responsibility over a certain aspect of what government does. When the government executes, the presidency exerts power; when it adjudicates it is generally the judiciary which does so; and the bulk of legislative power resides in Congress. At the same time the Constitution explicitly builds in “an occasional intermixture of the powers of the different departments.” In other words, it occasionally specifies a legislative role for the executive or a judicial role for the legislature.

To Jackson, the censure resolution was unconstitutional because it was a judicial pronouncement offered up by a legislative institution without the explicit constitutional authority required to tread outside of its own normal area of purview. The Constitution does authorize the Senate to judge a president, but only after an impeachment by the House of Representatives, using the form explicitly provided in the Constitution. The Senate cannot create a new form of judicature without constitutional authorization.

This is the context in which Jackson uses the word “coequal.” With a few exceptions, “each of the three great departments is independent of the others in its sphere of action.” When there are constitutionally authorized exceptions to that rule (the executive acting in a legislative capacity, for instance), “that sphere is not responsible to the others further than it is expressly made so in the Constitution.” In other words, if the Constitution explicitly authorizes a branch to tread outside of its “normal” function, then that explicitly-granted function cannot be encroached upon by the other branches, even the one which more typically possesses that jurisdiction. “In every other respect,” reasoned Jackson, “each of them is the coequal of the other two and all are the servants of the American people, without power or right to control or censure each other in the service of their common superior,” (our emphasis). The phrase “in every other respect” is a critical qualifier—by using it Jackson is eliminating from consideration all the instances in which the Constitution is explicit. When talking of coequality, therefore, Jackson is not talking of the “normal” authorizations of power: executives executing, legislatures legislating, and the judiciary adjudicating, for he knows the differentiation of functions make for power asymmetries in almost any specific thing that the government undertakes. Nor is he talking about the exceptions to this built into the Constitution (e.g., executive having a hand in the legislative process, the Senate sitting as a court during an impeachment trial). Jackson’s only claim for coequality is one outside of both these scenarios—where the Constitution is silent. Where the Constitution is silent we have to assume that the branches have equal constitutional standing, and thus one branch cannot invent procedures which punish, chastise, or control either of the others.

This is a far cry from claiming that the total quantity of power the president wields is equal to the legislature as a whole. The protest against censure does not
quantify power by branch at all. According to Jackson, his work regarding the National Bank was appropriate to the prescribed executive role of the president. In censuring him, the Senate had overstepped its bounds. It is very easy to misconstrue Jackson’s convoluted argument into a suggestion about the relative power of institutions, but that was not his meaning or intent. His argument amounted to this: where the Constitution is silent, each branch is entitled to be treated with the deference required of an equally legitimate constitutional entity.

There are only two other instances of presidents claiming a form of interbranch equality until late in Dwight D. Eisenhower’s presidency. The first came in 1860, when James Buchanan protested a House investigation of his actions. The House had appointed a committee to determine whether the president attempted to influence Congress through the distribution of patronage. Like Jackson, Buchanan suggested that if there had been wrongdoing, the House’s only choice was to use its constitutionally prescribed method of punishing the president: impeachment. “Except in this single case [impeachment], the constitution has invested the House of Representatives with no power, no jurisdiction, no supremacy whatever over the President,” (March 28, 1860). Buchanan seems to have taken a cue directly from Jackson here. Constitutional silence was not an invitation for any branch to chastise another; in fact, without specific authorization one branch could not bring another to heel. In nominating individuals for jobs, Buchanan was doing something that the Constitution clearly authorized presidents to do. He was moving in his proper sphere. Having acted properly, he suggested that the House had no standing to challenge him unless they voted to impeach him.

Buchanan went on to note that “he was quite as independent of [the House] as they are of him. As a coordinate branch of the Government he was their equal,” (our emphasis). The last sentence severely circumscribes the claim being made. Buchanan does not suggest that the power of the presidency is equal to the power of Congress—or even that the president’s power is equal to that of the House alone. Instead he asserts that the president and the House have equal constitutional standing. One could rephrase Buchanan’s sentence by switching the two clauses and it would mean the same thing but be clearer: “He [the president] was their [the House’s] equal as a coordinate branch of the Government.” In terms of constitutional standing, the presidency and the House are equally legitimate. Each is sanctioned to exist by the fundamental law. Each has a prescribed job to perform. Each is equally free to perform its constitutionally prescribed job without interference from the other except in the cases where the Constitution allowed interference. For Buchanan, like Jackson before him, there was no claim of an overall equality of power.

In 1879 Rutherford B. Hayes insisted on the same sort of equality. A bill was presented for his signature that prohibited the president from calling up federal troops to keep peace during federal elections. Hayes protested that this was an unconstitutional encroachment on executive authority. As commander-in-chief of the armed forces the president had the power to use the military to quell all internal uprisings. Congress could not carve out exceptions to that power for federal elections,
or for any other occurrence. In his veto message of April 29, 1879, Hayes related that “the enactment of this bill into a law will establish a precedent which will tend to destroy the equal independence of the several branches of the Government,” (our emphasis). Here too, the assertion of equality is not about power but about each of the branches remaining in its own proper sphere, something that preserves the role of each branch and with it the interbranch asymmetries set into the Constitution.

There are, of course, many notable developments in interbranch power dynamics during the era described in this section. The most important of these include the aggressive assertion of congressional power in the late 1800s, the “Stewardship Theory” of Theodore Roosevelt, and the construction of the apparatus of the modern presidency by Franklin Roosevelt. As Jeffrey Tulis (1988) has emphasized, Woodrow Wilson’s aspiration to be as much of a prime minister as the American system would allow figures prominently into the mix as well. Initially Wilson was very successful at leading Congress through his “oratorical statesmanship,” and no doubt felt himself free “to be as big a man” as he could be in the office, as he had written in Constitutional Government in the United States (Wilson 1908, 70). That spoke of his aspiration to transcend interinstitutional rivalries, but if Wilson had been forced to compare interbranch power, he might even have considered the ideal president to be more powerful than Congress. Yet it should be emphasized here that none of these visions posited coequal branches of government. This was not an argument made by Wilson or either of the Roosevelts.

THE COEQUALITY OF DESPERATION: PRESIDENTS NIXON AND FORD

Over a span of eight years Richard Nixon and Gerald Ford worked to establish a much more robust and literal version of interbranch coequality than had ever before been claimed in the United States. After just three instances of presidents using the words “coequal,” “coequality,” or “equality” to compare branches of government in 170 years, in the span of eight years there were at least 11 high profile assertions of coequality during these two presidencies. During Watergate, Nixon used the word coequal as a political refuge while desperately attempting to prevent Congress and the judiciary from seizing incriminating tape recordings. Ford entered office at a vulnerable time for the presidency. He asserted coequality while electioneering, in an effort to prevent a “veto proof” Congress from being elected. Ironically, one of the least favorable moments for the presidency led to the creation and acceptance of a new assertive model of presidential power.

The only mention of coequality between the years of 1879 and 1969 came in a Dwight Eisenhower news conference on July 29, 1959. Eisenhower claimed that Congress violated the Constitution by writing a provision into a bill reauthorizing the Tennessee Valley Authority. A portion of the bill allowed Congress to adjust yearly expenditures on the TVA without the need for additional legislation.
Eisenhower vetoed the bill containing this provision. When asked by reporters, Eisenhower suggested that he was presented with a serious breach of the separation of powers. How he explained the breach is notable: “Any time that a bill purports, with the consent of the President, to encroach on one branch of our coequal branches and give an advantage to one or the other, then we have made a very, very serious mistake...” Here Eisenhower seems to expand the notion of coequality significantly. Laws can upset the balance between institutions—giving greater say to one institution over the others. The proper, constitutionally prescribed allocation of powers is one of equality between institutions and one of the president’s jobs is to police that balance. Coming as an off-the-cuff remark in a news conference, this reference to coequality is vague and suggestive rather than precise. Given the brevity of the comment we cannot even know for sure what is coequal to Eisenhower. Is it the total quanta of power of each branch of government? Or is it the influence over legislation of each of the lawmaking institutions (House, Senate, and president)? At any rate, 170 years after the Constitution became operative, we may have the first instance of a president suggesting that his office is equal in power to the legislature.

Eisenhower’s new, more aggressive claim for coequality would be extended upon by his former vice president. Richard Nixon’s claims for presidential coequality preceded Watergate. His first mention of this idea came on October 13, 1969. In a message to Congress regarding partisan cooperation, Nixon observed that:

> in my view, the American people are not interested in political posturing between the Executive Branch and Capitol Hill. We are co-equal branches of government, elected not to maneuver for partisan advantage, but to work together to find hopeful answers to problems that confound the people all of us serve.

Because Nixon is talking about solving problems with Congress, it seems logical to conclude that his claim for coequality is that the president is equal to Congress in the legislative process, but Nixon’s devotion to the concept did not end at the legislative process. What awaited was a situation in which it made sense to him to more aggressively assert the claim.

On June 17, 1972, the Democratic Party headquarters at the Watergate Hotel in Washington, DC, was broken into. Nixon was eventually suspected of engineering a cover-up and was accused of masterminding the break in. These events produced a clash between the executive and the legislative branches, in which Nixon claimed his coequal status prohibited the Senate and House Judiciary Committees from requiring him to turn over tape recordings of Oval Office discussions. In a letter to the Senate Judiciary Committee dated January 4, 1974, Nixon related that “in order to protect the fundamental structure of our government of three separate but equal branches, I must and do respectfully decline to produce the materials called for in your subpoenas.” Nixon suggested that since the branch he occupied was coequal, he
could check the aggressive investigative actions of Congress, essentially cancelling its subpoenas.  

Six months later, on June 10, 1974, Nixon reiterated his stance in a letter to the House Judiciary Committee. Nixon again claimed that his power as executive was equal to that of Congress. He elaborated in a letter, saying “what is commonly referred to now as ‘executive privilege’ was part of the parcel of the basic doctrine of separation of powers—the establishment, by the Constitution, of three separate and co-equal branches of government.” Nixon would use this notion of coequality coupled with the idea of executive privilege as justification for refusing congressional subpoenas. Later in the same letter Nixon expanded his idea that the president could check aggressive legislative actions by claiming that “each branch historically has been steadfast in maintaining its own independence by turning back attempts of the others.” An almost Newtonian vision of interbranch relations was described here: for any action there could be an equal and opposite reaction by another branch.

Nixon was likely encouraged to pursue this line of reasoning by recent decisions of the Supreme Court, which had begun asserting interbranch coequality in 1971. A search of the LexisNexis archive of Supreme Court opinions for the terms “coequal branch” and “equal branch” turned up 47 total hits, but none before the Pentagon Papers case, *New York Times v. United States* (403 U.S. 713 1971). That case has Chief Justice Warren Burger, recently appointed to the high court by Nixon himself, writing a dissent which complains that the Executive was not “given the deference owing to an administrative agency, much less that owing to a co-equal branch of the Government.” Burger was a frequent asserter of coequality. He even did so in *United States v. Nixon* (1974), where the court unanimously rejected Nixon’s claim that his coequal stature gave him exclusive control over the White House recordings (418 U.S. 683). Having the court decide cases with interbranch coequality as a standard represented a substantial change in jurisprudence, one Nixon tried to exploit. Contrast this metric for adjudication with that offered in *Youngstown Sheet and Tube v. Sawyer* (343 U. S. 579 1952), for instance. Justice Hugo Black’s majority opinion formulaically relied on the logic of the separation of powers. Justice Robert Jackson’s famous and more pragmatic concurrence relied primarily on the powers granted to each branch but acknowledged that there was a “zone of twilight” of unspecified power about which the political branches wrestled. No concurrence or dissent relied on the argument that the branches were coequal.

Nixon failed to gain the result he hoped for, resigning the presidency in the face of impeachment from the House and probable conviction by the Senate. Yet his assertions of coequality in the highly publicized scandal gave the concept more visibility than it ever had before. Gerald R. Ford would lend the idea even more credence and expand on Nixon’s interpretation. If Nixon pioneered the modern notion of coequality, then Ford was its first permanent settler.

Coming to the presidency without being elected, but having an immense reservoir of goodwill in Congress where he had served for a quarter century, Ford
was eager to improve relations between the president and Congress. In an August 12, 1974, address to a joint session Ford made it clear that he wanted the two branches to get along: “Part of my heart will always be here on Capitol Hill. I know well the coequal role of the Congress in our constitutional process.” With many of his friends still in Congress, Ford made clear that he wanted cooperation and compromise. He extended his remarks by saying, “I love the House of Representatives. I revere the traditions of the Senate... As President, within the limits of basic principles, my motto toward the Congress is communication, conciliation, compromise, and cooperation.” Thus Ford did something very curious here, at least judged in terms of historical conceptions of interbranch power. He pledged his deep respect for Congress as an institution while simultaneously asserting an innovative power arrangement between branches that elevated the presidency at the expense of Congress in a way that no founder and no president until at least Eisenhower had ever dared to articulate. The wonder is that Ford, steeped in the traditions of Congress, was so eager to embrace the newfound coequality of the executive branch, something which threatened the traditional understanding of interbranch power relations.13

In fall 1974 Ford started to incorporate coequality into his stock stump speech. Facing an angry electorate predisposed to punish the Republicans because of Watergate and Ford’s subsequent pardon of Nixon, Ford employed coequality in a new way, as an electioneering tool:

Our forefathers so wisely decided almost 200 years ago that we needed a strong President in the White House, we needed a strong Congress in the legislative branch, we needed a strong judiciary system headed by the Supreme Court. But they were all co-equal, coordinate, and they were to be a check and a balance, one against the other. Because we had that balance, we have had freedom and the greatest material benefits and blessings of any nation in the world. (October 16, 1974)

Ford would employ this idea, stated a little bit differently in every instance, many times on the campaign trail.14 Of particular importance to Ford was drawing a distinction between a coequal arrangement and having a Congress so dominated by the opposing party that it was “veto-proof.” For example, after mentioning that the branches were coequal in a campaign speech in Grand Junction, Colorado, on November 2, Ford said that a veto-proof majority “totally disrupts and tears apart that finely tuned balance so that you no longer have a system of checks and balances. It means that one branch of our Federal Government will have a totally dominating, controlling impact on how your Government is run.”

In this and other similar examples, Ford used coequality to reengineer the Founders’ meaning of checks and balances. As articulated by James Madison in Federalist 51, each branch of government was to have enough power to prevent the others from stepping on its constitutional functions. Checks and balances prevent interinstitutional encroachment, and thus tyranny, from any institutional source. By
contrast, Ford suggested that the Founders’ checks guaranteed that the president would have coequal say over policy outcomes. Ford believed that the Founders would be displeased when the president’s party was weak in Congress, and would counsel citizens to vote for the president’s copartisans to prevent the chief executive from being overwhelmed. In Ford’s version of the story, checks and balances seemed partly designed to ensure a rough balance among two major political parties. This is a problematic claim for a number of reasons, not the least of which is that the Founders so emphasized their dislike and suspicion of political parties. Even those who founded the first party system hoped that competitive parties would not dominate the national scene. There is no reason to believe that the Founders would want to protect a party without significant popular support.

Legislation can be made without the president’s concurrence. This was the Founders’ intentional design. It was a check on the president if there was a near-consensus that he was mistaken about the benefits (or constitutionality) of some piece of legislation. In his midterm stump speeches Ford was essentially making the claim that the Founders were at odds with themselves. The very item they deliberately set into the Constitution was a thing not to be used. Overriding vetoes would, in fact, undermine the constitutional fabric. This is not a slight reinterpretation of the Founders’ vision. Rather, it is a wholly new version of interbranch relations which would prevent a president, regardless of how unpopular he or she would be, from ever having to worry about legislative pushback from Congress.

Ford was also the first to assert the coequality of the judiciary. In responding to an audience question posed during a March 12, 1976, presidential campaign appearance in Buffalo Grove, Illinois, Ford used coequality to explain why he could not reverse court-ordered busing. Ford was against busing to achieve racial balance in schools, but suggested that he was powerless to do anything about it. He suggested that, “under our system, the Supreme Court is a coequal branch of the Federal Government, and the President can’t call up the Chief Justice and say, you decide the way I want it decided.” Ford thus indicated that the coequality of the judiciary with the executive prevented him from reversing their decisions. This is a curious use of coequality because the example implies that the president is not coequal at all, but has been trumped by the federal judiciary. In making a judicial pronouncement which “stuck,” the federal judiciary had more power than the president regarding the issue at hand. Another interesting innovation here is that instead of using coequality to assert presidential power, Ford was using it to explain presidential weakness.

While hemmed in by scandal and legislative assertiveness, Nixon and Ford were responsible for popularizing the modern concept of coequality. By their use of the term in speeches and highly publicized documents Nixon and Ford helped to create a new expectation for power relations that would be repeated and accepted long after their rather desperate claims faltered. Since Ford, every president but Carter has claimed that the three branches are coequal in power.
A NEW NORM

The five most recent presidents have all asserted the coequality of the three branches of government multiple times during their presidencies. Together these presidents have popularized the concept of coequality, and seemingly turned it into an accepted norm of American politics. This section describes the manner in which recent presidents have accomplished this. Coequality has frequently been marshaled in specific interbranch battles, but it has also come to be uttered in other contexts as well. The examples described here will show how recent presidents have quietly been able to incorporate coequality into our everyday vocabulary, making Americans believe that this arrangement accurately describes the Constitution’s approach to interbranch power. Together, the presidents from Reagan through Obama took an idea that had been only recently at the fringes of American politics, used out of desperation, and made it part of mainstream political discourse.

The mainstreaming of coequality is indicated by the casual ease with which recent presidents have expressed a belief in it. Coequality is now the stuff of offhand remarks, which come at times of little significance or importance, in contrast to the dramatic contexts in which Jackson or Nixon or Ford used the idea. For example, in a July 16, 1982, interview, Paul Duke asked President Reagan to explain his “mastery of the legislative branch” despite being an outsider like Jimmy Carter. Reagan responded by saying, “I had eight years experience as Governor of California in which for about seven out of those eight years both houses of the legislature were of the opposing party.” Despite facing divided government, Reagan claimed that he fostered cooperation and got crucial reforms passed because the legislature and the executive understood that they each had an equal say over policies and therefore had to compromise. “I came here [to Washington] with the same idea, that we’re coequal branches of the government,” said Reagan. Reagan’s remark is the first instance of a gratuitous mention of coequality, not prompted by any specific fight or challenge, indicative that Reagan simply believed it to be true.

Reagan also engaged in an innovative usage of the concept. He employed coequality when he spoke of the judiciary with the intent of reining in its power. On August 1, 1983, Reagan addressed the American Bar Association about the nomination of federal judges. Reagan stressed the need to appoint conservative judges, noting that “with your counsel, we’ve sought judicial nominees who support the limited policy-making role for the Federal Courts envisioned by the Constitution.” Reagan then proceeded to claim that the Founders created three coequal branches with the specific intention of keeping the courts from becoming too powerful. “The Founding Fathers did not want our judiciary system to be the first among equals. They wanted it to be one of the three coequal branches of government.” This observation was accompanied by Reagan’s oft-repeated message that the federal judiciary was out of control and that activist, liberal judges had warped the meaning of the Constitution to create a hyperactive government.
A similar statement by Reagan came in his 1986 State of the Union address. Reagan suggested that the workload of the federal judiciary had “skyrocketed.” In Reagan’s view this was because activist liberal judges had involved the federal judiciary in policies that they should have steered clear of. By appointing conservative judges, Reagan felt he could restore the judiciary to its proper role: “The Founding Fathers did not want our judiciary system to be first among equals. They wanted it to be one of the coequal branches of government.” If we take Reagan at his word, he believed that the judiciary had become the most powerful branch of the government. How else could diminishing their scope and reach entail a restoration to a position of coequality? But how seriously we should take these pronouncements is at least somewhat in question because Reagan coupled these views with the understanding that the federal courts should have only a “limited policy-making role.”

Like Gerald Ford in 1974, Ronald Reagan used coequality in stump speeches designed to help elect his copartisans. Reagan’s 1988 speeches, his last active campaign, provided a civics lesson along with more conventional professions of support for fellow Republicans. To high school students in Pennsylvania on October 12, 1988, the president noted that it is:

not just by casting a vote for President [that you have an impact on politics]. Ours is a system of three equal branches of government. Two branches, Congress and the President, are chosen by election, and the third branch, the Courts, is chosen by the other two branches. When you vote for a candidate for the Senate or the House, you’re voting for the direction of the country and the world as much as when you vote for President.

In a clear sign of the increased visibility of the presidency in the modern age, Reagan felt he had to tout Congress’ coequality to bolster his audience’s appreciation of it. The President not only wanted a George H. W. Bush win in 1988, but he was also suggesting to his audience the importance of having a Republican Congress. Why? Because the Congress was equal in power to the president. With a friendly Congress, a President Bush would be much more effective than he would be without a friendly Congress—and Reagan knew whereof he spoke, having been president for eight years during divided government.

George H. W. Bush also used coequality as a political weapon. In his case the intended target was Congress. In an April 12, 1989, address to the American Society of Newspaper Editors, the 41st president discussed the role of the independent counsel, a part of the 1978 Ethics in Government Act. Bush suggested that his administration’s new ethics guidelines would keep any corrupt appointees out of the executive branch. Bush pointed out that the new ethics regimen would hold executive branch officials to a higher standard than members of Congress. He also complained that the new ethics guidelines were a necessity because of the dangerous obtrusiveness the independent counsel statute posed to members of the president’s inner circle. Bush suggested that this was not fair, saying “ethical consistency demands equitable standards across all three branches of government.
And under our Constitution, every branch of government is equal and none warrants preferential treatment.” Bush believed that members of Congress were receiving “preferential treatment” because they did not have to worry about an independent counsel investigating them.

This gave Bush an idea. He could get members of Congress to rethink the independent counsel statute by suggesting that the statute be applied to them. “A practice is either ethical or it is not. And if Washington is to be a level playing field, then every player should be treated the same. And therefore, I am proposing that we must extend the Independent Counsel statute to cover the Congress.” To Bush, the logic of coequality demanded revision of the law which was designed to remedy the potential conflict of interest of having the attorney general investigate himself, the person who appointed him, or his political allies in the cabinet. While this attempt to rework the Ethics in Government Act went nowhere, it was skilled position taking. Bush employed coequality to suggest that the Democratic-controlled Congress supported a double-standard that would keep its members from being investigated. Bush, by contrast, could portray the presidency as unfairly put-upon, because an ethics law applied only to the executive branch and not to each branch.

Bill Clinton was the first modern Democrat to mention coequality. Clinton made his first such statement at a Saint Patrick’s Day ceremony on March 17, 1994. A reporter suggested to Clinton that he was going to face questions from Congress regarding the Whitewater affair and asked him how he would answer them. Clinton acknowledged that he was helpless if Congress wanted to investigate his old Arkansas land deal, because Congress’s power matched his own. Clinton said, “It’s up to the Congress. They’re an independent and coequal branch of Government, and they ought to do whatever it is they think is the right thing to do.” The rest of Clinton’s answer betrayed frustration, because this arrangement allowed the Congress to investigate frivolous or partisan matters at taxpayer expense. Clinton’s statement is therefore like Ford’s on the busing issue: instead of positing coequality to puff up the presidency or stave off challenges to the office, Clinton uses it to explain his own helplessness. Clinton made a much more offhand assertion of coequality in a Citizenship Day proclamation on September 17, 2000. He referred to the Founders as being “wise about human nature and wary of unlimited power.” Because of this “the authors of our Constitution created a government where power resides not with one person or institution but with three separate and equal branches of government.” Here Clinton made explicit what Nixon, Ford, and Reagan had all implied: the coequality between the three branches is a coequality of power.

For all the differences between George W. Bush and his predecessor, Bush repeated Clinton’s view of coequality. At the Federalist Society’s 25th Annual Gala dinner on November 15, 2007, Bush delivered a speech which lauded the Constitution. Bush spoke of original intent, saying that “when the Founders drafted the Constitution, they had a clear understanding of tyranny . . . [and] their solution was to separate the Government’s powers into three coequal branches.” It is ironic but tells that Bush could so effortlessly assert that a recently developed innovation in
constitutional thinking was actually the intent of the framers to a group of professionals who claim to be dedicated to upholding originalist constitutional values.

George W. Bush used coequality in another way: as rhetorical cover for aggressive executive-centered policy. On February 17, 2006, Bush was taking questions about the implementation of parts of the USA PATRIOT Act. Regarding surveillance that was conducted under its auspices and in potential violation of the Foreign Intelligence Surveillance Act, he acknowledged that “I knew I needed to tell members of Congress. See, they like to be a part of the process. They’re a co-equal branch of Government, and I recognize that, and I honor that.” Bush, dogged for years by the charge that he was running a rogue presidency, was engaged in damage control, reassuring the public that he did respect Congress as an equal partner. It was smart to employ language that had become a truism about interbranch relations because it might reassure the public that he had not returned the nation to an imperial presidency. Bush felt that his responsibility was fulfilled by informing only top-level congressional leaders and the chairs and ranking members of the intelligence committees of his surveillance program. This claim of coequality for the Congress rings hollow, as Congress was not an equal partner in authorizing specific modes of surveillance through the law. In this instance, Bush could seem to acknowledge Congress’ rightful constitutional role even as he acted in a constitutionally questionable manner that seemed to diminish the lawmaking authority of Congress. Bush’s reassurances to the contrary would not have been available without the groundwork laid by the previous presidents.

Barack Obama has also gotten into the coequality act. At an April 29, 2009, press conference Obama was asked whether Arlen Specter’s defection to the Democratic Party would yield a veto-proof majority in the Senate. Obama responded by suggesting that Specter’s switch would not create a “rubber-stamp Senate.” Knowing how tough it is for the president to strong-arm members of Congress, Obama said, “I’ve got Democrats who don’t agree with me on everything, and that’s how it should be. Congress is a coequal branch of government . . . every Senator who is there, whether I agree with them or disagree with them, I think, truly believes that they are doing their absolute best to represent their constituencies.” This is Richard Neustadt’s formulation with a new explanatory twist. The president is not able to influence members of Congress—not just because each has an electoral base independent of the president—but because Congress is coequal.

This has not been the only Obama reference to coequality. In overturning several Bush administration executive orders on the classification of government documents, Obama pledged greater openness. While he promised to keep documents secret which, if released, would compromise American security, he also suggested that “accountability and oversight is the hallmark of our constitutional system” and that openness should be the rule, rather than the exception. In remarks at the National Archives on May 21, 2009, Obama opined that the truth should never be hidden “because it’s uncomfortable” and that a presumption of openness is the way to “deal with the Congress and the courts as coequal branches of Government.”
Here Obama is expressing a high-minded principle while simultaneously taking a covert shot at his predecessor. In his actions Obama believes that he is righting the ship of state, restoring it to its proper balance—with coequal branches instead of an arrangement which favors the presidency. While the greater embrace of openness is admirable, what is most remarkable about President Obama’s endorsement of coequality is that he is a former constitutional law professor, who one might think would resist a simplistic and ahistorical conception of the relative position of the legislative, executive, and judicial branches. Regardless, Obama has become the fifth straight president to assert coequality, a concept that has now come to be used in many different ways.

CONCLUSION

Desperate to save his presidency, Richard Nixon asserted that the president had power coequal to the Congress, which meant that he could ignore its subpoenas. That argument failed, of course, because the Supreme Court very publically determined otherwise. When Nixon’s coequality strategy failed and Gerald Ford was elevated to the presidency, Ford used the same idea to argue that a midterm election should not diminish a president’s ability to veto congressional enactments. Ford’s hope for a statically coequal arrangement between himself and the Congress was not realized either, but together he and Nixon (and ironically the Supreme Court) helped lay the foundation for the idea of coequal branches to be taken very seriously. Typically political scientists work on the assumption that only successful presidents expand the power of the office. In the case of coequality something quite odd occurred: two presidents considered among the least advantaged at the times they served were key players in the advance of an expansive philosophy of presidential power. Rarely has Gerald Ford been considered a key innovator of the office he occupied largely by accident.

Each of the presidents from Reagan to Obama has used the concept of coequality confidently. They have inspired many others to believe that this is a valid constitutional norm. This is a new development, starkly at odds with the founding generation’s understanding of interbranch power and the practices of the first 180 years of the national government’s existence under the Constitution. Some may be tempted to draw the conclusion that these claims about interbranch power do not matter much, whether they are by presidents, the public, or political scientists. The idea did not, after all, shield Nixon from the consequences of wrongdoing or Ford’s party from electoral retribution in 1974. However, this would be a problematic conclusion. How a president speaks and thinks about presidential power matters, because the president acts as a political “teacher in chief” (Neustadt 1990, 84, 87–90). And the public seems to have absorbed the lesson.

In the decades since Watergate the idea of coequality has gained currency. The best evidence of this is that recent presidents have so casually employed the argument. No longer do they gamely assert that they need to be taken seriously
because they are coequal; they have come to suggest that other institutions are not in eclipse because they are, in fact, coequal. At the very least, these presidents perpetuate a false view of the American polity’s interbranch relations. At the worst, they jeopardize the functioning of the government itself by reinforcing the Newtonian assumption that any institution’s action can be stymied with an equal and opposite reaction by another. The Founders intended to set up a government which would work to solve collective problems much better than the one they had under the Articles of Confederation. The coequality argument suggests that a standoffish stasis is a normal result and a proper baseline for American politics. This is hardly the kind of government that inspires confidence. Public opinion surveys of recent decades point to this lack of confidence. The logic of coequality suggests that there is nothing wrong with any institution stymieing anything that the government does if its members feel strongly enough (and when do they not feel strongly?). This is a phenomenon seemingly at work in recent debates over the national debt and taxation. This view ignores the separation of roles upon which the actual Constitution is built. The second constitution of coequality touted by presidents and others fits uneasily with the original Constitution and expectations of the Founders.

This leads us back to the argument of Jeffrey Tulis (1988), who was the first to note the challenge of overlaying a second “presidentialist” constitution on top of the one written in 1787. If presidents cannot exert coequal power through normal constitutional means, then they will be tempted to turn to signing statements and executive orders to do so. Changes in public expectations for interbranch relations did not end with Wilson—these expectations continue to evolve. It should be noted that Wilson’s effort to change the dynamics of American constitutionalism was consciously planned and rationally executed. Wilson did not foresee all the consequences of his actions, but in some fundamental way he accomplished what he had set out to do. The efforts of Nixon and Ford are not comparable in that unfortunate happenstances forced these presidents to rely heavily on an argument which they thought might preserve their authority. Later presidents have used their ideas, and developed them in much more favorable circumstances to assert interbranch coequality as an unremarkable norm that both justifies their actions and explains their weaknesses. Thus the second constitution continues to be fleshed out—by the vagaries of history and presidential opportunism rather than through the rational design of a single person or a document endowed with collective approval.

We do not, in fact, have a Constitution that arms the president, the legislative branch, and the judiciary with coequal power. The whole idea is a bit nonsensical. Trying to gauge the total quantity of power possessed by each branch would be an absurd exercise. Power is not easily reduced to numbers and this effort also does not acknowledge the different roles these branches occupy. Even if power could be quantified, would the presidency ever have exactly as much power as the Congress or the courts? If this is the arrangement required for a properly working republic it is doubtful that one could ever be founded or maintained. Any ebb or flow of power between institutions would be considered pathological. Coequality of branches is
a much more precise arrangement than the Founders imagined, concerned as they were with one branch’s tendency to encroach on another. The American government would have to successfully balance on a razor’s edge day by day to be considered healthy.

A more realistic way of thinking about interbranch power is to make a distinction between roles as was traditionally the case. Though each of the three branches is powerful, they are serially unequal in power, each exercising more authority than the others at a time proper to their given roles. In cases of adjudication, the judiciary is the most powerful branch, and in execution of the law, the president is most powerful. Consider one example of how this distinction of roles works. Imagine a corporation employing workers who are not in the country legally. At least in the short term, this is a law enforcement issue. When the executive enforces the law against this practice in some way, then the executive is acting as the most powerful branch. But we can only conclude from this that the executive, while acting, is the most powerful branch on this particular matter at a very specific place and time. Because federal laws may have been violated, cases may work their way through the federal judiciary. At the point that a federal court pronounces its verdict, the judiciary acts as the most powerful branch in the matter. If members of Congress get upset—perhaps because the enforcement of the law harms businesses in their districts or maybe because the president is not enforcing the law in the way they intended—they may collectively change or clarify the law. When this happens, the legislature acts as the most powerful branch, but only in regard to immigration law or border security or employment law, whichever they use to deal with the situation.

There are many other potential examples of how we can more carefully distinguish interbranch power by focusing on roles instead of quantities of power. What was the Two Presidencies Hypothesis other than a suggestion that in foreign affairs presidents have more power while in domestic affairs Congress does? Regardless of the veracity of this hypothesis over time, this is not a claim of coequality but of contextually-driven inequalities.

Presidents, the public, and scholars should strive to be precise in their descriptions of interbranch relations. There are many factors besides constitutional stipulations that contribute to interinstitutional dynamics, including public opinion. This yields ebbs and flows in the power of each branch, not a static arrangement of permanent equality. Watergate temporarily drained power from the presidency and at least in the short term, Congress’ and the Supreme Court’s importance were enhanced, but even then, on an issue-by-issue basis, the roles that each institution occupied helped to determine their relative power situation by situation. Ultimately what draws Charles O. Jones (1999) to conclude that branches are coequal is that the president is not “in control” (as he seemed to be in 1913–1914 and in 1964–1965) and Congress is not either (as it seemed to be early in 1995 and during much of the 19th century). Despite having a nuanced feeling for the ebbs and flows of interinstitutional power, Jones indicates that all other arrangements are coequal in nature.
This general pronouncement strikes us as insufficiently precise and not indicative of many of Jones’ own contextually-driven findings.

What is so interesting about this development is that in a country that has been traditionally very touchy about the distribution of interbranch power, coequality has become an accepted norm without any protest from or even much notice from Congress, the media, or the public. Congress seems increasingly unwilling and unable to occupy the role originally planned for it, at the center of national politics. The media are distracted by partisan fights. The public is too ill trained in the foundations of American politics to recognize that a major, yet ultimately unrealizable shift in interbranch power has been proffered. Ironically, this innovation is touted as being consistent with the Founders’ original intent. The best thing the theory of coequality has going for it is a catchy name. As a description of American constitution power it is historically false. At present, the claim is still false, but it has gained enough currency to become counterproductive as well.

ENDNOTES

1. The first stop in the Capitol Visitor Center is a theater in which one views a 10-minute video describing the United States government and Congress’ role in it. The tape begins by offering the insight that Congress is one of the three coequal branches of the American government.

2. Not all of these documents were written or spoken by a president. Some non-presidential sources excluded from the analysis are press briefings by press secretaries, presidential candidate statements (unless the candidate was a sitting president), and party platforms. The majority of documents in The American Presidency Project are president-generated and are thus included in the analysis.

3. Madison used a hyphen between “co” and “equal”; Hamilton tended to employ the more modern usage of the word without the hyphen. The words “equal” and “equality” are not used to refer to interbranch relations in The Federalist.

4. Madison used the word coequal in one additional instance in The Federalist. He reasoned that since the House and the Senate possessed a coequal power to legislate, any corrupt designs by the Senate (a particular concern of the Antifederalists) could be thwarted (Cooke 1961, 429).

5. The other major theme of the protest is that Jackson was authorized to do what he did. Jackson argued that he was operating within his constitutional authority when he fired cabinet secretaries, in making the Taney recess appointment, and that his order to transfer funds out of the National Bank was executive in nature. None of these arguments involve judgments about the relative power of the legislative and executive branches.

6. Since we have accessed these documents through the American Presidency Project’s website, there are no page numbers to reference. We have provided the date for each document referenced, which will allow other researchers to find the document in question and to conduct their own word search to easily find the passages quoted.

7. This was an incredibly controversial assertion. Many thought that moving assets out of the national bank and into state banks required legislation. Refocusing on the different roles marked out for the branches does not prevent controversies over who can or should do what.

8. Hayes asserted the equality of the presidency a second time in this message, writing “The Executive will no longer be what the framers of the Constitution intended—an equal and independent branch of the government.” Hayes’ language here is sufficiently imprecise that it might seem like he is asserting coequal power across branches. If this were the case, it would be a stunning development: a president at the nadir of presidential power was the first to assert that the presidency was actually coequal to the legislature.

9. Hayes added an extra wrinkle to his argument in that he blamed the House of Representatives for playing power politics. The House had attached the provision to a military appropriations bill, essentially forcing the Senate to go along with it because the bill was a “must-pass” piece of legislation. Despite this kind of gamesmanship being relatively common now, Hayes argued that it meant that the House was acting illegitimately by arrogating the entire legislative process to itself.
10. Nixon could have chosen to do as President Jackson had done: suggest rather narrowly that Congress had no jurisdiction to conduct this extra-constitutional probe. Instead he chose make a much grander pronouncement, one about the nature of the powers of these institutions themselves. The Congress and the presidency as a whole were coequal and it would ruin that balance to allow one branch to investigate and harass another.

11. Woodrow Wilson used the word Newtonian to describe the view of the Constitution taken by those he opposed. In his mind this phrase described a Constitution which was static and rule-bound, as opposed to one which was organic, evolutionary, and informal. He often explained that government “is not a machine, but a living thing,” (excerpt of Wilson’s “New Freedom” campaign publication quoted in Pestritto, 2005: 121). In this sense he drew a distinction between his “Darwinian” understanding of constitutionalism and something static—the “Newtonian” view of the Constitution. Our own use of the word Newtonian aims at something related but different: the idea that any action by a governmental institution may be opposed by an equal and opposite reaction by another coequal branch, which justifies halting any governmental action.

12. In the unanimous opinion Chief Justice Burger wrote that Nixon’s claim of executive privilege would disrupt the judiciary’s “constitutional duty...to do justice in criminal prosecutions.” He then opined that “in designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence,” (418 U.S. 683). Many scholars have noted that U.S. v Nixon is a curious case because it acknowledges executive privilege while saying that it does not apply to the case at hand. The same can be said for coequality. Though it does not agree with Nixon’s reasoning on what coequality allows him to do, it confidently asserts that there is a coequality, which subsequent presidents could use to their advantage.

13. A similar instance of Ford making an off-handed assertion of presidential coequality with Congress came on October 8, 1974, in a speech where he stated to a joint session of Congress that “I stand on a spot hallowed in history. Many Presidents have come here many times to solicit, to scold, to flatter, to exhort the Congress to support them in their leadership. Once in a great while, Presidents have stood here and truly inspired the most skeptical and the most sophisticated audience of their co-equal partners in Government.”

14. Since not every Ford campaign speech is included in the database there were almost surely many additional speeches during which Ford mentioned coequality that are not recorded in Table 1.

15. Like Ford, there are almost surely additional instances of Reagan claiming coequality in his stump speeches of 1988 not included in the American Presidency Project’s database and thus not recorded in Table 1.

REFERENCES


