

Gerald R. Ford and the Quest for Legitimacy

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While George W. Bush might not have been a “legitimately elected president” in the words of now Senator Al Franken (Franken 335), he was, at the very least, elected. The same cannot be said of Gerald Ford, who is famous for being the only person never elected to, but holding both, the Vice-Presidency and Presidency. A natural question to ask is: did the public accept him as legitimate? Why or why not? What actions did Ford pursue that lent or detracted from his legitimacy?

This paper will be presented in three sections. First, the general consensus on what legitimacy is and how it works within the American Presidency will be laid out. Second, Gerald Ford’s specific actions and how they fit or did not fit the model will be presented (and the above questions answered). Finally, a critique of the theory based on the case study of Ford will be formulated.

Theory

While much has been said about Executive *power*, little has been postulated about Executive *legitimacy*. In fact, legitimacy itself seems like a forgotten child in politics. Everyone knows what it is, and most everyone agrees that it is a necessary condition for governing—but little has been said on how to obtain, maintain, and use legitimacy. In this section, the brief theories will be laid out and supplemented.

Legitimacy can roughly be understood as the right to govern—that one *ought* to have the authority to get things done. It can be considered metaphorically equivalent to a reservoir of water: as long it stays at a certain level it can be maintained, but if it falls below a certain level there is the risk that all will be lost (Dahl, 124-188). There are four

general bases for governmental legitimacy: legitimacy by 1) results, 2) habit, 3) shared characteristics, and 4) process. These four represent the general theory of legitimacy.

Results refer to the fact that after one accomplishes some important acts that benefit the public, the public gives the government legitimacy. One of the drawbacks of this basis is that it takes time to accomplish these results, and during this time there is a lack of legitimacy. Habit is where after you obey a government for so long, you get used to it, it becomes a routine, and legitimacy is just acquiesced to. Shared characteristics are often based off of a common ethnicity, religion, language, history, or identity, and are used in the early stages of establishing a government when results are unavailable and habits have not yet formed. A government argues that because they have the same characteristics, they represent the people and thus ought to have the power to govern. Finally, process is where certain steps (traditionally democratic elections) are seen as legitimate, and the outcome of following these steps is also seen as legitimate (Shively, 157-160).

Within American Presidential politics, more specific applications of the aforementioned general theory occur. Particularly, the process aspect is often utilized, with legitimacy coming from winning a majority (not plurality) of those voting in a presidential election (Price, 68-9). This can be seen as the initial filling of the metaphorical reservoir. However, when this option is not available to (or has already been used by) Presidents, other political options and aspects of the general theory must be used to fill the reservoir.

One example is offered by James Wilson, a founding father of America, when he asserted that with regards to government power, it was the people who would be

“supplying the formal basis for its legitimate exercise” (Anderson, 202). While Wilson points out that legitimacy is derived from the people, he neglects to mention how it is derived. Historically, it has been thought of as being derived from the Constitution, a document most all Americans agree is legitimate (Pious, 48-9). This is legitimacy by constitutional process, referred to as Constitutional Legitimacy. The concept of Constitutional Legitimacy is that a president takes his legitimacy directly from the constitution before being able to use it (Pious, 49). Or seen in another light, appealing directly to the people by associating oneself with the legitimacy of the constitution is an effective technique for garnering legitimacy.

Another theory of legitimacy states presidents, in their mere existence, create legitimacy for themselves (Anderson, 210). This theory draws heavily upon legitimacy by habit and by results. The voice of the President is the “one national voice in the country” (208) and is as such the summation of all the peoples within the country. The President, far from having to be elected, merely has to be accepted by the people. But instead of going through the constitution for this acceptance, “presidential assertions of power...serve as an extraconstitutional source of Presidential Legitimacy” (200). The presentation of this theory used wartime presidents as its basis, and focused on presidents that would “refight the Revolution rhetorically” and “identify with their predecessors” to protect and establish their legitimacy (207). This can be seen as “gratifying the public” (210)—which is legitimacy by results. Expanding this theory to all presidents, the use of speeches to create a positive public feeling—or at least alleviate negative feelings—creates legitimacy by public acceptance, referred to in this paper as Presidential Legitimacy. Communication, via speeches, the press, and other mediums can thus be

used to create and assert legitimacy if used successfully, leading to the conclusion that “speaking is governing” (Anderson, 211)—legitimacy by habit.

Finally, there is a third theory that has been mentioned, but not analyzed. Legitimacy can come from having a unified government—the support of congress can bolster a president, (Congressional Legitimacy) and lends itself to improving legitimacy by results. This can be seen in the 107th Congress, when the narrow Republican majority “immediately rallied” to the newly elected President’s side in 2000 and “circled the partisan wagons” to prevent any claims of illegitimacy (Price, 71) under legitimacy by process. They then proceeded to help Bush pass his agenda, leading to legitimacy via results. Even Nixon mentioned this when he said during his resignation, “because of the Watergate matter, I might not have the support of the Congress that I would consider necessary to back the very difficult decisions and carry out the duties of this office in the way the interests of the nation would require” (Ford, 37). Here one can see that Nixon thinks some support from Congress is essential to ensuring legitimacy of the president, without it the president might be able to exercise his authority, but it will not be perceived as legitimate.

While none of these theories offer a complete picture of how Executive Legitimacy works in full, they offer a good starting point. Throughout this paper Gerald Ford will be used as a case study to see which elements of these theories hold up, and which elements are irrelevant—or were, in his case. In the end a synthesis of the theories will be presented, and hopefully a consensus on what Executive Legitimacy really is will be reached. A diagram is provided at the end to facilitate comprehension.

Gerald Ford was chosen because he entered the presidency in a most unusual way, having never won an election larger than Michigan's 5th House district before being chosen for the Vice-President vacancy, and then assuming the office of the President after Nixon's resignation. This alone opened Ford up to the question of legitimacy (how can he speak for the people as a whole if he was never elected by them?). It also allows the exploration of other variables that lead to legitimacy besides the most common one in democratic systems: elections.

Throughout this paper, primary sources (newspapers, autobiographies, etc) will be used, in conjunction with secondary sources and independent analysis to produce a qualitative theory of what Executive Legitimacy within the American Political System is.

Practice

It is quite remarkable that even before assuming the office of the President of the United States, Gerald Ford was given a sense of legitimacy from the press in comparison to Nixon; legitimacy that he so desperately needed to govern the country. *The Washington Post* asserted that Ford's open door style of government will be a "death sentence for the royal attributes of the Nixon era with pervasive Oval Office political dominance and remoteness" (Evans, A23), and that "where Mr. Nixon was devious and secretive, Mr. Ford is direct and open" (Miller, 7). Ford's difference were even presented long before Watergate led to Nixon's downfall; on May 27, *U.S. News and World Report* ran a story on what would happen if Ford was to become president, stating that

"Congressional leaders would be consulted more frequently. Mr. Ford... would try to take full advantage of the contacts he built up in more than a quarter of a century on Capitol Hill.... Roadblocking tactics by Congress, often employed now to embarrass President Nixon, probably would decline. At the outset, at least, Mr. Ford could look for more cooperation on the Hill" ("The Nixon Crisis," 19-20).

It is clear from all of these accounts that the press, while holding high expectations of the Ford Presidency, was also offering out generous amounts of legitimacy to Ford via the favorable comparison to Nixon. *Before taking office*, legitimacy by result was already established. All that Ford had to do to keep this legitimacy was maintain the high standards set out by the press.

Gerald Ford initially had a three pronged strategy for moving the country forward. Nixon hadn't talked to the press, hadn't dealt with Congress, and hadn't reached out to the people of the country. Ford's plan was to do all three (Ford, 133). In doing this, Ford hoped mainly to distance himself from the disgraced Nixon, prevent claims of illegitimacy, and signal that his administration would be different in how it dealt with domestic matters.

Gerald Ford, in his first speech as President, reached out to the people of the country. He started off by stating "I am acutely aware that you have not elected me as your president" (Diamond, 2). This can be seen as not only distancing himself from the scandal, but pre-empting the attacks (and thus softening the blow) on his lack of legitimacy. Ford appealed directly to the people when he asked them to keep him in their thoughts and prayers (2), a signal that he would like the legitimacy that comes directly from the people. His first speech was aimed at Presidential Legitimacy, where by speaking he would please the public and help to establish a habitual form of government for the next 2½ years.

Ford then transitions within his speech to seeking legitimacy through the democratic process, looking for Constitutional Legitimacy. He holds the office not through a corrupt bargain or pure chance, but by a system specifically outlined in the

Constitution. Ford said the “Constitution works; our great republic is a government of laws and not of men” (2). This specifically lays out that Ford trusts in the laws of the land, and that he followed them, establishing his Constitutional Legitimacy. Moreover, Ford promises to “bind up the internal wounds of Watergate” and “restore the golden rule to our political process” (2). This shows Ford’s commitment to move beyond an incident that seriously weakened the public’s faith in government and prevent claims of illegitimacy (Hetherington, 240).

Three days after giving this speech, Ford delivered another speech; this time to Congress, not the people, although the content was directed at both. Again, we see Ford questing for legitimacy by saying things such as “I intend to listen to the people themselves—all the people—as I promised last Friday. I want to be sure that we are all tuned in to the real voice of America,” and “as President, I intend to listen” (Diamond, 75). We see another direct appeal to the people in his speech, another direct statement that he will listen to them and act as a president should. This follows the statement made by Monty Python, “Supreme executive power derives from a mandate from the masses”; showing that direct appeals are one factor in obtaining Presidential Legitimacy. It is “WE THE PEOPLE of the United States”, after all, and these are the “most important words” (75) of the Constitution. In this instance, we have an appeal to Congressional Legitimacy, Presidential Legitimacy, and Constitutional Legitimacy.

Ford continued to cultivate good press coverage, like when he referred to “the absolute necessity of a free press” (Diamond, 75), in an effort to reverse the relationship that had been cultivated between the President and the press during the Nixon years. Ford received more positive coverage when two weeks into his Presidency he selected Nelson

Rockefeller to be his Vice-President. The choice was between Rockefeller, Governor of New York, and George H. W. Bush, chairman of the Republican National Committee. Ford was advised that Bush was the choice for “party harmony, but this would be construed primarily as a partisan act, foretelling a Presidential hesitancy to move boldly in the face of known controversy” (Ford, 143). Rockefeller, on the other hand, would be “hailed by the media most hostile to Republicans, encourage estranged groups to return to the party and would signal that the new President will not be the captive of any political faction” (143). Indeed, the choice was nearly universally acclaimed by all major sources of print, and by the public at large; only the staunch conservatives were disappointed (Rozell, 45). Ford choice was a “complete reversal” (“Political Turnaround”), an “indication of Ford’s own political maturity” (“A Natural Force”, 12-13). This clearly showed Ford in a more superior light than Nixon and showed that Ford could accomplish good results. Ford had, with this decision, finally gotten to the point where the press and the people trusted him—Ford had finally filled the metaphorical reservoir to a satisfactory level. The quest for legitimacy was satisfactorily completed.

However, there was a continual drain on Ford’s legitimacy—the ongoing presence of the Watergate scandal in the minds of the people and the press (Ford, 157). It was a leak in his reservoir of legitimacy, and prevented him from governing the country effectively and producing good results. Ford recalled

“Devoting about 25% of my time listening to lawyers argue what I should do with Mr. Nixon’s papers, his tapes, etc. At the very same time our country faced serious economic problems, inflation, higher interest rates, unemployment going up. And we had allies that were uncertain as to what would happen. And the Soviet Union—we never knew what they might do in this change of presidency” (Mieczkowski 30).

Ford faced two options: do nothing and let the stench and time-drain linger, or he could quickly end it.

Before deciding what he should do, Ford took great steps to establish what he legally *could* do. He had lengthy discussions with Phil Buchen (then White House Counsel) asking if the President could “pardon someone who had not been indicted, or convicted, yet” (Ford, 159). In the end, Buchen decided that the President did indeed have the authority to grant a pardon before an indictment (162). Ford was concerned with upholding the law, as failure to do so would detract from his Constitutional Legitimacy.

Having decided that he, as President, did have the authority to issue a pardon, Ford looked at whether he should. On the one hand, doing this would establish a “dual system of justice” (Ford, 172) one where Nixon did not serve jail time for his actions, and one where Nixon’s aides did. This would go against the conception that all are equal before the law. In addition, the pardon would prevent a trial from going forward, and the truth might never be learned by the American people (172). Balancing this was the fact that even if the trial did go forward, Nixon did not have to testify, and the truth might still not be found out. That, and while Nixon might not have jail time like his aides, he would have the shame of resignation for the rest of his life (172). Moreover, it wasn’t just about Nixon, it was also about the “country’s health at home and around the world” (160). If left unresolved, the Nixon story “would overshadow everything else...[making] it virtually impossible to direct public attention to anything else” (161). Ford would be incapable of establishing Presidential Legitimacy if Nixon remained in the minds of the people and the press.

In the end, Ford decided that “the hate had to be drained and the healing begun (161) and that the “the right thing for me to do is to spend 100% of my time on the problems of 240 million Americans and not 25% of my time on the problems of one man” (Mieczkowski, 30). The overarching rationale for this was that “public policy often took precedence over the rule of law” (Ford, 173) which can be seen as the President using an extraconstitutional idea to establish Presidential Legitimacy.

Ford was cognizant of how much this would cost him (161), and tried to save as much legitimacy as he could throughout his speech pardoning Nixon. He appealed to the Constitution in arguing that it will be “many months and perhaps more years” before Nixon could obtain a fair trial in any jury, and instead of being “equal treatment with any other citizen accused of violating the law, [Nixon] would be cruelly and excessively penalized” (“The History Place”) by having his trial delayed. In addition, “the courts might well hold that Richard Nixon had been denied due process” and history would be even more inconclusive as to his wrong doing. All of this is supposed to show that Ford was concerned with upholding the Constitution and its Bill of Rights—Ford was focusing on Constitutional Legitimacy.

Ford had then made it possible to move past Watergate over time, but for the moment there were immediate repercussions. While the press had originally charged that Ford must “unite the country after the bitter Watergate and Vietnam debacles” (Rozell, 4); when Ford did what he could to move the country beyond Watergate, the press jumped on him and asserted a quid pro quo deal—which Ford vehemently denied. There were charges of corruption and backroom deals over the pardon coming from the press (59-60). Ford’s decision “shredded his own credibility” (60) and ended his good

relationship with Congress (60). Where once he was perceived as legitimate, scathing lines such as “We have always cherished the promise that any one of us could be president. Any one of us now is” were directed at Ford (Green, 62). The fact that the press gave him negative coverage for pardoning Nixon detracted from both his Presidential and Congressional Legitimacy.

Similarly, the public smelled a rat in the pardon. Ford’s popularity dropped after the pardon from around 66% to 50% immediately following his decision (Jones). Furthermore, there were protests outside the White House, with banners saying things such as, “Promise Me a Pardon and I’ll Make You a President” (Mieczkowski, 32). Where once Ford had brought in a welcome change of atmosphere and a “sense of trust” to the government, the pardon “exploded the delicately emerging image of a savior President, and lingering suspicions sapped his Presidency of strength” (36). Presidential Legitimacy had been lost from the public.

Remarkably, there were unused actions available to Ford to potentially keep his well-earned legitimacy and still pardon Nixon. Robert Hartmann asked “what the rush” was and wondered why Ford couldn’t pull a Lincoln and wait for a good time to make his announcement. Similarly, Tip O’Neil questioned if the pardon was coming too early (34). Simply waiting for good timing (or even more time) would have given the public time to digest the entire Watergate debacle and be prepared to swallow the final chunk—the pardon. But by pardoning Nixon so soon, it seemed as if Watergate was being forced down the public’s throat. Ford could have used more time to preserve the people’s opinion of him and his Presidential Legitimacy.

Another option available to Ford was so called “trial balloons” where he leaks what he intends to do to the press and senses their reaction, or at least to his cabinet. Melvin Laird, Defense Secretary, recalls that if told earlier he would have had time to lobby Congress for bipartisan support. Laird firmly believed that he could have had Congress “begging [Ford] to do it” by the time he was done (34); thus giving the President additional Congressional Legitimacy.

Why weren’t these normal political options utilized? One answer is that they were normal political options—and Ford was patterning himself as moving past Nixon politics. Not following Nixon’s example in politics had served Ford well, and by not following a typically Nixonesque move of playing politics, Ford expected the public to understand, expected decent coverage from the press—he expected good results (Ford, 178-9). Another reason is that Ford thought what the country needed most was time to heal (as evidenced by the title of his autobiography), and that in delaying the pardon he would be decreasing the amount of time available to the country, he would be prolonging the illness (161, 173, 175). Yet another reason is that Ford thought he could get away with it. While he knew it would cost him, he thought he had enough legitimacy stored in the reservoir that he could dip into it and be fine. He knew that the press he was receiving was extraordinary, and that it would come down, but he failed to “anticipate the vehemence of the hostile reaction to [his] decision” (178).

In an effort to recoup from his pardon losses, Ford did something extraordinary, not seen since George Washington was President; he went before Congress to testify as to why he pardoned Nixon. The image of one man, going alone before the Congress and plainly answering their questions was impressive to most—and reminiscent of the

Revolution. He explained in plain language the purpose of his pardon, which was to “change the national focus. I wanted to do all I could to shift our attentions from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation” (Mieczkowski, 36). While there, he vigorously defended that there had been “no deal, period, under any circumstances” to pardon Nixon. This can be seen as a drastic, perhaps desperate stratagem to recover some legitimacy. He went before Congress, something he was not required to do, to defend his practice. He answered all questions, and presented a defense of himself and his actions. Some of the press believed it. *US News and World Report* said that Ford “impressed viewers as unflustered, forthright, a man with nothing to hide,” and *The Washington Post* thought that “the President was categorical and compelling, in our view, in refuting the allegation that his pardon of Richard Nixon was part of a pre-arranged ‘deal’.” (36). Despite all this, only some of the public bought it. The damage had been done, and no amount of political Band Aids could restore the damage done by the equivalent of nuclear bomb in politics. Ford was a “wounded fish” and the Democrats in Congress were “circling sharks” (36). The Presidential Legitimacy sought by this action was mixed, and while his Congressional Legitimacy may have increased among Republicans in Congress, it had no effect whatsoever on Congressional Democrats.

Conclusions

From looking at this case study, a conclusion about the differing theories of legitimacy within American Presidential politics: one theory is not dominant over the other; rather, they all work in tandem to produce the same results. The bases for legitimacy (from the general theory) are not diametrically opposed to each other, each

basis is allowed to flow to differing theories without hindering any other theory.

Moreover, the differing outside forces that fuel the different theories are not in conflict with each other, as they flow into only one theory. Thus, one can reasonably conclude that the only reason not to utilize all theories is that of time constraints inherent within being President: a single man does not necessarily have the time to deal with everything, and some theories may have to be given up to accommodate others.

This is most often seen in Congressional Legitimacy, it was rarely used by Ford. Perhaps this was because Ford came from Congress; and he thought he had their legitimacy. Or perhaps it is because legitimacy from Congress is the least developed of the theories, thus making approaching it for legitimacy more risky than other, more developed and sure-fire ways to acquire legitimacy from other sources. Or, maybe it was because Ford had to contend with a divided Congress, one that was open to him in the beginning but obviously hostile after the Nixon pardon.

Constitutional Legitimacy can be seen as a stable source of moderate amounts of legitimacy. In this analysis, Constitutional Legitimacy was regularly sought, and always obtained. Yet, it was not enough to hold back the tide when the press and the public jumped on him. Constitutional Legitimacy is thus easy to establish, but often not enough to fill the reservoir to a satisfactory level.

Presidential Legitimacy is the most dynamic of the three, and the one that can easily make or break a presidency. It is shaped by results and habit, the two from the general theory that are the most fluid¹. Both results and habits are also easily stymied by outside events that either detract from the President's time (thus making it harder to

¹ Shared Characteristics are set (you either have them or you don't) and process is generally set once for each country. Results are up to the President to produce, as is habit. Thus, a President has more control over this area than others, and success or failure rests with him alone.

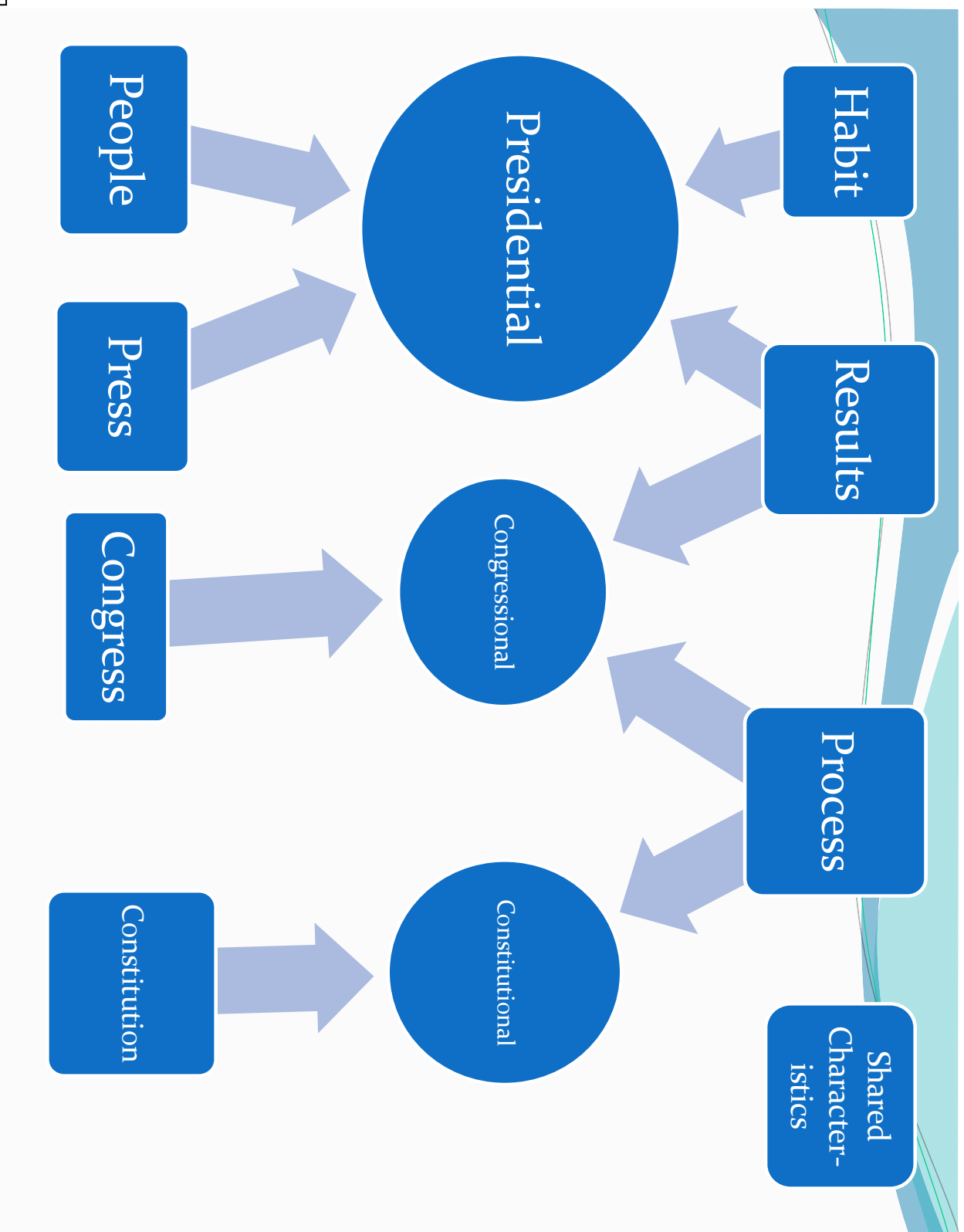
establish a habit of governance) or by being outside the President's control but within his responsibility (e.g. the economy). However, successes in these areas lead to a large influx in legitimacy in the reservoir.

It is interesting to note that within American Presidential Politics, shared characteristics do not show up. While Presidents may routinely say "we are all Americans" this is never used as a basis for governing, rather it is a device to seek unity and then results via bipartisanship; "we are all Americans" can be seen as a means to an end. Perhaps this is a comment on the diversity of ethnicity, religion, and culture in America, or perhaps a strong theory on how to use shared characteristics within the American Presidency has not yet been developed. Regardless, more research is needed in this aspect.

Yet, through this case study one can conclude that a President seeking legitimacy should above all focus on the Presidential Legitimacy theory. It is the aspect that provides the most legitimacy, and requires the most attention. Constitutional Legitimacy can be gained through a line here or there referencing the Constitution and a pledge to uphold it in Presidential speeches. Congressional Legitimacy is often situational, and should come from Congress voluntarily if they feel that their position is threatened by a weak President; the President, being the physical manifestation of the party, would spell trouble for the party if he went down, ergo it is in the party's best interest to lend him legitimacy to keep the party afloat. Moreover, there are times where Congressional Legitimacy is unattainable, such as when Congress is of a differing party than the President.

In Ford's case, legitimacy was sufficiently given, but was constantly leaking out of the reservoir. Ford tried to fix the leak with a quick remedy, before letting other

“experts” take a look at the hole, and he mismanaged the situation, which let more legitimacy out than was desirable, putting him at a critical level. This should be a lesson for all future Presidents, who in times of leaks should take the time to properly assess the situation, and allow a team of experts help fix it at an opportune moment. Examples of this can be seen with the Reagan handling of the Iran-Contra affair (delay, deny, then appeal to the people), Clinton’s handling of his own affair (deny, delay, admit, and have a good economy the whole time) and Bush II’s handling of the Iraq War (delay, delay, delay, admit when no one is looking). It can be said that these leaks in legitimacy are not as large as the Watergate one was, thus the act of patching them would actually let a larger amount of legitimacy out during the patching period than the amount of legitimacy that would be saved over the long run, whereas with Watergate this was not possible. But the original point of Dahl should also be taken into account—if legitimacy drops below a certain level at any time there can be problems. A large one time dip is therefore worse than a slow steady decline of equal magnitude. Our theory then states that while what Ford did might have been the best thing to do for the country, it was not the best thing to do for himself politically at that time.



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