

Guantanamo Bay: Obama's Persuasive Failure?



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Guantanamo Bay detention center is still open in 2016, even though President Obama promised to close the facility within twelve months of his inauguration in 2009. This raises questions about Obama's use of Presidential power and, therefore, Richard Neustadt's Presidential Power and the Modern Presidents is used to appraise Obama's failure to close Guantanamo. This thesis examines how Obama failed, which is relevant considering the perpetual incarceration of individuals stains the United States' consciousness. It begins to examine Obama's broadly endowed Constitutional clerkship and the gradual shift to Presidential government. It then turns to Obama's use of his clerkship and the actions undertaken to close Guantanamo, and ends with the evaluation of Obama's persuasiveness and his failure to persuade his five constituents. This, and Obama's unwillingness to invest political capital in early 2009, constitute Obama's persuasive failure.

Keywords: Guantanamo Bay, President Obama, Presidential Power, Richard Neustadt, Persuasion, Power to Persuade.

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Preface

On January 22nd, the second day of his Presidency, Barack Obama moved “to promptly close detention facilities at Guantánamo [Bay]” in an attempt to end, as Obama as a candidate for President had pointed out, “a sad chapter in American history” (Spillius 3). The promptitude with which the President signed the executive order was indicative of Obama’s commitment to fulfill a much reiterated campaign promise of closing Guantanamo during his first year in office. During the course of the campaign Obama repudiated Guantanamo not only as bad policy, but also as a negative, symbolic representation of the United States after 9/11 as a whole. The indefinite incarceration of individuals suspected of terrorism without trial; the denial of fundamental human rights; the harsh interrogation techniques; all stained, Obama argued, America’s “broader record of upholding the highest standards of rule of law.” Guantanamo Bay had clearly tarnished the United States’ image, interests, and ideals, especially abroad. It created difficulties with America’s allies, and enemies used Guantanamo as a recruitment tool; it is obvious that Obama wanted to deprive America’s critics from their potent argument.

After eight years of occupying the White House, however, Obama’s promise remains unfulfilled; Guantanamo Bay is an existing entity, even though, the Obama administration itself is moving to its close. This I find remarkable and curiously interesting given Obama’s apparent keenness to rid America of its ill repute. The closing of Guantanamo Bay, then, becomes an issue of presidential power. Guantanamo, after all, raises questions about a President and his power; about Obama’s leadership and how the other actors in the American political arena influence him. How is it possible that an issue behind which the President rallied his office to get the desired result has, in fact, not been resolved? It is what makes Guantanamo such an interesting case, for failure illustrates shortcomings in presidential power better than success. It has, as such, been a much discussed and published topic in the nation’s media for the duration of Obama’s Presidency; it still is today. This illustrates the relevancy of using Guantanamo as the object of Presidential power.

Presidential power, that is indeed the theme of my bachelor's thesis. The President is often understood to be the dominant and most powerful actor in American Politics; the notion that he can alter the political system and move the country in the direction he prefers through his leadership is commonplace, and, in fact, expected of him (Edwards III 1). The Presidency is indeed different - as the Founding Fathers intended, and as Hamilton argued in Federalist nr. 70 - than the legislature; its unitary character, as opposed to the many heads in Congress, fabricates an energetic office responsible to the people in its entirety rather than a specific constituency. When he, case by case, succeeds in making the office work for him, the President receives eternal fame; when he fails it reflects on the administration's effectiveness as a whole. FDR and Reagan are familiar names to all Americans, Pierce and Coolidge abide in the shadow of history. Obama's Presidency and his persuasiveness will, of course, be evaluated in due course but it is not the present purpose; rather, I seek to evaluate Obama's use of power in the specific attempts to close Guantanamo.

The theory that is used in this bachelor's thesis to appraise Obama's power is Richard Neustadt's *Presidential Power and the Modern Presidents*, in which he contends that 'powers are no guarantee of power; presidential power, therefore, is the power to persuade' (11). Published in 1960, Neustadt's work challenged the established notion that the President's role and his formal powers that the Constitution provides were decisive for presidential influence (Edwards III 5). Instead, Neustadt argued, presidential power is primarily personal. Primarily because it implies that a President cannot do without formal powers but that there is more to it than simply pronouncing them. Because of his unique position, all other actors of significance lay claim on the President. These include executive officialdom, Congress, partisans, citizens, and foreign governments (Neustadt 8). All are involved in Obama's case to close Guantanamo, and with all Obama must bargain to achieve his goal. It is why I will use this theory to research Obama's potential problem of persuasion to close Guantanamo. This is a novel method to look at this case. It does not mean, however, that factual evidence will be overlooked; it simply means that stumbling blocks as, for

example, the removal of prisoners and Congress' opposition will be viewed through the lens of Neustadt's theory. President Obama and his action are, nonetheless, most important. The question that, therefore, is subject of this thesis is: How has President Obama failed to close the Guantanamo Bay detention center during his Presidency?

What exactly constitutes the notion of Presidential power remains, though, a much-discussed topic. It is, for instance, argued that instead of the power to persuade, political regimes and the President's affiliation with a dominant regime determine Presidential power (Skowronek 28). Others argue that presidential power is unilateral and that, therefore, bargaining is irrelevant (Lewis and Moe 374). Others, too, argue that Presidential power is not the power to persuade; that power, rather, is the facilitation of change after recognizing opportunities in their environments to exploit that change (Edwards III 188). Yet, Neustadt's theory remains relevant for two reasons. First, all theories have added to the field of Presidential studies in general, and in a sense, to Neustadt's theory in particular. In other words, all refer back to Neustadt, acknowledge his theory's merit and use that as a starting-point for their endeavors. Second, Neustadt's work is based on the Constitutional framework of checks-and-balances, in which a President shares his powers with other branches and, as such, he must bargain with them (Dickinson, "We All Want" 764). And because the system has not fundamentally changed, Neustadt's theory is still relevant to appraise Obama.

Chapter 1 discusses the concept of Obama's office as a clerkship and its incumbent as a clerk. It, therefore, establishes the clerkship's foundations, the Founding Father's political theory that led to the creation of the Presidency, the Constitutional checks on the President, the gradual shift from legislative to Presidential government, and Obama's unilateral powers. It reveals, after all, what Obama *could* do with his office.

Chapter 2, then, focusses on Obama's use of these powers and chronologically presents the actions Obama has taken to close Guantanamo. It is important to observe what he has done, for it

exposes interaction with other constituents. That interaction is decisive to evaluate the power to persuade.

The final chapter, chapter 3, explores Obama's actions through the lens of Richard Neustadt's theory in order to assess his failure to persuade the other constituents. To that end, the Chapter presents Obama's sources of power to establish a general assessment of Obama's persuasiveness and, thereafter, his willingness or unwillingness to use that persuasiveness to close Guantanamo.

Chapter 1: The Foundations of the clerkship of Barack Obama

“In form all Presidents are leaders nowadays. In fact this guarantees no more,” Richard Neustadt contends, “than that they will be clerks” (7). All are leaders, for all assume the weight of immense expectations of constituents to do everything all at once. A President must protect the environment and fight climate change while stimulating economic growth; protect American interests abroad without neglecting domestic policy; and advance national security while supporting human rights. It is telling that Obama’s first State of the Union address comprised statements concerning health-care reform, immigration, the economy, obesity, job creation and innovation, and Israel; it is still not the end of the list. All constituents accept that it is the President who is expected to promise, it is he who is expected to deliver; it is he who decides what promises to initiate and when. In other words, at the Presidency’s core is initiation and decision making, for which the United States Constitution, laws, and traditions are a valuable source. These connect the notion of leadership to the President. All Presidents are, however, mere clerks. All constituents demand the President’s services but leadership not necessarily yields influence; only the Presidents that master the power to persuade are leaders in fact (7). Yet, it is important not to condone the basic premise of leadership in form, and to examine the Presidency as a clerkship. To understand the basics is to understand the power of persuasion. To understand if Obama’s failure to close Guantanamo Bay is a persuasive failure, the foundation of Obama’s clerkship must be examined. I will, therefore, review the Founding Father’s political theory behind the clerkship, its checks and balances, the shift from legislative to Presidential government, and the unitary powers that Presidents can use to initiate, influence, and dismiss policy.

The Founders’ ambivalence towards executive power resulted, in the words of James Madison, in “tedious and reiterated discussion” at the Constitutional Convention of 1787 about the authority and powers of the Presidency (Kammen 66). Almost all agreed that the new Constitution had to prevent the recurrence of a despotic, demagogic, monarchical executive. Almost all

recognized the need for a stronger, more energetic but safely republican, central government than that of the Articles of Confederation (Milkis and Nelson 28). A government devoted to limited ends was desired, still. Many disagreed, however, about the definitive design of the executive to achieve these aims. The conversation included the number of the executive, institutional barriers to keep separated powers separate, and the enumerated powers of the President. Essentially, these predilections stemmed from the Founders' reverence for the republican notion of virtue - and, at the same time - the skeptical view of human nature; indeed, they did not believe that an individual's virtue and reason would withstand the corruptive forces of power, and of an individual's passions and ambitions (Howell 62). All prevent the individual's interest to coincide with the broader public's (Howell 57). Thomas Jefferson argued that, therefore, "let no more be heard of confidence in man, but bind him from mischief by the chains of the Constitution" (qtd. in Howell 56). The occupant of the Presidency, in short, was simply not to be trusted to stay on the paths of righteousness; the Constitution assumed the guardianship of an individual's own virtue.

The Constitutional guardianship of executive excess materialized in a system of checks and balances. The Founders believed that the separation of the legislative, executive, and judicial powers was indispensable to the preservation of liberty. Each branch is superior in its own task but shares that power with the other branches and, therefore, Neustadt observes the Founders "created a government of separated institutions sharing powers" (29). Rather than controlling himself, the executive checks others; rather than curbing their own legislative and judicial agenda's, the legislature and the judiciary negate the ambition of the executive. Ambition as such is not eradicated, it is regulated (Howell 56); "[a]mbition must be made to counteract ambition," Madison argued in Federalist No. 51, to compel the government to control itself from within. It also explains Neustadt's reasoning that the President must persuade other branches - especially the legislative branch - that what he wants from them is what they ought to do. To check another's ambition, after

all, is to promote the President's. The President, in many aspects, is dependent on the acceptance of others of the President's ambition and persuasiveness.

Alexander Hamilton, John Jay and James Madison explicate the checks that balance executive power in the *Federalist Papers* to countenance the anti-Federalist's accusations that the new executive's powers are too commanding - even resembling those of a monarch. William Howell, Sidney Milkis and Micheal Nelson agree that for all the apprehensions regarding the executive, the Founders designed a Presidency that was stronger than initially contemplated (55; 28). It explains Hamilton and Madison's motive to unequivocally demonstrate that the Constitution's chains are durable. It must, then, also be acknowledged that they wrote these in defense of the Constitution and the Presidency to advocate for ratification; these nevertheless provide an indispensable account of the reasoning behind the checks a President is confronted with. Congress' power of the purse checks the President's power of the sword, for a withholding of funds implicates a paralysis of the executive (Hamilton et al. 357). In accordance with the Budget and Accounting Act of 1921, moreover, it is the executive who initiates but Congress who appropriates. To have the initiative is, to be sure, a formidable advantage to set the terms of discourse but far from mitigates Congress' ability. It is the most powerful weapon of the people's representatives (357), and used to starve the beast of government with the executive being the head of that government. Congress' impeachment power to remove the President from office, moreover, checks the President's conduct. It impels the President to avoid committing political offenses that abuse or violate the public's trust (397), and, in other words, to act in the public good, not solely his own.

The Senate, the people, and the judiciary, too, check the President's power. The Senate's confirmation power to advise and consent checks the President's appointment power to oblige the President to fill executive and judicial offices with competent and reputable officers. It precludes, in other word, favoritism, and rewards merit. Furthermore, the Senate can check and override the Presidential veto with a 2/3 majority and, as such, the veto power is not absolute. The veto, of

course, is a Presidential weapon of defense against the legislature and prevents Congress from enacting legislation subject to factional interests, and encroaching on executive power (441). It can also be used in bargaining with the legislature to demand alterations to a bill. The people democratically check the President in elections (Howell 57). It is, Hamilton argues, an incentive for the President “to plan and undertake extensive and arduous enterprises for the public benefit,” and a requisite his continuation in office (Hamilton et al. 436). At the same time, the people can readily evaluate his achievements, for the executive’s unitary character - as opposed to that of the legislature - allow the people to hold him solely responsible. It is, finally, important to observe that the judiciary holds neither the power of the sword or the purse and, as such, checks and judicially reviews acts and actions of the legislative and executive branches.

All these checks and the limited number of Constitutional enumerated powers have not, however, prevented the executive from supplanting the legislative branch as the first branch in government. This, indeed, is not what most Founding Fathers intended; they preferred legislative supremacy over presidential government. It is significant that the legislative branch is the first branch set forth in the Constitution - the executive’s powers are enumerated in the consecutive article. This reversal certainly does not mean that modern Presidents condone the checks; the Constitution, of course, binds them. Rather, successive Presidents have succeeded in accumulating powers and prerogatives within the limits of the Constitution. Obama, indeed, assumed an office far more powerful than his predecessors; each modern President, in general, leaves an office more powerful than that he encountered. Constitutional ambiguousness and Congressional deference makes that it is to the President to whom all constituents, including Congress itself, nowadays look for initiative.

This development, for the most part, is ascribed to the ambiguousness of the Constitutional enumerated powers. Whereas Article I of the Constitution vests the legislative power *herein granted* in a Congress, Article II more succinctly vests the executive power in a President. This, indeed,

suggests that the executive power exceeds the given enumerated powers; these are, surely, equally equivocal. These include the President's role as commander-in-chief; the task to receive ambassadors; to preserve, protect, and defend the Constitution and, in regards to unilateral initiative the most important power, to command 'the faithful execution of the law.' All are undefined and thus provide "the opportunity for the exercise of a residuum of unenumerated powers," (Lewis and Moe 378) especially in times of national emergency. Presidents have not ignored this chance to augment their power; rather, they relished it. Lincoln suspended the writ of Habeas Corpus in the border states, issued the Emancipation Proclamation, and established military tribunals during the Civil War; President Franklin Roosevelt unilaterally ordered the internment of 120.000 Japanese-Americans during World War II, and Congress accorded to President George W. Bush an unprecedented freedom and discretionary powers to combat terrorism (Rudalevige, *The Presidency and 477*). In such times, indeed, Congress cedes powers it deems imperative for the security of the homeland to the executive.

Although Congress and the Courts have - to a certain extent - reasserted control after the end of conflict, the institution of the Presidency emerged more powerful each time. Presidents do not - rather not at all - relinquish power easily, and customs and bureaucracy emerge faster than they recede. According to Arthur Schlesinger, this culminated in the 'imperial presidency' of the 1970s. Presidents Johnson and Nixon, he argued, had extended and centralized - and in the process unshackled their institution from the Constitution - the unilateral bounds of the Presidency to 'the point of no return' (qtd. in Skowronek) resulting in the abuses of Vietnam and Watergate. Although the point of no return was, indeed, not surpassed, for Congress and the Courts still checked the President (Milkis and Nelson 358), it clearly illustrates the development and want for Presidential power. President George W. Bush, too, was associated with the Imperial Presidency in the aftermath of 9/11 and, as such, left his successor, Barack Obama, an office with broad executive authority (Rudalevige, *The Presidency and 477*).

The other element in this transition towards Presidential government is the considerable amplification of the White House bureaucracy during Franklin Roosevelt's Presidency. Resulting from the implementation of the New Deal, power of the Federal government was augmented in general and that of the President in particular. The advent of the welfare state, after all, entailed a transfer of the burden to help those in need from the states and the private sector to the Federal government (Milkis and Nelson 293). It established social security to aid the aged, unemployed, and the disabled, fostered unionization, and promoted federal work projects. To carry the heavy burden of responsibility and to address Roosevelt's administrative weaknesses, Congress passed, on the recommendation of the Brownlow Committee that "the President needs help" (Burke 350), the Reorganization Act of 1939. It resulted in the birth of, what John Burke calls, the 'institutional Presidency,' (350) that is a decentralized organization that executes "policy, public, and political functions for which the President is responsible" (Ragsdale 40). In the process, Congress authorized and delegated many powers to the Presidency. It is significant that Roosevelt's White House staff consisted of eight employees in 1939; Obama's staff of about 2000 in 2008 (Burke 352). This allows specialization and centralization. The act, indeed, initiated the definitive, but gradual, swift from legislative to Presidential government. It instituted the Executive Office of the President, which, today, consists of, for example, the Council of Economic Advisers, the National Security Council, and the Office of Management and Budget. These exist to assist the President with policy issues, political targets, and the daily workload; it devises budgets, writes and rejects legislation, and invokes vetoes (40). It is important to observe that the President appoints most members to these councils without Congressional oversight, which gives the President a significant advantage; he appoints individuals who share his political and policy objectives. In short, the institutionalization of the Presidency established an organizational apparatus with expertise that centralized decision-making to manage unilateral initiation to the detriment of the legislative branch (Milkis and Nelson 298)

The White House bureaucracy, moreover, favors the President in his struggle with Congress over influence and control over the extensive executive bureaucracy. This includes the four million people that work for the fifteen cabinet departments; it is central to the control over public policy. Although it reports to the President who, therefore, boasts great control, Presidential command is not immaculate. For it is also subject to the legislative power (Rudalevige 477), because Congress authorizes the agencies' programs and budgets and oversees its behavior (Lewis and Moe 375). According to Lyn Ragsdale, the Executive Office of the President serves to "target political players and other political institutions for presidential persuasion." (41) This is important, and strengthens Neustadt's claim that executive officialdom is also a constituent that needs to be persuaded. The President institutionalizes his persuasive power; it is the President still who directs whom and what to persuade; it is his personal power that is crucial for the Office of Legislative Affairs and the White House Press Office for bargaining. It is this point that gives him a significant advantage in the power game with Congress: the President alone directs the Executive; individual legislators cannot promote the collective body's power over the federal bureaucracy (Lewis and Moe 383). In other words, the institutionalization of the Presidency firmed its grip on the federal bureaucracy; it is, it must be noted, never assured.

The most important unilateral tool that Presidents wield to initiate and execute the law without the necessity to persuade is the executive order. It also includes Presidential memoranda and proclamations. They are used to exercise emergency powers; direct action within the executive branch; initiate substantive policy; or to highlight symbolic stances (Mayer 462). To close Guantanamo Bay with his first executive order, then, Obama swiftly illustrated his principal ambition. The authority to issue them is of amorphous nature, for the Constitution does not contain an explicit provision that designates such a power, and what it entails, to the President. It is, as all Presidents since the Republic's inception have argued, implied in the vesting of the executive power and the faithful execution of the law clauses. Executive orders have the force of law. Its legal

authority, however, must be derived from the Constitution or Congressional delegation and, therefore, Presidents usually state a Constitutional or statutory basis (Rudalevige 483). Since these are especially apparent in foreign policy and national security, both Presidential in character, executive orders concerning these fields are of particular importance. It all implies that an executive order's power is formidable - the institutionalization of the Presidency and the expansion of the executive branch increased it, still - but not unconditionally absolute. The President or his successors can, for example, rescind, alter, or override the executive order; the Supreme Court can, as occurred in *Youngstown Sheet and Tube v. Sawyer*, invalidate an executive order; and Congress can pass legislation that proposes nullification (United States, Chu and Garvey 9). Congress may, moreover, withhold funds to inhibit its implementation (10). The Courts, however, have established broad limits that mitigate scrutiny and confirm Presidential authority. Thus, the President exercises, within the system of checks and balances, an authority to unilaterally organize the executive branch, initiate policy that his branch executes, and influences how it is executed.

Another unilateral tool that Presidents use to influence public policy is the signing statement, which is a comment on legislation or a statute to influence its interpretation; to claim a right to determine how and, more importantly, if they will be implemented; to defend his executive authority against legislative encroachments; and to attempt to strengthen his role in the legislative process (Rudalevige 481). All Presidents since President Monroe have issued signing statements, but since President Reagan, in particular, the signing statement became an often used unilateral tool (Howell 43). President George W. Bush challenged over 1200 legislative provisions using the tool and Obama has continued this, although less frequent (45) Similar to the executive order in its roots in Constitutional obscurity, signing statements, in contrast, do not have the force of law nor is it a Presidential veto. It is, to be sure, an important tool to influence the implementation and interpretation of policy, over which, as this chapter showed, the President already has profound influence.

In conclusion, the Constitutional clerkship offers Barack Obama broad executive powers that often have a unitary character. It does not mean these powers are absolute; they do give the unitary executive a significant advantage over the legislative branch with whom the President competes and bargains for power; he cannot command however, he must persuade. This, then, raises the question of how Obama has used his clerkship to fulfill the important campaign promise of closing Guantanamo. That will be addressed in the next chapter.

Chapter 2: Barack Obama and Guantanamo Bay

In the autumn of 2008, nineteen days before Barack Obama's election to the Presidency, a senior Bush administration official cautioned that "[t]he new president will gnash his teeth and beat his head against the wall when he realizes how complicated it is to close Guantánamo" (Myers 13). Although it cannot be, of course, said for certain if the prediction was literally accurate, the inability to fulfill his most conspicuous campaign promise to close Guantanamo Bay, and to be continuously reminded of it, must have frustrated Obama. It is, at the same time, certain that Obama never thought of it as straightforward. Politics - especially in the American system of checks and balances - is at no time easy; Obama is, as Chapter 1 illustrated, endowed with significant, enumerated and implicit powers and advantages to effectuate the elevation of a promise - the closing of Guantanamo - to the reality of fulfillment. Persuasion of Congress and other actors to close Guantanamo remains part of that system, however. At Guantanamo Bay, established in 2002 under the Bush administration, captured individuals suspected of terrorist activities - at its apex 780 from 42 countries, and at the start of Obama's Presidency 242 - were indefinitely confined, interrogated, some tortured, and, notably, concealed in the "legal equivalent of outer space" (Department of Justice et al. 1). The prisoners, in other words, could not claim a habeas corpus right, that is the opportunity to contest their detention in the United States courts. It is understandable Obama wanted Guantanamo closed; to determine whether Obama's failure to succeed constitutes a failure to persuade, it is imperative to examine Obama's initiatives, unilateral actions, and his proceedings with the other constituents in the face of legal, logistical, and political opposition, from January 22nd until the present day. What did Obama do in his struggle to liberate himself from the burden that is Guantanamo? I will, therefore, first examine the detainees' legal status and corresponding Supreme Court opinions, and thereafter, in chronological order, Obama's efforts, that include executive orders, signing statements, and addresses, to close Guantanamo in cooperation with Congress.

The legal status of the incarcerated at Guantanamo, and the fundamental Constitutional rights - habeas corpus in particular - that attend that status has, since the 'war on terror's inception, been a much contested issue (International Bar Association 1). On September 13, 2001, within days after the September 11 attacks, Congress passed the Authorization for Use of Military Force (AUMF), which appropriated to the President the power to use all necessary and appropriate force to prevent future attacks on the United States from the persons who *he* determines "planned, authorized, committed, or aided the terrorist attacks." Invoking the authority and language of this broad endowment of power, President Bush established Guantanamo as a place of indefinite detention of suspects labeled 'alien unlawful enemy combatants,' (International Bar Association 7) an invented term to designate the unconventional opponent, and to circumvent the protections of the Geneva Convention. The President, moreover, issued executive order 57834 to establish military commissions for the detention and trial of non-citizens combatants held at Guantanamo instead of the Courts as chartered under Article III of the Constitution. To the detriment of the accused, the created commissions deviated from Article 36 of the Uniform Code of Military Justice (UCMJ) to permit hearsay used as evidence, and exclude defendants from procedural proceedings, such as the right to be present (*Hamdan v. Rumsfeld*). It, in short, placed the prisoners at the wimps of the President and his executive branch.

The detainees' relatives filed suit to contest the executive detention, and the Supreme Court, in four cases, developed a body of law concerning the prisoner's fundamental rights. In *Rasul v. Bush* in 2004, the Court held that, although Cuba retains ultimate sovereignty over Guantanamo Bay, the United States exercises exclusive jurisdiction pursuant the 1903 lease-agreement and that, therefore, the United States Courts have jurisdiction to determine the legality of executive detention. In other words, despite the detainees not having U.S. citizenship, they could - under statute 28 U.S.C. §2241 - claim a *statutory* habeas corpus review. On the same day, it decided *Hamdi v. Rumsfeld*, in which the Court confirmed that the AUMF authorized indefinite and

perpetual executive detention for the duration of the conflict and confirmed the inapplicability of the Geneva Convention protections. This, once more, affirmed the detainees' right of habeas corpus to challenge their detention in a Court, which, according to the Supreme Court, is a critical judicial check on the executive "ensuring that it does not detain individuals except in accordance with law" (*Hamdi v. Rumsfeld* 18). It is remarkable, then, that, in response to the rulings, Congress voted - Senators Obama and Clinton included - to adopt the Detainee Treatment Act of 2005 (DTA), stripping the Courts from their jurisdiction to hear Guantanamo detainees' habeas corpus applications. This precipitated *Hamdan v. Rumsfeld* in 2006, and the Supreme Court decided that the DTA failed to remove the Court's jurisdiction in cases pending at the time of the DTA's enactment. It, moreover, invalidated President Bush's establishment of the military commissions - Congress had not provided statutory authorization; the AUMF and the Constitution did neither - and that the unauthorized commissions with unauthorized practices, therefore, violated both the Geneva Convention and the UCMJ. Guantanamo Bay was, albeit a mere five months, lifted into the judicial stratosphere.

Again, however, Congress responded, this time with the Military Commission Act of 2006 (MCA) - now, both Obama and Clinton voted against - that authorized the President to establish military commissions. It, moreover, prohibited the Courts from determining the lawlessness of detention in light of the Geneva Convention and, most importantly, deprived Guantanamo's detainees from the right to file - as decided in *Rasul v. Bush* - a statutory petition of habeas corpus for both pending and future cases (Breyer 208 and 209). President Bush, consequently, issued Executive Order 13425 to reconstitute the military commissions. *Boumedienne v. Bush* in 2008, however, found that the Guantanamo detainees, despite being 'alien unlawful enemy combatants,' have a *constitutional* right to habeas corpus that the MCA unconstitutionally suspended. U.S. Courts could, now, scrutinize government evidence, and command release of detainees whose detention was unwarranted. This, amongst other reasons, sparked a significant reduction of

detainees held at Guantanamo to, as noted, 242 prisoners. The case marked, in sum, the end of tenacious and repeated endeavors of, as Supreme Court Justice Breyer argues, the executive and the legislative branches “to limit the Court’s power of judicial review,” (211) and to keep the Guantanamo prisoners in legal outer space.

It was against this background that Barack Obama, in one of his first acts as President, issued executive order 13492 to close Guantanamo Bay no later than January 22, 2010. It is important to observe that, in contrast to Obama’s campaign statements, subsequent press conferences and speeches reveal that his main incentives in closing Guantanamo were to keep Americans safe, observe American values in that process, and rid Al-Qaeda of its recruitment tool - not the detainees’ fundamental rights (Press Briefing 2/6/09; Remarks by the President 5-21-09). This delicate swift suggests a tactic to persuade the people that closing Guantanamo is in their personal and direct interest. The President, moreover, ordered the executive branch to temporarily suspend the commencement of the new military commission trials to allow an immediate status review process to determine the individuals’ legal status, and the corresponding - transfer or release - outcome of that review. This, the White House elucidated, was only the first step to remove detainees to materialize the closing of Guantanamo. It is, therefore, that Matthew Dickinson notes that “the effect of these orders was more symbolic than real since they did not specify how Obama intended to deal with the prisoners currently held at Guantanamo Bay” (*The President and Congress* 437). He, indeed, failed to provide a comprehensive proposal concerning the removal and allocation of the prisoners.

Four months later, by May 2009, Obama’s promise was still just that - a promise. Both Democrats and Republicans in Congress demanded additional detail and explicit assurances that no Guantanamo detainees could be released or settled in the United States (Herszenhorn 2). It is, then, not surprising that opposition culminated after the White House, without informing Congress, determined to relocate - the Court ordered their release - two Uighur prisoners in Virginia; the

commanding narrative of ‘terrorists’ walking on American streets proved to be effective, and fear suddenly gripped Congress (Alter 342). It resulted in Obama’s first legislative setback, for, on May 20, the Democratic controlled Senate voted 90-6 against appropriating \$80 million to close Guantanamo. The following day, Obama intended to soothe the public’s and Congress’ concerns in his national security speech at the National Archives, in which he reiterated his resolve - as in his executive order - that no releases would impair national security nor the American people. Obama affirmed, however, the complexity of the issue when he described five distinct approaches to detainees - federal prosecutions, military commissions, court-ordered release, transfers home or to third countries, and, the most troubling, indefinite detention for the detainees who could not be prosecuted but endangered national security (Remarks by the President 5-21-09). “This is the toughest single issue that we will face,” Obama said, but could not substantiate his words with a substantive proposal; he failed to convince Congress.

In response to the transfer of the alleged Kenyan and Tanzanian embassy bomber Ahmed Ghailani to New York City, Congress passed the Supplemental Appropriations Act of 2009 in June (Press Briefing 5-21-09). Section 14103 prohibited the executive from using appropriated funds of this - or any prior act - for the release or transfer of Guantanamo detainees in the United States. For the purposes of transferring detainees for prosecution, the President must, according to the act, submit a detailed plan containing the rationale, costs, and possible national security threats, 45 days prior to the transfer (United States, Henning 4). Obama objected to this provision in a signing statement, which read that it “would interfere with [but not limit] my constitutional authority to conduct foreign relations” (Statement from the President upon signing HR 2346). This is a relative modest statement, considering the act created executive accountability to the legislative branch. Section 319, moreover, established a general reporting requirement, which obligated the President to report on the Guantanamo prisoner population to Congressional leaders. It, in other words,

involved Congressional retaliation for Obama's indistinctness and a demand to be kept informed; Congress, therefore, positioned itself to exercise direct control over Obama's promise.

In October, Obama signed the National Defense Authorization Act of 2010, of which section 1041, again, prohibited the executive from using funds the act appropriated to release Guantanamo detainees in the United States, now in the period from October 1, 2009 until December 31, 2010. It, again, established a general reporting requirement concerning the transfer of detainees for prosecution, now including the Governor of the respective state. It is, however, remarkable that Obama signed without expressing disapproval of section 1041. He, of course, disagreed, but to be silent is rather unpersuasive. Title XVIII, the Military Commissions Act of 2009 was the President's first legislative endorsement of the military commissions. It changed the procedural rules in place since the MCA of 2006, for it precluded the use of coerced testimony; limited the use of hearsay; required appropriate legal representation; but abstained from equating military commissions with the federal court's protections of the Constitution and the Geneva Convention. This, then, suggests, Tung Yin argues, that Obama did not simply replicated Bush's military commissions. Rather, "[it] is to say that President Obama has apparently agreed that some cases are appropriately prosecuted in the military system," (471) for example, cases involving suspected violations of the laws of war, even though the President advocated prosecution in federal civilian courts. On November 13, after all, Attorney General Holder announced - a clear illustration of the President's intention - that the administration pursued prosecution and, therefore, transfer, of five individuals, including the 9/11 architect Khalid Sheikh Mohammed, in New York's federal court (The Department of Justice 4).

Five days later, on November 18, 2009, President Obama acknowledged for the first time that at January 22, 2010, Guantanamo would still be open; his promise of swift closure floundered. Obama did not institute a new deadline but nevertheless hoped to shut down Guantanamo somewhere in 2010. To that end, the Obama administration had, throughout 2009, probed into finding a replacement prison, and on 15 December, 2009, Obama issued a Presidential

Memorandum decreeing the acquisition of Thomson Correctional Center in Illinois to accommodate the transfer of Guantanamo detainees (Presidential Memorandum). This, according to David Luban, demonstrated that “there had been no intention of closing Guantanamo on grounds of civil liberties,” (22) for all Obama proposed was a relocation - not an abandonment of indefinite detention. White House Press Secretary Robert Gibbs confirmed this reasoning, and added that detaining them in the United States did not diminish the President’s authority under the AUMF to incarcerate individuals without trial. This, too, allowed the President, on January 5, 2010, to suspend the repatriation of Yemenis - the Courts had ordered their release - to Yemen, where the deteriorated security situation raised fears that the Guantanamo detainees would rejoin a terrorist organization - and, then, threaten America’s national security; the moratorium would not be lifted until May 23, 2013.

On 22 January, 2010, the Guantanamo Review Task Force published the results of the immediate status review process of 240 detainees. It approved 126 for transfer to foreign countries, of which 82 still remained; it referred 36 for prosecution in either federal court or military commission; it advised conditional detention for 30 Yemeni until Obama’s approval for release; and, most problematically for the President, it determined 48 detainees to be too dangerous for release, but not feasible for prosecution (Department of Justice et al. 10, 11). In some cases, after all, and as Obama had elucidated in his National Archives speech, evidence was too tainted. The review, in other words, recommended indefinite detention, and this presented the President with a familiar obstacle; what do we do with them? Considering that a Democratic controlled Congress had blocked funds, it is not surprising that this important question remained unanswered for the duration of 2010, which illustrated the existing status-quo.

The President signed the National Defense Authorization Act of 2011 almost a year later, on January 7, 2011. In response to Obama’s intention to relocate Guantanamo detainees to Thomson, Congress included section 1034, which prohibited the appropriation of funds to “construct or

modify any facility in the United States.” This effectively ended Obama’s aspirations for a replacement prison in the United States. Section 1032 banned *any* transfers to the United States, including those - it explicitly mentions Khalid Sheikh Mohammed - for trial and, moreover, section 1033 imposed conditions to exercise control over transfers to foreign countries. The President strongly objected in a signing statement; he lamented Congress’ encroachment in national security and foreign policy, and announced to seek repeal of the restrictions and mitigate their effects (Statement on Signing the Ike Skelton 3). Despite his strong opposition, however, Obama signed to appropriate funds to the military. Obama, hence, avoided a direct confrontation with Congress at the expense of a workable solution to fulfill his promise; Congress essentially obstructed prosecution in federal court and, as a result, again prevented the President from transferring a detainee who has been granted a writ of habeas corpus.

In March, Obama had, Trevor McCrisken argued, “implicitly admitted defeat” and issued executive order 13567 that established a periodic review of the 48 detainees in indefinite detention under the AUMF (790). This, McCrisken concluded “effectively institutionalizes indefinite detention at Guantanamo (790), and furthermore, Obama allowed - “it broadens our ability to bring terrorists to justice” - for the formal resumption of military trials; a notable alteration of policy and ending the suspension that executive order 13492 instituted (New Actions on Guantanamo Bay and Detainee Policy). Attorney General Holder, subsequently, announced the abandonment of the administration’s 13 November 2009 promise; instead, the reinstated military commissions would try Khalid Sheikh Mohammed and the four others.

In the following years, it became customary for Obama to sign the National Defense Authorization Acts with a corresponding signing statement. In 2012, Congress renewed the Guantanamo funding restrictions; Obama renewed his opposition against them, and claimed it “violate[d] constitutional separation of power principles (Statement by the President on H.R. 1540). Section 1021, in addition, statutorily affirmed the President’s prerogative under the AUMF to

incarcerate without trial - both foreigners and citizens. This endowment was gratuitous and, Obama asserted, the executive had possessed this authority since 2001. Remarkable, however, is that the President announced it would not detain citizens without trial. The original draft of the bill exempted Americans from military detention; the White House nonetheless had strenuously demanded the provision's removal and thus, according to William Howell, to eliminate "one of the few constraints on who could be detained, and how" (143). It substantiates David Luban's claim, and questions Obama's resolve to rid himself of the profound barrier of indefinite detention. In 2013 and 2015, Obama presented similar arguments against, now, familiar restrictions, but in 2014, Congress lifted some - not all - restrictions to allow executive's flexibility to conduct negotiations with foreign governments for transfer purposes (Statement by the President on H.R. 3304). Sections 1033 and 1034 of the National Defense Authorization Acts of 2016, however, restored restrictions on foreign transfers, and specifically barring transfers to Libya, Somalia, Syria, and Yemen. In the face of Congressional opposition and legislative restriction, Obama, undeterred, renewed his ambition to close Guantanamo on February 23, 2016, and stated that he was "absolutely committed to closing the detention facility at Guantanamo" (Remarks by the President on Plan to Close 6, 20). The President accentuated progress - 147 transfers since 2009 with 91 remaining - but failed to introduce new solutions or arguments, and, therefore, it suggests that Obama's arsenal to tackle Guantanamo is exhausted.

In conclusion, the complicated entity - both legal and practical - that is Guantanamo remains an unsolved question in 2016; it seems that transfer prohibitions and Congress are, for the time being, an insurmountable challenge. The actions presented in chronological order provide important insights in the factual evidence, failures, and successes of Obama's attempts to close the prison. It, moreover, illustrates that May 2009 was a disastrous month for the President; he lost support of a Democratic Congress and, thereafter, Obama's chances to achieve closure were further reduced.

This raises questions about Obama's persuasiveness. Has a lack of persuasion prevented Obama from liberating himself from Guantanamo's burden? That question is subject of the next chapter.

Chapter 3: Obama and his Persuasive Failure

“He’ll sit here,” President Truman remarked about his successor Eisenhower (tapping his desk for emphasis) “and he’ll say, ‘Do this! Do that! *And nothing will happen.* He’ll find it very frustrating” (qtd. in Neustadt 10). It illustrates that Presidents cannot simply command; Obama, as demonstrated in Chapter 2, ordered - from that same desk - to close Guantanamo within 12 months but failed to dictate the realization of his promise. In that sense, *nothing has happened*, and it evidently frustrated Obama. The power to persuade, to convince others through reasoning and urging (Edwards III 4), and its importance to presidential power, then, is as true for Obama as it was for Truman and Eisenhower; each President operates in the system in which he checks others, and others check him. His institution shares powers with other, separated institutions who he must persuade. To augment his persuasiveness a President must exploit his vantage points, reputation, and prestige, in addition to recognizing and protecting his interests in them. The President is exclusively positioned to do so: all constitutions look to him for initiation; he initiates on terms preferable to him. Considering that the previous chapters established the foundations of Obama’s clerkship and its involvement in the failed initiatives and proceedings concerning Guantanamo, it finally raises the question whether Obama was a leader - not a clerk - in Guantanamo’s case. In other words, is Obama’s failure to close Guantanamo a failure to persuade? To that end, I will examine the sources of Obama’s persuasive powers to establish his degree of persuasiveness and Obama’s attempts to persuade the five constituents - public, Congress, partisans, the executive branch, and foreign governments.

President Obama’s effective influence stems from three related sources - his vantage points, reputation and prestige - that augment, not guarantee, his persuasiveness. The vantage points inherent to the Presidency are constitutional, statutory, and traditional authority, which, according to Neustadt, reinforce Obama’s “logic and charm” (30). These were, indeed, discussed in chapter 1. Obama is, as such, in an advantageous position when bargaining with others that he needs - and, of

course, they need to use him - in his attempts to achieve the closure of Guantanamo. He must, however, exploit his vantage points in order to achieve status; for Presidents, action rather than inaction is the norm.

President Obama's persuasiveness with others depends, in close relation with his vantage points, on his professional reputation with the Washington community, which include members of Congress, Democratic and Republican leaders, and foreign diplomats (50). All are vocationally compelled to watch the President and must, Neustadt argues, be "convinced in their own minds that he has skill and will enough to *use* his advantages" (50), to *use* his vantage points, and, in that process, first impressions count. To protect his reputation, then, Obama must make sure that the incapacities to use his advantages do not form a pattern; a pattern, after all, Neustadt says "is bound to be a loss of faith in his effectiveness next time" (53). The beginning of 2009 was, therefore, of crucial importance for Obama to establish a strong reputation.

Washingtonians, furthermore, evaluate Obama's public prestige, which is his standing with the public outside Washington. The public consists of an aggregation of publics that are diverse and overlapping, whose sense of what the President ought to be governs ephemeral shifts in popular prestige (Neustadt 80). The moving factor in such public perception Neustadt contends "is what the people outside Washington see happening to *themselves*," (83) which, in other words, involves governmental action that disturbs the private lives of Americans. Presidents are often, however, unable to control these feelings; action, then, rather than talk must influence the public (Dickinson "We All Want" 742). An unsatisfactory flow of power from these sources, in short, does not exclude Obama's persuasiveness; rather, it strengthens others. It is, accordingly, in Obama's self-interest to protect them, and no other person, considering the unique position of his office, can do it for him.

The facts indicate that, although Obama used his vantage points, he has not always done so when he *could*. After executive order 13492, Obama's initiation halted; he failed to introduce a detailed plan solving the problem with the Guantanamo detainees that faced indefinite detention, for

whom prosecution nor release were viable options. Although Obama had proposed moving them to the United States since the announced acquisition of Thomson in 2009, and did so again on February 23, 2016, he, in the face of Congressional opposition, never pressed hard enough. And Obama's deference to Congress in the acceptance of transfer bans - effectively tying Obama's hands and limiting his options - underscore that notion. Obama, moreover, signed all National Defense Authorization Acts without using his veto-power, which, as noted, is a defensive Presidential tool against the legislature. Each time, Obama remarked in similar fashion in his signing statements that Congress's legislation intruded upon, indeed, critical constitutional, statutory, and traditional executive branch authority; Obama still signed the act to authorize vital defense and national security funding. It is not to suggest that Obama should have sacrificed the national interests - of which as President he is custodian of - for the realization of his campaign promise, but the veto could have been used to send an important signal to Congress that Obama wanted to end Congress' obstruction and to initiate a new beginning. This ties in with Obama's failure to use the signing statements to influence statutory interoperation; he, indeed, could have claimed unconstitutionality and that, consequently, he would not enforce them. Obama, however, was cautious; he hinted - but failed to explicate its meaning - that it presented a violation of separation of powers.

President Obama's professional reputation suffered from the emerging pattern of a lack of persistence following January 22, 2009. Four months later, after all, inaction prevailed over action and both Democrats and Republicans felt dissatisfied. "While I don't mind defending a concrete program," Democratic Representative David Obey declared in May 2009, "I'm not much interested in wasting my energy defending a theoretical program" (qtd. in Bash and Walsh 3). "Where are we going to send them?" John McCain asked; a decision he said he "would have made before I'd announced the closure" (qtd. in Kirkpatrick and Herszenhorn 3). Although the White House conceded that a detailed plan was wanting, and that it would soon introduce a comprehensive plan, its promise nonetheless faded into obscurity; Obama waited, as chapter 2 described, until February

23, 2016, to initiate a new plan. Again, however, it predominantly met scorn in Congress. According to Democratic Senator Michael Bennet, the plan “has done nothing to change my mind” (qtd. in Demirjian 15) and McCain rejected it as “a vague menu of options, not a credible plan for closing Guantanamo” (10). Obama’s opportunity to change and, therefore, overcome his patterned reputation faltered. His refusal, moreover, to veto the first Defense Authorization Act must have assured Congress that he would not do so in the future; its assumption was correct. Each signing was an acquiescence to Congressional meddling and a decay of Obama’s reputation. Franklin Roosevelt sometimes asked for “something I can veto” to remind Congress of his reputation; it is arguable that Obama should have done so too (Neustadt 71).

Republicans, moreover, inculcated the Guantanamo debate with fear - the narrative that transferring Guantanamo detainees to the United States endangered national security and, in the process, succeeded in lowering Obama’s public prestige. From 22 January, 2009, onwards, Republicans, indeed, linked the transfer of Guantanamo detainees to the personal safety of Americans. The unannounced transfer of two Uighur detainees to Virginia provided the Republicans with a credible illustration, and this relocation local Congressman Frank Wolff argued, “directly threaten[s] the security of the American people” (qtd. in Kadidal 4). Senate Minority Leader Mitch McConnell repeated this sentiment throughout May 2009: “[t]he American people want to keep the terrorists at Guantanamo out of their neighborhoods and off the battlefield” (4). Democrats in Congress struggled with refuting the statements; the White House failed to give appropriate support; and Obama waited two weeks to address them in his National Archives speech. He, of course, emphasized that incarceration in the United States did not equal release, and that no terrorist had ever escaped a U.S. maximum security facility. By that time, however, fearing the political repercussions of the Republicans’ tale, Democrats abandoned the administration - voted, as noted, 90-6 against appropriating funds for closure - to, Senate Majority Leader Harry Reid stated, “never allow terrorists to be released in the United States” (qtd. in Herszenhorn 3).

This significantly influenced public opinion towards Guantanamo. A Gallup Poll published on January 21, 2009, found that 35% of Americans supported closure, 45% opposed closure, and 20% to have no opinion (Morales 1). On June 3, 2009, however, shortly after the Republican's offensive, support to close Guantanamo dropped with 3% but the number opposed increased with 30% (Jones 4). Of the respondents, 74% opposed relocation of Guantanamo detainees to the United States (5). The December 16, 2009, and the June 13, 2014, polls presented similar statistics. The Americans' private fears, therefore, determined its perception of what the President *ought* to be: a commander-in-chief protecting his citizens. Obama, thereafter, continue to reiterate his arguments and promise to close Guantanamo; his prestige, though, had dropped and, in combination with his faltered professional reputation and unwillingness to use his vantage points, Obama's degree of persuasiveness hindered him in making a credible argument to the American public in particular, and to his constituents in general.

The legislative context, after all, illustrates Obama's unwillingness and failure to persuade Congress. Guantanamo Bay and Obama's corresponding course of action, indeed, reveal that the President invested his professional reputation and political capital in other campaign promises. The 111th Congress, with significant Democratic majorities in both chambers, passed the \$787 economic stimulus package, the repeal of "Don't ask, Don't Tell," Wall Street regulations, and, most significantly, the Affordable Health Care Act; this session, Barbara Sinclair notes, "will be remembered for doing big things," (qtd. in Rudalevige "A Majority is" 1278). It was indeed the most productive Congress since Lyndon Johnson pushed his legislative program through the 89th Congress. It meant, though, that Guantanamo competed with other campaign promises for political investment; it lost, and Obama's executive order "never translated into the kind of political push," Peter Finn and Anne Kornblut argue, "necessary to sustain the policy" (9). The struggle to achieve healthcare reform, indeed, occupied the President's mind and time. Although the White House initially rebuffed such claims, (Finn and Kornblut 8) it is Rahm Emanuel, the White House Chief of

Staff, who later, in 2010, compared Obama's legislative agenda to an operating airport: "[w]e are trying to bring in two 747s [the wars in Afghanistan and Iraq] at the same we are trying to reform our national health care system, and right in the middle you want to send up a flock of Canadian geese, which is Guantanamo, which could take down one of our 747s" (qtd. in Klaidman 110). It illustrates the administration's apparent unwillingness to sacrifice political capital on Guantanamo. After Democrats received, in Obama's words, a 'shellacking' in the midterm elections of 2010 resulting in the loss of the majority in the House of Representatives, the flock of Canadian geese had flown - and never returned. Obama, subsequently, lacked political capital to afford himself a Rooseveltian veto.

The administration's objection to invest political capital in the face of Republican opposition left its partisans feeling unpersuaded and unsupported. An unwillingness to invest political capital, after all, suggests an unwillingness to persuade. Representative Jim Moran contended that the White House "left us all twisting in the wind" that the Republicans instigated (qtd. in Rogin 7). "Vulnerable senators weren't going out on a limb and risk being Willie Hortonized on Gitmo when the White House, a senior Democratic aid argued, "wasn't even twisting arms" (Finn and Kornblut 10). Both statements illustrate the Obama's administration desertion of its partisans, which, in fact, developed into a pattern. Each time when Democrats in Congress faced political opposition, the White House retreated to, it seems, avoid the loss of additional political capital, of which it had hitherto been afraid of losing. It is, then, not surprising that Congressional Democrats, thereafter, in the face of changing public opinion and Republican opposition, abandoned the Obama administration altogether, which culminated in punishing Obama with the adoption of the first transfer restrictions.

A similar pattern emerged with the administration's proposal to prosecute Khalid Sheik Mohammed in New York City. New York Mayor Michael Bloomberg initially supported the trial, for it was he said, "fitting that 9/11 suspects face justice near the World Trade Center site where so

many New Yorkers were murdered” (Muskal 10). Again, however, the administration was silent and failed to provide support to a partisan under nationwide criticism and soon, Bloomberg and Senator Charles Schumer abandoned the White House citing the \$200 million security costs and the logistical disruptions in Manhattan for holding trials elsewhere (Yin 473). The Obama administration’s paralysis, though, meant that it never initiated alternatives and the promise was abandoned. It is, therefore, in part due to Obama’s unwillingness to persuade partisans in 2009 that Guantanamo is still open in 2016.

The Republicans’s continued opposition to the President in the subsequent years, and the partisan makeup of Congress, then, expose the fundamental point that Neustadt’s argument overlooks - that the President’s persuasiveness is dependent on the constituent’s willingness to be persuaded. In other words, structural and political forces matter, in addition to Obama’s sources of power. Both affect the President’s influence with others. Persuasion, of course, is about amending that willingness; but intense partisanship - ideological cohesiveness had gradually replaced moderation since the 1970s - involving an absolute determination to reject most of Obama’s major policy initiatives undermines the notion that the power to persuade alone encompasses Presidential power. Neustadt acknowledges that persuasion has no guarantee attached (47), but blames a failure to persuade a constituent on the President’s persuasiveness, rather than the constituent’s unwillingness. In 2011, Mitch McConnell stated that “[w]e will see if [Obama] actually wants to work with us to accomplish things that we’re already for” (qtd. in Rudalevige “A Majority is” 1283). And since closing Guantanamo was an issue that Republicans were already against, Obama’s overtures - whether persuasive or not - would not be reciprocated into legislation favorable to lifting transfer bans and seeking a definitive solution to close Guantanamo.

The transfer of detainees out of Guantanamo is, indeed, essential to achieve eventual closure of the prison; it is, therefore, significant that Obama’s executive branch hindered the completion of transfers to foreign countries. The Pentagon, in cooperation with the State Department, was

responsible for receiving foreign delegations at Guantanamo, providing them with the detainees' records, and, eventually, transferring them abroad. Its opposition to President's Obama intention to close Guantanamo, however, resulted repeatedly in throwing up bureaucratic obstacles, such as, making it more difficult for foreign delegations to visit Guantanamo, limited their time to interview detainees, declining to release the detainees' records, and preventing the delegations from spending the night at Guantanamo (Levinson and Rohde 1). This frustrated both the White House and the foreign delegations, who often, backed off. Kazakhstan, for instance, was prepared to take five detainees; it took a year to complete that process after the Pentagon prohibited the visitors from videotaping the detainees; the White House, then ordered the Pentagon to tape the interviews and provide its visitors with copies; after which the Pentagon sent them processed videos, which the Kazakhstanis, in turn, found useless (4). It, furthermore, took five years to transfer four innocent Afghans after Pentagon's refusal to cooperate. Negotiating prisoner release with the Pentagon was, according to James Dobbins, "like punching a pillow" (1). Even though it might be attributed to the Pentagon's unwillingness to be persuaded, its actions - in contrast to Obama's intentions - constitute a failure to persuade. The President, after all, failed to convince the Pentagon that what he wanted of them is what they *ought* to do on their authority.

The transfer difficulties, in general, affected Obama's persuasiveness with foreign governments. It falls outside the scope of this bachelor's thesis to examine the Obama administrations' negotiations with them all in detail - and, often, these are classified. What is important to observe, however, is that Obama's failure to persuade his executive branch thwarted Obama's efforts to transfer detainees, which in turn, must have left the foreign governments feeling unpersuaded. It, indeed, sends the wrong signal to foreign governments that, after negotiations with the White House, it is the executive branch whom the President directs that, then, frustrates the final stages of that process. Although Obama's administration transferred 147 detainees to foreign countries and, therefore, succeeded in persuading these governments, the Pentagon prevented

persuasion of additional others, and, as such, detainees from leaving the prison. Congress' transfer bans, moreover, constrained Obama in its persuasiveness with the European Union, who, in 2009, had asked for a resettlement of Guantanamo detainees in the United States to assure it was willing to do, what the White House asked of them (Briefing by White House 5-29-09). And considering that Congress prevented the two Uighur detainees from relocating to Virginia, and thereafter, all transfers to the United States, it is understandable that the European Union backed off.

In conclusion, Obama's failure to close Guantanamo is a failure to persuade. Although the Republican Congresses demonstrated a discernible unwillingness to be persuaded, it, too, constitutes Obama's lack of effort, with a Democratic Congress in 2009 in particular, to circumvent that unwillingness. Obama's use of vantage points, reputation, and prestige, after all, suffered from the objection to invest political capital, which hurt Obama's persuasiveness with all constituents; having lost them, Obama's attempts to persuade fell on deaf ears, and except from transferring some detainees, essentially *nothing had happened*.

Conclusion

As the seventh year of his Presidency drew to its close, Barack Obama admitted he “didn’t fully appreciate [...] how decentralized power is in this system. A lot of the work is not just identifying the right policy but now constantly building these ever shifting coalitions to be able to actually implement and execute and get it done” (qtd. in Simmons 12). This statement illustrates that Presidential government, which replaced the Founding Fathers’ standard of legislative preeminence, is still bound to the Constitution’s chains; that, therefore, the chains are durable; and that Presidential power is not absolute. The claims and checks that all constituents place on the President, indeed, decentralize power and necessitate persuasion. Obama’s complicated struggle to close Guantanamo required Obama to devote himself and his office; to appropriate his vantage points, reputation and prestige, to fulfill his promise. The decentralization of power, in other words, is, in the end, responsible for Obama’s persuasive failure to close Guantanamo during his Presidency.

Obama’s persuasive failure is, first, a convincing failure to factually achieve his goal of closing Guantanamo; even though Obama issued a symbolic executive order on the second day of his Presidency to close Guantanamo within 12 months, the prison is still open 65 months after that initial deadline. Legal and practical obstacles, including the transfer and appropriation bans have, of course, significantly complicated the situation. It nonetheless is remarkable that an office, which under President Bush, as under Johnson and Nixon, approximated the “Imperial Presidency,” failed to close a prison. It seems, though, that today’s Congress is attempting to reassert its power; an unwillingness to invest political capital, then, gives Congress room to maneuver at the expense of the executive. It must be concluded that Obama lost the legislative battle with Congress for control. He used unilateral tools but did not employ his veto power to prevent Congressional control over his promise. Obama’s unwillingness to invest political capital in the early months of 2009, as such,

seems to be a crucial miscalculation that kept Guantanamo open at a moment when the political consensus was still ambivalent.

Obama's persuasive failure is, second, a failure to convince his five constituents that closing Guantanamo is what their own assessment of their own responsibilities require them to do in their interests. His vantage points, professional reputation and public prestige failed to augment his persuasiveness; rather, opponents were emboldened in their resistance and connected Obama to a lack of perseverance. He, then, failed to persuade the public because Obama's argument of safe incarceration in the United States could not compete with the Republican's fearful narrative, which had lowered his prestige. He failed to persuade the Congress because a detailed proposal never came, and political capital went elsewhere. It was altogether clear that endangering their own political careers for an unpopular promise the White House did not invest in was not in any Congressmen's interest. And although the Republican's unwillingness to be persuaded must be noted, Obama deserves criticism for the failure to persuade his partisans. It is indicative of Obama's priorities and persuasiveness that a Democratic Congress did not close Guantanamo. The White House suffered, after all, from paralysis and unwillingness to convert retreat into advance. He abandoned his partisans in the face of adversity and, therefore, they abandoned him. He failed to persuade the executive branch because the Pentagon worked against him; not with him to realize Obama's promise. He, finally, failed to persuade foreign governments, the European Union in particular, because his persuasiveness with them suffered from the failures to persuade the executive and legislative branches. It is, in short, Obama's personal persuasiveness that is to blame for Guantanamo's continued existence.

This bachelor's thesis provided a comprehensive and chronological overview of President Obama's attempt to close Guantanamo Bay through the lens of Richard Neustadt's *Presidential Power and the Modern Presidents*. This leaves opportunities for future research concerning Obama's general persuasiveness as President and to examine it across multiple case studies over

multiple years. It, moreover, allows successive generations to appraise Obama's ultimate role in the complex entity that is Guantanamo. It is certain, however, that Guantanamo will remain open for the foreseeable future; Obama's failure to persuade perpetuates the detainees' sufferings and hopelessness - the sad chapter in American history continues, still.

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