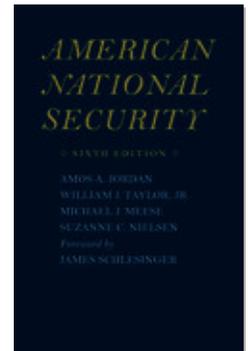




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Congress

Over two hundred years ago, Alexander Hamilton laid out the constitutional framers' rationale for the distinct roles of Congress and the president with these words: "The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate."¹ Their experience during the Revolutionary War convinced the framers that the lack of a strong executive sharing power with an equally strong legislature had nearly cost them victory. In a letter to William Gordon, George Washington wrote, "to suppose that the general concern of this Country can be directed by thirteen heads, or one head without competent powers, is a solecism, the bad effects of which every Man who has had the practical knowledge to judge from, that I have, is fully convinced of; tho' none perhaps has felt them in so forcible, and distressing a degree."² Reflecting this concern, the Constitution authorized extensive power to the federal government. The distribution of this centralized power among the branches of government was to prevent any of them from wielding power arbitrarily.

Congress and the Constitution

Congressional Powers. The Constitution provides Congress with a formidable array of tools that authorize it to participate in national security matters. It has the power to declare war, to raise and support armies, to provide and maintain a navy, to determine the rules and regulations governing the military, and to call forth the militia in times of crisis. Additionally, presidents must seek the "advice and

consent” of the Senate for treaty ratification and the appointment of senior governmental officials, including military officers. Ultimately, Congress influences the executive via the power of the purse. With the ability “to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States,” Congress determines the appropriations levels for the entire executive branch, including the national security apparatus. The Constitution specifies that the Army should not receive operational and pay appropriations for longer than a two-year term, so technically each Congress must reestablish the army or it must demobilize.³ This provision reflects the Founding Fathers’ fear of standing armies under the control of a despotic leader (in their case, the king of England during the Revolutionary War).

Mindful of its institutional power, Congress carefully protects its ability to use the power of the purse to shape foreign policy. In the debate over the 1994 defense appropriations bill, which occurred shortly after the death of eighteen American soldiers during the U.S. intervention in Somalia, Senator Robert Byrd (D-WV) stated:

This is the appropriate bill on which to debate our policy in Somalia, because it highlights the importance of the power of the purse—the ultimate arrow in Congress’ quiver—to effect the policy of the Nation in such weighty matters as war and deployments of American Forces. The Framers of the Constitution were well aware that the power of the purse was the key to the power of this institution, and we cannot guard the American people and it too closely.⁴

Despite the intent to assert congressional prerogative, it is evident in these comments that Congress is reacting to national security policies already set in motion by the president. Presidential initiatives create a momentum that even a united Congress can find difficult to overcome, and the 535 members of Congress have perhaps never held uniform views or priorities.

Richard Fenno suggests that legislators have three key motivations: reelection, good public policy, and advancement to higher office.⁵ On the campaign trail, members of Congress rarely focus on foreign and national security policy. These are not the characteristic bread-and-butter issues that bring federal largesse to home districts and states. Characterizing this paucity of attention to this aspect of national policy, Senate Foreign Relations Committee Chairman Richard Lugar (R-IN) observed, “There’s almost no political sex appeal. . . . For those who get involved it’s strictly a pro bono service.”⁶ In fact, public opinion generally lags behind the course of international events; consequently, Congress ends up legislating for future events against the errors of the past. Recent examples of this include the clarification of interrogation techniques by Congress after the prisoner abuses by U.S. personnel at the Iraqi Abu Ghraib prison in 2003 and the 2006 sanctioning of military tribunals for unlawful combatants already detained at a U.S. military facility at Guantanamo Bay. In effect, in the national security arena, the president often acts and then asks Congress for retroactive permission.

Executive Branch Advantages. When it comes to dealing with foreign powers, the executive enjoys the inherent advantage of unity of command. Hamilton

writes, “That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceeding of any greater number.”⁷ The Constitution not only vests the president as the commander in chief of the armed forces, but it also makes him or her both head of state and head of government. In periods of crisis, particularly during armed conflict, presidential powers reach their pinnacle. Centralized authority is required for swift and effective action. Responding to emergencies, presidents have claimed implicit prerogatives not specifically mentioned in the Constitution. President Abraham Lincoln famously suspended the writ of habeas corpus during the Civil War without congressional approval. Under a “doctrine of necessity,” Lincoln claimed he had to break the Constitution in order to save it.⁸ President George W. Bush similarly claimed powers as commander in chief in authorizing warrantless wiretapping and in establishing military commissions to try unlawful combatants during the Iraq and Afghanistan wars. In responding to these extraordinary assertions of authority, Congress faces a difficult choice: It can actively counterbalance presidential declarations of power and assume greater responsibility for the resulting outcomes, or it can accept executive hegemony in national security affairs.

The executive branch also has an informational advantage over Congress. John Lehman writes, “In terms of expertise, the disparity is enormous. In the executive departments, the richness and sophistication in scientific, technological, military, diplomatic, statistical, medical, educational, geological, fiscal, legal, and sociological skills are truly awesome. Congressional staffs have a smattering of knowledge in all of these areas, but only a smattering.”⁹

Congressional Branch Passivity and Activism. Due to its relative lack of knowledge, fractious nature, torpid decision-making pace, and inability to maintain confidentiality, Congress has often been the minor partner in the national security process. Traditional periods of congressional passivity in foreign affairs include President Thomas Jefferson’s Louisiana Purchase, President Theodore Roosevelt’s initiation of the Panama Canal project, President Franklin Roosevelt’s launching of the Lend-Lease Program, President Lyndon Johnson’s stimulation of the Gulf of Tonkin Resolution, and the first five years immediately following the September 11, 2001, terrorist attacks on United States soil.

Despite these examples of executive preeminence, there are occasions where Fenno’s three incentives align uniformly across Congress to impel institutional action. Cecil V. Crabb and his colleagues classify three conditions necessary for congressional activism in national security and foreign policy: (1) a clear public opinion groundswell regarding America’s international role, (2) tentative or weak presidential leadership, and (3) urgent domestic affairs overpowering foreign policy.¹⁰ Historical events that meet these conditions include congressional activity during and after the American Revolution; President James Madison’s dealings with congressional hawks prior to the War of 1812; the Reconstruction Period following the Civil War; the Senate’s refusal to ratify the Treaty of Versailles, which denied President Woodrow Wilson’s desire to join the League of Nations; the

isolationist movement in Congress prior to World War II; and congressional activism in the decade following the Vietnam War and the power abuses of the Nixon administration.

Aside from periods of passivity and activism, Congress has also acted in concert with the president as a full partner in setting national security policy and processes. However, these occurrences are rare. The primary example of bipartisan and equal partnership occurred during the early Cold War years, when both the executive and legislative branches saw the Soviet Union as a dire threat to the United States.

Congressional National Security Institutions

When considering the establishment of national security policy, Lehman writes, “it is the executive that proposes but the Congress that disposes.”¹¹ Yet how Congress disposes is a complicated process whereby members must placate varied constituencies, moneyed interests, personal ideological considerations, and, most importantly, each other. To bring their policy ideas to fruition, legislators must line up support across the institution. They must generate legislative momentum through cosponsorship, the logrolling of votes, and compromise. Power bases in Congress are broad and diverse. Members must forge coalitions with other members in various committees and subcommittees. Roger Davidson and Walter Oleszek report that, between the House and Senate, there are twenty-three committees with jurisdiction over national security and foreign policy.¹² (During the energy crisis of the late 1970s, there were eighty-three committees and subcommittees of the House of Representatives alone with some claim to jurisdiction in energy matters, and 421 of the 435 House members belonged to one or more of these!)¹³

Armed Services. The Senate and House Armed Services Committees (SASC and HASC, respectively) are the authorizing committees for the Department of Defense (DoD; including the Departments of the Army, Navy, and Air Force); military research and development; the national security aspects of nuclear energy; the pay, promotion, benefits, and retirement system for members of the armed services; and the strategic natural resources related to national security. These committees make substantive policy through the introduction and passage of bills that authorize the terms and conditions of programs and activities related to defense. They also recommend appropriation levels for spending. Although some members join these committees out of an intense public policy interest, other legislators are members for the traditional purpose of safeguarding constituency interests, with the aim of being reelected. As evidence, during the 109th Congress (2005–2007), the average House member had approximately 3,627 defense-related employees in his or her district, while HASC members had three times that amount, at 10,031. Furthermore, HASC member district economies relied twice as much on defense spending (5.18%) as their noncommittee member peers (2.66%).¹⁴

As a result of member incentives, geographical and economic constituencies surrounding military bases have disproportionate influence on these committees’ policy

decisions. Key issues recently considered by these committees include the 2005 Defense Base Realignment and Closure (BRAC) Commission's recommendations, the authorization of funding to refit and replace equipment damaged or destroyed in the Iraq War, and the question of whether the military is taking all the necessary measures required for the procurement and issue of adequate body and vehicle armor to deployed troops. As these examples suggest, the focus of committee activity is frequently on the resource allocation of defense-related personnel and materiel.

Appropriations. Once defense authorization bills are reconciled and passed, the Senate and House Defense Appropriations Subcommittees provide the funding. No money is transferred in this process, but rather Congress grants budgetary authority to the authorized agencies, activities, and programs. With budgetary authority, a federal entity can make obligations requiring immediate or future expenditures, or *outlays*. Of the thirteen annual appropriations bills, most national security spending comes primarily from three—defense, energy and water development, and military construction. The normal appropriations process supplies two thirds of defense-related funding. The other one third is provided through continuing resolutions and supplemental appropriations measures.¹⁵ As is the case with the HASC, membership in the House Defense Appropriations Subcommittee is affected by constituency concerns. During the 109th Congress, the percentage of their district economy that was defense related was 5.41% for House Defense Appropriations Subcommittee members, while only 2.81% for nonmembers. The districts of House Defense Appropriations Subcommittee members had an average of 8,525 active-duty military and civilian employees, compared to 4,077 defense-related personnel in nonmember districts.¹⁶

Foreign Affairs. The Senate Foreign Relations Committee and House International Relations Committee are two other important national security players in Congress. The Senate Foreign Relations Committee assesses treaties with foreign governments and approves diplomatic nominations. Due to their “advise and consent” mandate, members see themselves as equal partners of the president in setting national security and foreign policy. Senator Jacob Javits (R-NY) wrote that the committee must “be a source of independent judgment and a potential check upon the actions of the executive branch on such fundamental matters as the use of military force, the conclusion of international commitments, the appointment of principal policy-makers, and the financing of military and diplomatic programs.”¹⁷ Extensive television and media coverage of the Senate Foreign Relations Committee make its members among the most well-known politicians in Washington. As for the House International Relations Committee, its membership primarily relies on the House's power of the purse to shape foreign policy.¹⁸

Other Committees with National Security Jurisdictions. There are a number of other committees that impact national security policy. Both the House and the Senate have Energy Committees, for instance. The House and Senate Select

Committees on Intelligence deal with the intelligence community, including the Central Intelligence Agency, the National Security Agency, and others. The functions of these committees are limited to policy and procedural oversight; the authorization and appropriation functions for the majority of the intelligence community are handled elsewhere in Congress. Both the House and the Senate have recently empowered committees with specific jurisdiction over the function of homeland security. Relatively new, the impact of these committees has not yet materialized. Their prestige and power will rest on their ability to exert jurisdiction over a broad governmental responsibility that was previously shared across many committees. Their nascent position and jurisdictional claims highlight a key aspect of congressional policy making—diffuse power bases. Jurisdiction for national security policy is not cleanly divided among committees. Divergent constituency interests, opposing ideological considerations, and old-fashioned political power plays characterize the disjointed nature of congressional policy formulation and national security institutions.

National Security Policy

Analytically, national security policy can be separated into three varieties: structural, strategic, and war powers. *Structural policy* relates to the allocation of resources. *Strategic policy* concerns these actions as well as the military, economic, and political posture of the U.S. government toward the accomplishment of nationally identified goals and objectives. Finally, *war powers policy* guards the nation from imminent danger both at home and abroad.

Structural Policy. Structural policy involves the resource allocation of defense-related personnel and material. This includes weapons procurement, military base infrastructure, foreign arms sales, private contractor deals, and defense personnel policies. These activities provide legislators with the opportunity to steer important projects to their districts, thus enhancing their reelection chances. As a result, structural policy formulation receives the greatest congressional attention of the three policy areas.

Military Base Infrastructure. Due to the economic dependence of local communities on neighboring military bases, the topic of military base infrastructure is a hot-button political issue. As far back as the early 1900s, when obsolete frontier bases faced closure, members of Congress fought ferociously to keep them open. When faced with the closure of the cavalry station in Brownsville, Texas, a young congressman named James Nance Garner (later vice president of the United States under FDR) marched into Secretary of War William Taft's office to demand that the station remain open for economic reasons. Taft retorted, "What's the cavalry to do with economics?" Garner responded, "Mr. Secretary, it's this way. We raise a lot of hay in my district. We've got a lot of stores, and we have the prettiest girls in the United States. The cavalry buys the hay for its horses, spends its

pay in the stores, marries our girls, gets out of the army, and helps us develop the country, and then more replacements come and do the same thing. It *is* economics. It *is* economics."¹⁹

From the viewpoint of a member of Congress, Garner's rationale is still very salient. The Constitution grants Congress the authority to "dispose of and make all needful rules and regulations respecting the territory or other property [of the federal government]."²⁰ This includes the "erection of forts, magazines, arsenals, dockyards, and other needful buildings."²¹ As with many other enumerated powers, Congress has delegated restrictive authority to the executive branch with respect to the management of military property. Yet, when it comes to the closure of military bases, Congress faces a collective dilemma. To achieve the general national goal of eliminating obsolete military bases, it must impose particular pain on those states and districts where the bases are closed.

Unfortunately in the past, the parochial reelection interests of a number of members have generally trumped the diffuse national benefit that would be realized from the elimination of outdated installations. Prior to the late 1980s, the military had been unable to close a number of major bases for thirty years.²² The Pentagon estimated that it had a 30% overage in military infrastructure capacity. To overcome parochial interests, Congress had to devise an extraorganizational procedure that protected targeted members from constituency fury over a base closure, while at the same time providing the appearance of congressional oversight. Thus the Defense Base Closure and Realignment Commission (BRAC) process was born.

With four closely spaced BRAC rounds (1988, 1991, 1993, and 1995) and a later, recent round (2005), Congress successfully overcame the collective dilemma of base closures. The process begins with the formation of an independent bipartisan BRAC commission nominated by the president and approved by Congress. The Pentagon submits a list of proposed closures and realignments to the commission, which travels to various military bases and holds hearings on the proposed list. Threatened members of Congress publicly fall on their swords defending their local bases while highlighting the fact they are powerless as individual members to stop or change the process. The commission can modify the list or leave it unaltered, submitting their final recommendation to the president. After the president approves it, Congress has forty-five days to disapprove the list in its entirety or it becomes law. The BRAC process limits congressional tampering while achieving the general political goal of eliminating bases. Furthermore, the process insulates members from adverse political repercussions. Such a unique process is not required for other types of structural policy formulation.

Weapons Procurement. Unlike the BRAC process, Congressional action toward defense procurement follows the more traditional bipartisan distributive process of bringing federal dollars to constituents. Congress routinely spreads defense largesse as widely as possible so that many constituencies benefit. It is not unusual for a weapons system to involve multiple subcontractors spread across virtually the entire United States. It is also not uncommon for members of Congress to

supersede the Pentagon's program priorities with their own. For example, in 2006 the Navy planned to reduce its attack submarine force to forty, but House members voted to require the Navy to maintain a fleet of forty-eight submarines. In addition to approving the president's proposed \$2.5 billion for a Virginia-class attack submarine, legislators also added an extra \$400 million to begin construction of another unrequested submarine to be completed in the next two years.²³ Furthermore, the benefit of building the Virginia-class submarine is stretched across numerous constituencies, with one half of the hull being produced by one defense contractor while a second contractor builds the other half.²⁴

Predictably, Congress reacts caustically to the proposed shutdown of expensive weapons systems. In 2006, for example, the Pentagon requested \$390 million to cease production of the C-17 Globemaster transport aircraft. Not only did Congress vote to shift the requested funds toward the production of three more airplanes, but it also forced the Air Force to maintain a fleet of 299 long-range transport aircraft—all but necessitating the production of more C-17s.²⁵ It is also not uncommon to find legislators playing one military service against another or against the Office of the Secretary of Defense.

Another defense procurement phenomenon is that lengthy development times cause legislators to develop parochial attachments to weapons systems. As a result, projects suffer ballooning costs and have dubious strategic and tactical value when ultimately completed. For example, when describing the F/A-22 Raptor fighter jet, former Assistant Secretary of Defense Lawrence Korb writes:

This plane, which is arguably the most unnecessary weapons system currently being built by the Pentagon, was originally designed to achieve superiority over Soviet fighter jets that were never built. Back in 1985 the Air Force claimed it could build 750 of these stealth fighter jets for \$35 million each or at a total cost of \$26 billion. . . . At the current time [2006], the Pentagon says its can buy 181 planes for \$61 billion.²⁶

At this figure, the F/A-22 increased in cost per plane from \$35 million to \$337 million—an increase of 963%. Legislators are loath to relinquish such projects as the F/A-22, for which over one thousand manufacturing contractors are spread across forty-three states.²⁷ In fact, Congress nearly doubled the Pentagon's request for F/A-22s in Fiscal Year (FY) 2007 to twenty aircraft, funded at \$2.7 billion, and provided a further \$687-million advance for another twenty aircraft in FY 2008.²⁸

Foreign Arms Sales. For Congress, foreign arms sales policy is a natural extension of the distributive politics of domestic military procurement. From 2000 to 2003, U.S. arms sales to developing countries were \$35.8 billion.²⁹ With the end of the Cold War in the early 1990s and the contraction of the U.S. defense budget, the arms industry went through a series of consolidations and mergers to survive. To maintain profit margins and sell off excess inventory, the industry sought revenues earned in the international arms export market. Citing the need to make American manufacturers more competitive in the crowded international market and to protect endangered defense industry jobs in their states

and districts, Congress cooperated by relaxing a number of provisions of the Arms Export Control Act and the Foreign Assistance Act. These are the two major components of the International Traffic in Arms Regulations.³⁰

In 1996, Congress enacted the Defense Export Loan Guarantee program. This law essentially created risk-free subsidies for the U.S. armament industry. Under this program, the Pentagon can guarantee up to \$15 billion in private sector loans to foreign nations for the purchase of U.S. weapons. If the importing country defaults on the sale or lease payment, then the U.S. government covers 100% of the principal and interest of the loans. In the same year, Congress amended the Arms Export Control Act to allow the president to waive “re-coupment fees” that foreign purchasers had previously paid to cover the American’s taxpayers’ investment in weapons system research and development. The government could waive fees if it appeared that a sale would be lost with their inclusion in the final cost. These are two of many instances over the last decade where Congress has used its power to help the defense industry. In fact, a CATO Institute study found that between 1991 and 1999, the U.S. taxpayer actually paid \$10 billion to finance arms exports between private American firms and foreign countries (this does not include the \$2 billion provided to Saddam Hussein for the purchase of weapons technology prior to his 1990 invasion of Iraq).³¹ Examinations of the underlying causes of these export policy decisions repeatedly reveal that members of Congress follow the familiar distributive logic of protecting constituency interests to enhance their reelection prospects.

Personnel Policy. Military personnel policy is the last major structural policy area that receives substantial congressional attention. Active-duty, guard, and reserve service members, their families, and military retirees make a formidable coalition of well-educated, organized citizens who vote in large numbers. Backed by powerful lobbying organizations, this vocal group has considerable sway on Capitol Hill.³² In fact, the average congressional district has 4,022 military retirees who annually contribute \$73 million to the local economy. HASC-member district averages are much higher, with 7,318 retirees who contribute \$144 million.³³

These military interest groups and their respective patrons annually lobby Congress for increased pay and benefits. In the FY 2007 National Defense Authorization Act, Congress considered a broad range of personnel policies, such as percentage of annual pay increase for active-duty members, time-in-grade requirements for military officer promotion, targeted shaping of the manpower distribution of the military, increase in manpower end strength of the U.S. Army and Marine Corps, treatment of posttraumatic stress disorder, and minor changes to military health care and retiree benefits.³⁴ In recent years, Congress has even exceeded the Pentagon’s “comparability-with-civilian-pay” target for increased military pay and benefits. Legislators always seek to cultivate with their constituents a reputation for taking care of the troops.

Military personnel policies that receive substantial national attention provide legislators the opportunity to take substantive policy stances that play to wider domestic and cultural audiences. These actions can be seen as a form of position

taking for the benefit of constituents. David Mayhew defines *position taking* as a “public enunciation of a judgment statement on anything likely to be of interest to political actors . . . the electoral requirement is not that [members] make pleasing things happen but that [they] make pleasing judgmental statements. The position itself is the political commodity.”³⁵ As examples, the recurring coverage of the “Don’t Ask, Don’t Tell” policy that bans homosexual conduct in the military is routinely debated in every Congress; recently, Congress has publicly investigated allegations of sexual and religious harassment at the U.S. Air Force Academy. Legislators have also scrutinized the procedures for dealing with friendly-fire incidents in Afghanistan and Iraq (such as the 2004 incident in which former professional football player Pat Tillman was killed in Afghanistan). These public hearings have provided legislators the opportunity to voice their positions on larger political and cultural issues that are important to constituents back home, but actual congressional changes to personnel policy have been relatively minor. Most changes come from recommendations of the Pentagon. In the last thirty years, Congress has effectively asserted itself in a large way only once—with the landmark passage of the Goldwater-Nichols Department of Defense Reorganization Act in 1986.

Goldwater-Nichols and Congress as an Agent of Reform. Glaring deficiencies in joint military service cooperation were contributing factors to a number of national security disasters in the late 1970s and early 1980s. These included the failed Desert One operation to rescue Americans held hostage by Iran in 1980, the suicide bombing of the Marine barracks in Beirut in 1983, and the poorly coordinated invasion of the island of Grenada in 1983. For a number of influential legislators and key general officers, these incidents solidified the notion that reform of the DoD was required. These influential members of Congress included the chairman of the SASC, Barry Goldwater (R-AZ), as well as Bill Nichols (D-AL), Sam Nunn (D-GA), and Les Aspin (D-WI), while the senior military leaders included chairman of the Joint Chiefs of Staff (JCS), General David Jones, and Army chief of staff, General Edward “Shy” Meyer. This group faced the daunting task of affecting significant structural reform of the DoD and its individual services. Complicating this task, the average member of Congress benefited from the status quo, for legislators habitually exploited the decentralized nature of the Pentagon in order to distribute federal dollars back to their home districts and states. As Amy Zegart writes, “military duplication and inefficiency filled the trough of pork barrel politics.”³⁶

Despite an uphill battle, Goldwater-Nichols passed Congress because a number of key political factors aligned. First, the primary architect of the legislation, Goldwater, was retiring. Freed from electoral concerns, as a staunch military advocate he was uniquely qualified to carry the bill forward. Second, President Ronald Reagan stayed on the sidelines of the debate. Possibly distracted by other political issues, Reagan’s lack of involvement weakened the strident resistance within the Pentagon to the proposed reforms. Due to weak presidential opposition and with Goldwater’s name as political cover, the congressional reformers

fashioned a coalition of legislators to vote for the bill. It passed, and on October 1, 1986, Reagan signed Goldwater-Nichols into law.³⁷

Goldwater-Nichols affected three fundamental DoD reforms. First, the chairman of the JCS replaced the corporate body of the JCS as the “principal military advisor to the President.” Second, as a requirement for promotion to general officer, the law required officers to serve in positions outside their service branch. (These positions are known as “joint” assignments in the military.) And crucially, the law clarified the chain of command for regional combatant commanders. These commanders now responded directly to the secretary of defense and, ultimately, the president for their orders and authority. This minimized service chief interference in operational combatant commands and reduced individual service parochialism.

Many observers believe that Goldwater-Nichols was an important factor in the success of the American military in the Persian Gulf War. They also cite the numerous successes of the military in the post—Cold War era and the initial victories of the military in Afghanistan and Iraq. Because of the gains in effectiveness, as well as the efficiencies wrought by Goldwater-Nichols, many have called for similar reforms within or across other executive branch agencies.

Strategic Policy. Strategic policy concerns the accomplishment of nationally identified political, economic, and military goals. These goals enhance the power of the United States and heighten national security. As the head of both the government and the state, the president sets these goals with advice from his or her cabinet and other senior executive branch decision makers. These goals orient the work of vast executive agencies, such as the Departments of Defense, State, Treasury, Homeland Security, and Commerce. Many strategic goals continue through multiple presidential administrations, such as the goal of communist containment during the Cold War. To support its strategic goals, the U.S. government also relies upon agreements with other governments, its membership in numerous international organizations (such as the North Atlantic Treaty Organization [NATO], the World Trade Organization, and the United Nations [UN]), and its support of international treaties.

Budgetary Power. Congress’s primary power to shape strategic policy lies in its ability to fund all functions of the government. The Constitutional power of the purse allows Congress to appropriate money across federal agencies to support its vision of the important aspects of strategic policy. The president sends a budgetary request to Capitol Hill on the first Monday in February every year. This request asks for the funds to support all government operations, including the president’s national security strategy. Though Congress is not bound to the president’s budget, this request serves as an initial point in negotiations between the executive and legislative branches over priorities. Due to the president’s veto power, Congress cannot ignore presidential preferences.

Following the president’s submission, Congress sets forth its own unified provision with the passage of the annual Concurrent Budget Resolution on April 15.

This resolution regulates the remainder of the budget process until its final passage. Within the bounds of the budget resolution, Congress passes thirteen different appropriations bills. Approximately one third of the FY 2008 federal budget comes from the allocation of discretionary funds. (Nondiscretionary funds, which account for the other two thirds, include such items as interest on the national debt, social security, and Medicare.) National security spending makes up 60% of discretionary funding, at \$554 billion.³⁸ Although this is a large amount, military spending as a proportion of gross domestic product (GDP) is at low levels in historical terms. Over the last six decades, the defense proportions of GDP are as follows: World War II, 1944 (38%); Korean War, 1953 (14%); Vietnam, 1968 (9.5%); the Reagan era buildup, 1986 (6.2%); and Iraq-Afghanistan, 2005 (3.9%). Even during the 1970s, when many were seeking a peace dividend after the Vietnam War, the proportion never fell below 4.5%.³⁹

To guide strategic policy with respect to national security funding, Congress mandated in 1997 that the DoD undertake a Quadrennial Defense Review (QDR).⁴⁰ The QDR required that the secretary of defense do the following:

conduct a comprehensive examination of the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of defense programs and policies of the United States with a view toward determining and expressing the defense strategy of the United States and establishing a defense program for the next 20 years.⁴¹

Congress intended the 1997 QDR to be a top-to-bottom review of the Clinton administration's national security strategy. An independent committee of outside experts, the National Defense Panel, was created to provide Congress with a critique of administration policy. Legislators wanted to link long-term policies, programs, and procurement to the budget. The 1997 QDR was a disappointment to members of Congress. Legislators desired the QDR "to drive the defense debate to a strategy-based assessment of our future military requirements and capabilities," yet instead it became "a budget-driven incremental massage of the status quo."⁴²

In 1999, Congress made the QDR mandatory every four years. The second QDR occurred in 2001, prior to the terrorist attacks of 9/11; therefore, its recommendations did not reflect the changed nature of the threat facing the United States. The third QDR was prepared in 2005 and released in early 2006. This QDR was more congruent with the original intent of Congress, but reviews were still mixed. Those who praised the QDR pointed out its focus on national capability to meet emerging threats; critics emphasized a lack of consistency between statements of the strategic challenge and the DoD's own program submission. According to critics, the statement of the problem was fairly sound, but the corresponding adjustments to the structure of the armed forces appeared to be lacking.⁴³

Despite weaknesses in the QDR process, it retains some utility for Congress. Using this document as a source, members of Congress can seek to influence an administration's strategic policies via the use of public hearings. Furthermore,

legislators now have a further guide enabling them to link budgetary funding to policy goals. In conjunction with the power of the purse, Congress can be expected to continue to use the QDR or similar reviews to influence the president's near-dominant ability to set strategic policy.

Treaty Ratification. Relationships with foreign states also shape the strategic policy of the United States. These relationships are codified by formal treaty agreements between the United States and other members of the international community. As head of state, the president negotiates the terms of these treaties, yet the Constitution gives the Senate the power of treaty ratification. Two thirds of the Senate must be present and vote its approval for a treaty to go into effect.⁴⁴ As a result of the Senate's power, the president normally keeps key legislators privy to treaty discussions to facilitate ratification. In some rare cases, presidents have even requested that senior senators serve as active treaty negotiators with foreign powers. In terms of Senate history, only twenty-one treaties have suffered outright rejection, while another forty-three never went into effect because the Senate's modifications to the initial agreements were either (1) too onerous for the foreign parties to agree to or (2) unacceptable to the president.⁴⁵ Given that the Senate has considered over fifteen hundred treaties, these occurrences are relatively rare.

When it comes to treaty termination, the Constitution is silent. However, historical precedent is that the president is the sole authority who can cease American participation in a treaty. As a recent example, in 2001 George W. Bush withdrew the United States from the 1972 Anti-Ballistic Missile Treaty with Russia. It was originally negotiated with the former Soviet Union at the height of the Cold War to bring stability to the nuclear standoff between the United States and the Soviet Union. The Bush administration withdrew from the treaty so the United States could legally develop a limited antiballistic missile defense shield to protect against attacks by rogue states.

Recent treaty consideration by the Senate highlights some of the ways it can affect strategic policy. In December 2000, President Bill Clinton signed a treaty making the United States party to the International Criminal Court (ICC) but did not submit it to the Senate for ratification. In May 2001, George W. Bush renounced any American involvement with the treaty. The primary concern of the Bush administration was that the ICC could assert legal jurisdiction over American soldiers and policy makers through trumped-up charges of war crimes for legitimate uses of force during armed conflict and peacekeeping.⁴⁶ There was also concern that the court would assert jurisdiction over nonsignatory nations, including the United States. As a result, Congress went further than the president and passed the American Service-members' Protection Act in 2002. This law severed military assistance to any country that would not vow to not extradite U.S. citizens to the custody of the ICC if they were indicted. Two years later, in 2004, Congress acted to extend the aid cuts to all economic assistance.⁴⁷ Aside from Bush's renouncement, these congressional actions disconcerted many of America's European allies, who were steadfast proponents of the new court. Many observers believed

these congressional actions undercut the moral authority of the United States and its credibility in authoring future international law, bolstered the impression of U.S. unilateralism, and hampered the ability of the United States to build coalitions in Iraq and Afghanistan.⁴⁸

This concern can be generalized to Congress as an institution. It does not generally act with an international audience in mind; instead, it focuses on a domestic constituency with an eye to reelection. Although in the ICC situation George W. Bush was generally supportive of congressional action, future presidents may not concur with the stance taken by Congress in international affairs. Congress may not have the ability to set strategic policy, but it can certainly complicate matters for the president.

War Powers Policy. When it comes to the ultimate strategic decision, the commitment of U.S. forces to combat, Congress has struggled with the president over who is the definitive arbiter of policy. In July 1993, Army General Raoul Cedras deposed Haiti's democratically elected president, Jean-Bertrand Aristide. Cedras pledged to return power to Aristide in October. However, after Cedras failed to return power as promised, the UN Security Council voted to impose sanctions on Haiti. Clinton sent U.S. ships to enforce the UN embargo and reported that the action was "consistent with the War Powers Resolution." The president also used the War Powers Resolution as justification to send fifteen hundred U.S. troops to Haiti as part of a UN mission. Senate Minority Leader Robert Dole (R-KS) and other members of Congress disagreed with the president's action. The disagreement sparked a year-long battle over the president's continued support to the UN mission despite several nonbinding votes by Congress to the contrary. It was not until October 1994 that Congress officially authorized the intervention and set a timetable for withdrawal a year later.⁴⁹ The example of Haiti is one of many in the long historical struggle between Congress and the president over war powers.

The Origins of War Powers. War powers are a shared responsibility between the president and Congress. As noted earlier, the power to declare war was given to Congress in the Constitution.⁵⁰ Along with the ability to raise and maintain both an Army and Navy, this power gives Congress an unambiguous role. The president's power stems from the role of commander in chief of the armed forces.⁵¹ This is far more than a symbolic appointment, reflecting a general consensus among the framers of the Constitution that unity of command was necessary for effective military action.

Despite numerous historical military engagements, Congress has only declared war five times in over two hundred years. In fact, on four of these occasions, a state of war existed prior to the formal declaration. On over three hundred separate occasions, U.S. forces have been deployed abroad without a formal declaration of war.⁵² These cases range from short engagements that lasted for a matter of weeks, such as Grenada (1983) and Panama (1989), to longer wars, such as Vietnam (1964–1975) and Iraq (2003–2009 and beyond).

What is consistent in most of these cases is that the decision to enter the conflict was made by the president, often with little or no prior consultation with

Congress. Additionally, Congress is unlikely to assert its authority in an attempt to block the president from acting. There is a great deal of deference given to the president in protecting vital U.S. interests abroad. Once the nation is committed, Congress finds it equally difficult to stop the president from acting for fear of being open to political attacks for not supporting the armed forces in conflict. For instance, during the 2008 presidential campaign, Iraq War critic Senator Hillary Rodham Clinton (D-NY) said, “At this point, I am not ready to cut off funding for American troops. I am not going to do that.”⁵³

The War Powers Resolution: The Vietnam Era. The Vietnam War brought the issue of executive power to the forefront of political debate in the United States. Concerned that future presidents would overstep their constitutional authority as commander in chief by committing the United States to future military actions, Congress passed the War Powers Resolution of 1973. In doing so, Congress attempted to strike a balance between the two competing branches of government. It recognized that the president must have the ability to make decisions providing for the immediate defense of the nation in a time of crisis; equally important, the president must be prevented from having a “blank check.” Congress thought it necessary to compel presidential consultation once an immediate crisis had subsided. Failing to compel congressional authorization would give the president the unfettered ability to continue war actions indefinitely under the guise of the original crisis conditions.⁵⁴

The War Powers Resolution outlines a set of rules regarding the use of the military by the president. It requires:

The President to submit a report to Congress within 48 hours after introducing U.S. armed forces in the absence of a declaration of war into hostilities or into areas of imminent involvement in hostilities. In the absence of congressional authorization of such activities, forces must be withdrawn within 60 days, with a possible extension of 30 days in cases of pending danger to forces during withdrawal.⁵⁵

In addition to its being vague, the law spurred a vigorous debate as to its constitutionality. At its time of passage, many political scientists regarded the War Powers Resolution as evidence that Congress was once again willing to assert its constitutional role in the foreign policy process.⁵⁶ However, rather than weaken executive power, it is possible that the War Powers Resolution actually strengthened it by codifying executive powers that until 1973 were debatable. The War Powers Resolution can be interpreted as saying that the president can unilaterally send a military force into conflict for sixty days. It is unlikely the framers would have ever so allowed.⁵⁷

Between 1973 and 2003, 111 reports were submitted by presidents to Congress about U.S. troop deployments abroad.⁵⁸ In some circumstances, the action was so brief that no report was filed. Additionally, some presidents argued that certain actions did not invoke war powers, as there were no imminent hostilities. Such was the case with Reagan sending military advisors to El Salvador in 1981.⁵⁹

Neither Congress nor the president was inclined to pursue military adventures in the late 1970s, with the memory of Vietnam still so vivid in the national consciousness. Thus, congressional attention turned from the issue of war powers to

other aspects of national security. In 1974, Congress, through a series of joint resolutions, was able to force the Ford administration to stop arms sales to Turkey after its invasion of Cyprus, despite repeated threats of a presidential veto. This type of involvement in national security continued during the Carter administration when a threat of congressional disapproval forced the president to modify plans to sell Airborne Warning and Control System aircraft to Iran in 1978.⁶⁰

Persian Gulf War. The fall of the Iron Curtain and the collapse of the Soviet Union occurred rapidly from late 1989 to 1991. In quick succession, the Warsaw Pact and greater Soviet empire disintegrated into a number of smaller countries with serious economic problems stemming from years of neglect. The U.S. Cold War military structure seemed antiquated for a post-Soviet world. However, in August 1990, Hussein dispatched Iraqi forces into Kuwait. The ease with which Iraqi forces took Kuwait alarmed many, creating fears that Saudi Arabia and its rich oil fields might be the next target. President George H. W. Bush launched an aggressive diplomatic campaign to build an international consensus in opposition to Hussein. In addition to pushing for several UN resolutions condemning Iraq's actions, the administration secured pledges of financial and military support for a combined operation to drive Hussein's forces out of Kuwait.⁶¹

Despite the almost universal condemnation of Hussein's actions, many in the United States expressed significant concern over the potential outcome of such a military operation. Although initially rejecting a constitutional need for congressional support, George H. W. Bush did eventually ask for an authorization resolution. A vigorous debate in early 1991 ended with a one-hundred-vote margin in the House and a five-vote margin in the Senate in favor of the resolution. However, the close vote in the Senate did not reveal the true political situation. By the time of the vote, there were over five hundred thousand U.S. troops already in the region preparing for combat operations. Under these circumstances, anything besides authorization was unlikely.⁶²

Challenges of the Post-Cold War Era. The fall of the Soviet Union presented many opportunities and challenges regarding foreign policy and national security. While removing the one large threat the United States had faced for nearly fifty years, the end of the Cold War destabilized many countries that no longer had superpower financial support. One result was small regional and ethnic conflicts that sometimes turned to civil war. Once again, the president and Congress struggled over how to respond to crises.

One of the most demanding challenges of the early to mid-1990s was the disintegration of Yugoslavia and the resulting brutal ethnic conflict within Bosnia-Herzegovina. When the various warring groups agreed to end the conflict in 1995, it became clear that a large military force would be necessary to sustain the peace; the Clinton administration struggled to convince a Republican-controlled Congress of the necessity of committing U.S. forces to this endeavor. Many legislators saw this as a European problem that should be resolved by Europeans.

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In pushing for NATO and U.S. commitment to the mission, Clinton essentially involved the U.S. military by default. Only the U.S. Army was large and powerful enough to maintain the fragile Dayton Peace Accords. In the end, believing that the public would be unwilling to support a more substantial commitment, Congress and the president agreed to a one-year deployment.⁶³ After the U.S. military

was committed to peacekeeping in the Balkans, Congress begrudgingly extended American involvement beyond the initial one-year mandate. Ultimately, American forces remained in Bosnia for more than a decade. This highlights that once Congress gives authorization to commit U.S. forces, the president largely controls their employment and mission timeline. The president is the one who declares “mission accomplished” and brings the troops home.

Congress and National Security in the Aftermath of the Terrorist Attacks of September 11, 2001. The U.S. government’s response to the 9/11 terrorist attacks again demonstrates the inherent tension between the branches on national security and foreign policy. The attacks could be interpreted as sufficient cause for allowing the president to take immediate action without prior authorization by Congress. However, even in this situation, according to the War Powers Resolution, the president would need authorization to continue hostilities beyond the sixty-day limit. The negotiation that followed with Congress, though brief, underscores the issue. George W. Bush desired a resolution that gave him broad authority not only to act against those deemed responsible for the attacks but also to allow him to actively deter and preempt future attacks. Congress ultimately gave Bush only the authority for the first for fear the second portion would be construed too broadly. The final resolution was passed on September 14, 2001, by a vote of 98 to 0 in the Senate and 420 to 1 in the House.⁶⁴ The president clearly had the advantage in these negotiations, knowing that ultimately Congress would need to act in some manner to demonstrate to the public that it understood the seriousness of the situation and intended to support the president’s efforts.

Although it overwhelmingly supported the president and the invasion of Afghanistan to defeat the ruling Taliban regime and elements of al-Qa’ida, Congress was more assertive when it came to overhauling the domestic security apparatus in the United States. George W. Bush initially appointed a homeland security advisor and envisioned the position to have a similar function and role to that of the national security advisor. This appointment would remain within the White House and thus not be subject to congressional oversight. Congress opposed this approach and advocated a separate agency responsible for securing the homeland. By elevating the position to cabinet level, Congress would gain budgetary, oversight, and confirmation power over homeland security functions and personnel. Although the president initially rejected this approach, he ultimately acquiesced, and the Department of Homeland Security was created. With the creation of this federal bureaucracy, Congress could inhibit future presidents from acting unilaterally on homeland security issues. This issue area also created a new distributive political opportunity in that legislators could dispense new lucrative federal contracts in their states and districts. (For more on homeland security, see Chapter 6.)

A third important national security action taken after the 9/11 attacks was the U.S. decision to use force against Iraq. Shortly after the success in Afghanistan, George W. Bush and many of his advisors suggested that such states as Iraq were actively supporting terrorists and could supply them with weapons of mass

destruction (WMDs). A terrorist attack using WMDs would be so catastrophic that it could be necessary to launch preventive wars to keep this technology from falling into the wrong hands. Citing intelligence reports about Iraqi WMDs, Congress authorized the use of force against Iraq in 2002, and the U.S.-led invasion of Iraq began in March 2003. Although the U.S. military rapidly overthrew Hussein's government, no WMDs were found. The consequent insurgency, sectarian strife, and significant loss of both Iraqi and American lives led many members of Congress to question their initial support. Riding a wave of public disenchantment with the war, Democrats recaptured Congress in 2006 after twelve years of Republican hegemony. Newly in charge, key Democratic leaders, such as Speaker of the House Nancy Pelosi, argued that the people of the United States had "lost faith in the President's conduct of this war" and that Congress had a responsibility to act.⁶⁵

War Powers and the Future. Presidents continue to claim that the War Powers Resolution is unconstitutional, yet they are not eager to test its provisions in court for fear of restricting their power. Congress, faced with the unenviable position of denying a president freedom of action in a time of a crisis, has generally given the president the authority sought. However, Congress has also sought to reassert its prerogatives when it has perceived executive overreach. The executive and legislative branches are likely to continue to struggle over war powers policy.

Conclusion

The Framers gave Congress a distinct role in setting national security strategy, yet inherited institutional weaknesses have at times hampered Congress's ability to counter or condition presidential initiatives. Due to diffuse power bases, divergent member preferences, and slow decision-making processes, Congress has often been a sideline player in setting national security policy. However, this generalization admits important exceptions; Congress has on occasion successfully altered executive branch initiatives and checked presidential power. When considering the three varieties of national security policy, Congress tends to be dominant in structural policy, where its members have the most at stake due to the distributive nature of relevant policies. Due to uncoordinated and conflicting member preferences, Congress is weakest when attempting to set strategic policy. Finally, when considering war powers policy, Congress and the president actively wrestle for control, with the president historically holding the advantage.

Having examined Congress's impact on past national security policy, it is useful to recognize that new dynamics may shape the future somewhat differently. It is unlikely the Framers foresaw that the United States would become the sole global superpower or imagined that the U.S. president would become one of the most influential political leaders in the world. These developments, which have been accompanied by significant new challenges to U.S. security, have tended to strengthen the position of the president. Nevertheless, the view of the Founding Fathers that Congress provided the closest and most direct link to the American

people remains valid. For this reason, the role of Congress in formulating and executing national security and foreign policy will remain important. The extent to which Congress aggressively plays this role will continue to be affected by both institutional capacity and the character of external challenges.

Discussion Questions

1. What are the constitutional powers of Congress in the national security arena?
2. What are the advantages of the president in the making of foreign and security policy? What explains periods of relative congressional activism in national security affairs?
3. What are the institutions within Congress with the greatest role in national security affairs?
4. What are the varieties of national security policy? In which policy area does Congress play the greatest role? Why?
5. Is Congress well suited to playing the role of reformer within and among executive branch agencies? Why or why not?
6. What is the War Powers Resolution? Has it enhanced the role of Congress in national security affairs?
7. In the aftermath of the 9/11 terrorist attacks against the United States on its own soil, is Congress likely to play a greater or lesser role in national security policy vis-à-vis the president? Why?

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Internet Resources

Library of Congress THOMAS federal legislative information site, www.thomas.gov

National Archives, www.archives.gov

U.S. House of Representatives, www.house.gov

U.S. Senate, www.senate.gov