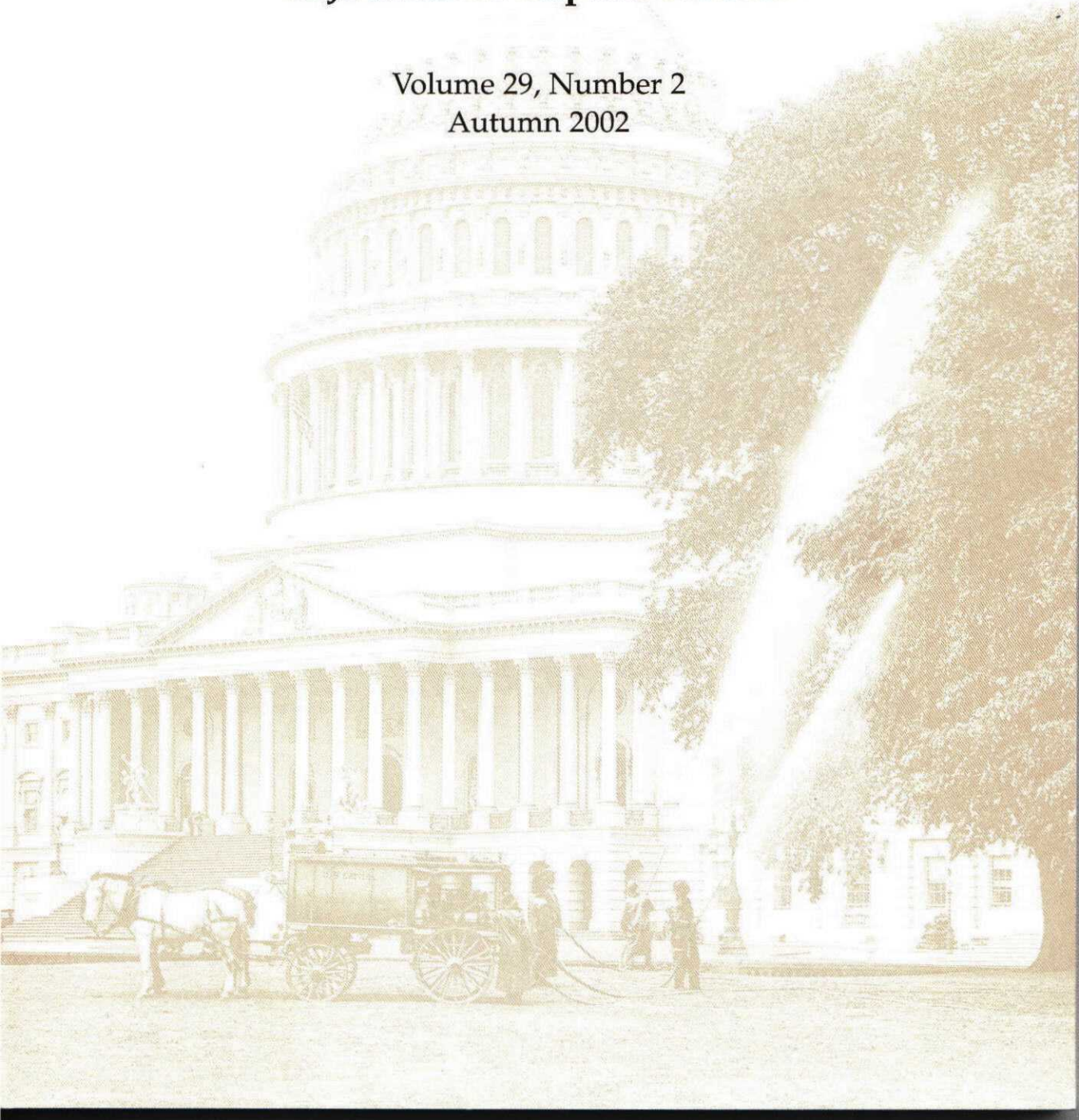


CONGRESS & THE PRESIDENCY

A Journal of Capital Studies

Volume 29, Number 2
Autumn 2002



INTRODUCTION TO THIS ISSUE

Tug of War: How Real Is the Rivalry between Congress and the President over Foreign Policy?

WILLIAM M. LEOGRANDE
American University

As President George W. Bush prepared for military action against Iraq in the fall of 2002, the White House's first instinct was to argue that the president needed no congressional authorization to take the nation to war. The counsel's office insisted that Bush's inherent powers as commander in chief and the 1991 congressional resolution authorizing the president's father to wage the Persian Gulf war were sufficient. In the face of significant bipartisan criticism, however, the president relented and sent to Capitol Hill a resolution authorizing the use of military force against Iraq, while nevertheless insisting he was under no legal obligation to do so.

The wording of the resolution was worked out in negotiations between the administration and House leaders from both parties, resulting in language declaring that the United States should seek United Nations support for military action and that one of the main aims of such action should be to enforce U.N. resolutions on Iraq. But, these concessions notwithstanding, the resolution that was finally approved by large bipartisan majorities in both the House and Senate gave the president exceptionally broad discretion. It authorized President Bush to "use the armed forces of the United States as he determines to be necessary and appropriate in order to defend the national security of the United States against the continuing threat posed by Iraq" (Congress of the United States 2002). Indeed, the mandate was so broad that it conjured memories of the 1964 Tonkin Gulf Resolution, which gave congressional imprimatur to President Lyndon Johnson's expansion of the war in Vietnam (Allen and Eilperin 2002; Balz and Milbank 2002).

Did Congress succeed in forcing the president to seek its authorization for war with Iraq and then significantly influence the terms of that authorization? Or did it engage in an empty ritual by blessing an initiative the president was going to take regardless, and giving him *carte blanche* to do it? Was this a modest triumph in Congress's battle to reassert its control over war powers—a struggle that began with the 1973 War Powers Resolution? Or was it yet another example of Congress's inability to pose a significant challenge to the president's dominance in the realm of foreign policy—a wholesale ceding of congressional authority to the White House?

Congress and the president have been battling over the conduct of foreign policy ever since the founding of the Republic, when ambiguities in the Constitution gave them "an invitation to struggle" (Corwin 1957). In recent years, scholars have been struggling just as mightily to ascertain which branch has gotten the upper hand. Most agree that the war in Vietnam marked a watershed in congressional-executive relations, and that the end of the cold war may have been another. But what, exactly, changed at these junctures has become a matter of intense debate. At first, the direction of change seemed unambiguous. Before Vietnam, there were "two Congresses," just as surely as there were "two presidencies." The domestic Congress was partisan, jealous of its authority (especially regarding money), and unafraid of battling the president to define national priorities. The foreign policy Congress was bipartisan, unassuming, and deferential to presidential leadership. After Vietnam, the foreign policy Congress appeared intent upon reasserting—some would say exceeding—its constitutional prerogatives. It reclaimed war powers with the 1973 resolution, reined in covert operations with the intelligence oversight acts, imposed human rights constraints on military assistance, and openly challenged the president's foreign policy agenda from Angola to Strategic Arms Limitation (SALT) to Central America (Franck and Weisband 1979; Crabb and Holt 1989).

But by the 1990s, a revisionist scholarship had begun to emerge questioning whether the Imperial Congress was really all that it was cracked up to be. Even the changes of the Vietnam era were not necessarily as stark as they appeared, because the era of cold war bipartisanship was not really so convivial if one looked closely. The president's foreign aid budget, to cite the clearest example, never had easy transit through the Congress, even at the height of the cold war. Nor did partisanship really stop at the water's edge. Republicans attacked Truman for losing China. Democrats (Kennedy in particular) attacked Eisenhower for being soft on Cuba and creating a "missile gap." Republicans returned the favor, accusing Kennedy of being soft on Cuba (at least until the Missile Crisis). After Vietnam, Congress's vaunted assertiveness was actually "less than meets the eye," in Barbara Hinckley's (1994) phrase—more a matter of symbolic politics than substantive policy making, designed to convince constituents that Congress is actively engaged when in reality it is not.

Three of the four articles in this issue of *Congress & the Presidency* focus explicitly on the relationship between Congress and the president in foreign policy over the past half century, while the fourth looks at changes in the White House's management of foreign policy during the same time frame. They represent a new effort at synthesis between the claims of those who see Congress as "resurgent" in foreign policy (Ripley and Lindsay 1993; Lindsay 1994), and those who see it as a paper tiger (Hinckley 1994; Weissman 1995).

In "Acting on the Hill: Congressional Assertiveness in U.S. Foreign Policy," James M. Scott and Ralph G. Carter argue that both sides in the scholarly debate are half-right, but have been talking past one another. The key, these authors claim, is to distinguish between congressional activism and congressional assertiveness. That is, Congress may be less actively involved in the foreign policy

field, as Hinckley claims, while nevertheless being more assertive in its relations with the executive on those issues where it chooses to be active. The authors operationalize congressional activity as the number of congressional foreign policy actions per year from 1946 to 1997 and code each action into one of four categories of compliance-assertiveness relative to the executive branch's position. They also disaggregate the data by era (cold war, post-Vietnam, post-cold war) and across issue areas. Their analysis shows that while activism does, indeed, decline over time, conflict with the executive branch becomes more frequent, especially in the post-Vietnam period. The largest increases in congressional-executive conflict are found in the areas of foreign economic policy and military-security policy, suggesting that the issue-composition of the agenda is itself an important variable.

In "The Pendulum of Congressional Power," Bryan W. Marshall and Brandon C. Prins focus precisely on the issue of agenda change. They begin from the premise that Wildavsky's (1969) model of the "two presidencies" has been rendered obsolete by changing dynamics between the two branches. They identify the two most frequently mentioned causes of that change: increased partisanship over foreign policy, which they attribute to the breakdown in consensus about national security after Vietnam and the end of the cold war; and the congressional reforms of the 1970s, which reduced the executive's informational and staff advantages, while at the same time eroding the ability of senior party leaders to control the membership. Together, these two changes created both motive and opportunity for increased activism.

But the most important reason for the growth of congressional activism, Marshall and Prins argue, is the changing agenda of foreign policy issues coming before Congress. If the foreign policy Congress begins to look a lot more like the *domestic Congress after Vietnam*, it is because the foreign policy agenda has become a lot more intermestic. Economic and trade issues have come to the fore, replacing politico-military ones. Not only do intermestic issues have more immediate and tangible impact on constituents' interests, they are also more likely to divide public opinion. One could argue that all Americans shared an interest in safeguarding national security against threats from the Soviet Union, but free-trade proposals inherently have winners and losers. They are therefore likely to be more contentious, and that contentiousness is likely to be expressed by representatives in Congress.

Looking first at roll call votes on foreign policy issues from the 83rd to 105th Congresses, and then at committee action in the House Foreign Affairs (now International Relations) and Armed Services Committees, Marshall and Prins compare congressional activism in the pre-1974 period (before Vietnam and congressional reform) and the post-1974 period. They find that economic and trade issues do, indeed, come to represent a larger proportion of the foreign policy agenda for Congress, and that these issues are also more conflictual (as measured by the president's success rate in Congress). But as they themselves acknowledge, the shift in agenda only solves part of the puzzle, because after 1974, presidential success rates also decline for more traditional foreign policy issues in the political-military sphere.

In "Clinton, Congress, and Cuba Policy Between Two Codifications," Walt Vanderbush and Patrick J. Haney address the evolving relationship between Congress and the president by focusing in detail on a case study: U.S. policy toward Cuba. In 1996, Cuban air force MiGs shot down two civilian planes piloted by Cuban-Americans from the group Brothers to the Rescue, killing the pilots. The resulting outrage led Congress to pass the Helms-Burton bill, which not only tightened U.S. economic sanctions against Cuba but also codified them into law. Previously, the sanctions were in the form of executive orders, which could have been lifted at the discretion of the president. To the surprise of many observers, President Clinton signed the bill, even though it meant relinquishing substantial presidential authority over policy toward Cuba.

Vanderbush and Haney explain congressional activism in the Cuban case as a consequence of two key factors: the character of the policy, and the salience of the policy to the public. Cuba policy generally and the Helms-Burton decision specifically are cited as an instance of "strategic policy" (i.e., policy that concerns "the basic goals and tactics" of U.S. policy toward other countries), as distinct from "structural policy" (essentially appropriations decisions, such as defense and foreign assistance, where Congress has a constitutionally mandated structural role), and "crisis policy," (where the urgency of time gives the executive the upper hand). But the more important variable is clearly political salience: for many Cuban-Americans, there is no policy with higher salience than relations with Cuba. Vanderbush and Haney argue that any foreign policy issue that energizes important domestic constituencies is more likely to spur congressional activism, an argument very close to the one Marshall and Prins make for economic and trade issues.

The most interesting part of Vanderbush and Haney's article is the description of President Clinton's efforts to gradually recover the initiative in policy toward Cuba, despite the apparently tight straitjacket of Helms-Burton. They examine in detail the ways in which the president exploited loopholes in the law and ambiguities in its phrasing to expand travel to Cuba, approve "people to people" contacts of various sorts, license humanitarian assistance, and even authorize sales of agricultural materials to private Cuban farmers. One is reminded of President Ronald Reagan's response to congressional limits on military aid to El Salvador and the Nicaraguan contras during the 1980s. With sharp lawyers to justify every particular action, Reagan simply ignored the spirit and sometimes the letter of the law rather than adjust his policy to make it consistent with congressional mandates. Cases like these show that presidents have a virtually unlimited capacity to get away with interpretations of the law that strain credulity, because Congress is unwilling to provoke a crisis between the branches over the details of how the president is carrying out (or failing to carry out) the law. As Congress has become more willing to contest presidential control over foreign policy, a key retaliatory weapon in the president's arsenal is precisely this strategy of seeking refuge in the executive's authority to execute the law.

Another interesting point to emerge from this case study of Cuba policy is how quickly the prevailing mood in Congress shifted from 1996, when Congress passed

Helms-Burton, to 2001, when Congress began to back away from economic sanctions under pressure from U.S. business, especially agricultural interests in the Republican Midwest. With George W. Bush in the White House, the shifting congressional mood put the policy shoe on the other foot. Now it was Congress trying to loosen Cuba policy and the president insisting that it remain unchanged. Cuban-American hardliners, who relished seeing Congress tying the hands of Bill Clinton, railed against the Imperial Congress and rallied behind the principle of executive leadership in foreign policy when the political winds in Congress shifted.

In "A Place at the Table: The Emerging Foreign Policy Roles of the White House Chief of Staff," David B. Cohen, Chris J. Dolan, and Jerel A. Rosati pick up the argument that in the post-Vietnam period, foreign policy issues have a stronger domestic component. But rather than endeavoring to explain the reasons for this shift, they take it as their point of departure, exploring its implications for the organization of the White House staff in the conduct of foreign policy. Most of the article is an excellent historical narrative that traces the changing roles of the chiefs of staff and national security advisers through the cold war and post-cold war eras.

Prior to Richard Nixon's presidency, the chief of staff focused almost exclusively on domestic issues, with the national security adviser playing an equivalent role in foreign affairs. The breach in this divide, Cohen, Dolan, and Rosati argue, began with Al Haig. As Nixon was consumed by Watergate, Haig took on a more assertive role in foreign policy, aided by the fact that he had been Henry Kissinger's deputy at the National Security Council (NSC). In Jimmy Carter's White House, COS Hamilton Jordan served as a foreign policy advisor, participating in the Friday morning foreign policy group. During Ronald Reagan's first administration, National Security Adviser Richard Allen had no independent access to the president, instead reporting through Chief of Staff James Baker and Counselor Edwin Meese. The chief of staff's role in foreign policy was institutionalized when Donald Regan was formally named to the NSC. In the end, the authors conclude, "The spread of technology, modernization, and global interdependence has led to the breakdown in the separation of foreign and domestic policy." Foreign policy has become more intermestic and hence more contentious domestically. With the two presidencies merging into one, it no longer makes sense to have two chiefs of staff, one for domestic policy and one (the national security adviser) for foreign policy.

These four articles exemplify recent scholarly efforts to dig below the surface of the debate between those who see the glass of congressional activism as half empty and those who see it as half full. Taken together, they make a strong case that the dynamics of the foreign policy process, both between the branches and within them, have in fact changed significantly in the years since Vietnam. The conflicts that gave rise to the "assertive Congress" model have proven to be neither illusory nor passing; they do represent a real shift in the deeper dynamics of the policy process. But congressional assertiveness, as it turns out, is not constant. It varies across issue areas and time periods. Not surprisingly, it is most pronounced on issues most likely to stir domestic constituencies to attention and action. The closer one looks, the more nuanced the relationship between Congress

and the president appears, and the more deserving of careful scholarly attention. But we probably should not expect a quick and easy resolution to the controversy. Just as the branches are engaged in perennial contention over the balance of power in the field of foreign affairs, scholars are likely to remain engaged in an ongoing debate over who is winning the tug of war.

References

- Allen, Mike, and Juliet Eilperin. 2002. "Bush Aides Say Iraq War Needs No Hill Vote," *Washington Post*, August 26, 2002.
- Balz, Dan, and Dana Milbank. 2002. "Iraq Policy Shift Follows Pattern; Bush's Move to Consult Congress Seen as Damage Control," *Washington Post*, September 6, 2002.
- Congress of the United States. 2002. H.J.Res. 114, "Authorization for Use of Military Force Against Iraq Resolution of 2002 (Enrolled as Agreed to or Passed by Both House and Senate)." Available at <<http://thomas.loc.gov>>.
- Corwin, Edward. 1957. *The President: Office and Powers, 1787-1957*. New York, NY: New York University Press.
- Crabb, Cecil V., Jr., and Pat M. Holt. 1989. *Invitation to Struggle: Congress, the President, and Foreign Policy*. Washington, DC: Congressional Quarterly Press.
- Franck, Thomas, and Edward Weisband. 1979. *Foreign Policy by Congress*. New York, NY: Oxford University Press.
- Hinckley, Barbara. 1994. *Less than Meets the Eye: Foreign Policy Making and the Myth of the Assertive Congress*. Chicago, IL: University of Chicago Press.
- Lindsay, James M. 1994. *Congress and the Politics of U.S. Foreign Policy*. Baltimore, MD: Johns Hopkins University Press.
- Ripley, Randall B., and James M. Lindsay, eds. 1993. *Congress Resurgent: Foreign and Defense Policy on Capitol Hill*. Ann Arbor, MI: University of Michigan Press.
- Weissman, Stephen R. 1995. *A Culture of Deference: Congress's Failure of Leadership in Foreign Policy*. New York, NY: Basic Books.
- Wildavsky, Aaron. 1966. "The Two Presidencies." *Trans-Action* 4 (December):7-14.