

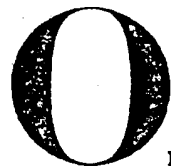
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FOREIGN AFFAIRS  
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## CONGRESS VERSUS THE PRESIDENT: THE FORMULATION AND IMPLEMENTATION OF AMERICAN FOREIGN POLICY

The President is the sole organ of the nation in its external relations,  
and its sole representative with foreign nations.

—John Marshall  
March 7, 1800  
6th Congress



One of the oldest conflicts in the American system of government is that between Congress and the President over the right to formulate and implement foreign policy. Is the President solely responsible for the conduct of external relations? Is the Congress an equal partner? Or does Congress have the right to shape U.S. policy by enacting legislation which proscribes a President's flexibility? These are not just debating points for historians and constitutional lawyers, but critical issues which need to be addressed if we are to see the successful exercise of American diplomacy in the 1980s. Our effectiveness in dealing with the problems ahead, especially U.S.-Soviet competition in the Third World, will depend to a significant degree on our ability to resolve the adversary relationship between the President and Congress.

The struggle for control of foreign policy came to the fore in the twentieth century, with America's reluctant entry into world affairs, two World Wars, and a smaller, but more complex, postwar bipolar world characterized by the increasing interdependence of nations. The first significant Congressional challenge to the Executive's foreign policy prerogative occurred during the interwar years. After the Senate rejected President Wilson's Versailles Treaty in 1920, Congress continued to assert itself in the formulation of foreign policy. By the 1930s, a strong Congress was able to prevent presidential initiative in the critical prewar years. The almost universal consensus today is that this Congressional intrusion had been a disaster and had inhibited the United States from playing a useful role in Europe that might have prevented World War II.

Following the Japanese attack on Pearl Harbor and our entry into the Second World War, Congress and the President stood in agreement over the direction of American foreign and military policy. Congressional intervention all but ceased.

The post-World War II period was marked by a reasonable balance between Congress and the President in the foreign policy decision-making process. In fact, Presidential foreign policy initiatives were generally accepted and reinforced by bipartisan support on Capitol Hill. American foreign policy was fairly co-

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herent and consistent through changing complexions of the body politic. The United States was perceived as a reliable ally and its leadership generally accepted with a high degree of confidence by the non-communist world. But the relative stability between Congress and the President began to erode in the early 1970s with Congressional disenchantment over the Vietnam War. By mid-decade the two branches were locked in a struggle for control of American foreign policy. To a certain extent Congress won, and the balance between Congress and the President has swung dangerously to the legislative side with unfavorable consequences for American foreign policy.

If the balance is not soon restored, American foreign policy will be unable to meet the critical challenges of the 1980s. We are entering an era of fast change and increasing volatility in world affairs. Political instability and regional conflict are on the rise, especially in the Third World. Developing nations in many parts of the world are being torn apart by civil wars between pro-West and Soviet-supported factions, subverted by externally supported insurrection, or subjected to radical or reactionary anti-Western pressures. The industrialized economies of the West are ever more dependent on a lifeline of resources from an increasingly vulnerable part of the world. The Soviet Union has pursued an aggressive interventionist policy on its periphery and abroad, supported by its emerging global force projection capability and its successful use of less direct means of projecting power.

We may well be in a situation today which is analogous to that of the late 1930s, when America's inability to play a more active role in world affairs helped permit the Axis to realize its objectives without serious challenge. During this period Congress tied the President's hands, with disastrous consequences. Now we are back in the same situation, and risk making the same mistakes. If the United States is prevented from playing an active role in countering Soviet and Soviet proxy involvement in the Third World, the 1990s could well find a world in which the resource-rich and strategically important developing nations are aligned with the Soviet Union.

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After the Indochina debacle, there was a raft of Vietnam-syndrome legislation that sought to prevent the President from getting us involved in "future Vietnams." The *Tunney Amendment* to the Defense Appropriations Act of 1976 (P.L. 94-212), which passed the Senate on December 19, 1975, prohibited the use of "funds appropriated in this Act for any activities involving Angola other than intelligence gathering." My colleagues feared that President Ford's attempts to offer minimal assistance to the pro-West UNITA (National Union for the Total Independence of Angola) and FNLA (National Front for the Liberation of Angola) factions would somehow embroil us in "another Vietnam." The domestic debate over whether we should become involved in Angola sent a clear signal to the Soviets and their Cuban proxies. They knew that the risk of U.S. intervention was low, and the possibility of continued U.S. assistance to the pro-Western factions slim.

Although the Soviet-Cuban airlift halted temporarily in December with President Ford's stern warning to the Soviet Ambassador, the airlift resumed with a vengeance following passage of the *Tunney Amendment* on December 19, 1975. The number of Cubans in Angola doubled as they began flying in fresher troops for what was to become an all-out offensive against pro-Western forces. By January the Soviet Union had increased its military assistance to the MPLA (Popular Movement for the Liberation of Angola) and stationed Soviet warships in the vicinity of Angola. They began extensive ferrying operations for Cuban troops. It was clear that the United States had lost whatever leverage it might have had to persuade Soviet leaders to reduce Soviet and Cuban involvement in Angola.

With Angola the Soviet Union entered a new phase; never before had it or its surrogate Cuban army attempted such large-scale operations in Africa or anywhere else in the Third World. Their successful intervention in Angola bestowed on the Soviet Union and Cuba the image of dependable allies and supporters of radical movements in southern Africa. The United States by contrast was portrayed as having lost its taste for foreign involvement after Vietnam, and as being domestically divided over a foreign policy strategy. The moderate black African states lost confidence in America's willingness to stem the tide of Soviet involvement in the region.

After being reduced to sporadic guerrilla engagements for over a year, in July 1977 the pro-West UNITA faction declared its intention to renew the fight. Following this announcement, the Soviets and Cubans increased their efforts. As of late 1979, there were some 19,000 Cuban troops, 6,000 Cuban civilian technicians and 400 to 500 Soviet advisors in Angola. Although the guerrilla war continues, the Clark Amendment prohibits the United States from offering any aid to the pro-Western faction. The Clark Amendment prevents us from responding to Soviet and Cuban involvement in Angola, and leaves open to them the mineral-rich, strategically important region of southern Africa.

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Finally, two of the most damaging Congressional intrusions into national security policy were the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the so-called *Church Committee*) and the *Hughes-Ryan Amendment* to the Foreign Assistance Act (P.L. 93-189). As vice-chairman of the Church Committee (1975-76) I sought to limit the damage to our intelligence community, although to little avail. By conducting a public inquiry into the CIA we exposed not only its supposed blunders and malfeasance but also important information as to how the CIA is organized, how it gathers intelligence and what kinds of sources and methods it uses.

The Hughes-Ryan Amendment, which became law on December 30, 1974, prohibited any CIA activities abroad that are not directly related to intelligence gathering, "unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operations to the appropriate committees of Congress." By 1977 information about covert intelligence activities was available to eight Congressional committees, for a total of 200 members or roughly 40 percent of Congress.<sup>2</sup>

This, plus the Church Committee hearings, confirmed to our adversaries that clandestine operations would be severely curtailed in the future. It sent a signal to our adversaries that they could proceed with impunity in the "back alleys of the world." These actions also shook the confidence of those friendly states which had cooperated with us in intelligence gathering, and caused many of them to reassess their relationship with the U.S. intelligence community. They feared Congressional investigations of the CIA would expose their own intelligence sources and methods. In private conversations with officials of friendly intelligence agencies, I have been told that the Church Committee raised doubts about the wisdom of their cooperating with the United States in the future. This has also adversely affected our cooperation with countries that for political reasons take a publicly hostile attitude toward the United States, but who privately cooperate with us on some matters of mutual interest. They fear the publicity generated by a Congressional investigation would expose what is essentially a private relationship, and lead to unfavorable domestic political consequences for them. Finally, either through leaks or publicly released data, the Church Committee titillated the press with daily helpings of some of our nation's most treasured secrets.

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If we are to meet the foreign policy challenges facing us in the 1980s, we must restore the traditional balance between Congress and the President in the formulation and implementation of foreign policy. To do so, much of the legislation of the past decade should be repealed or amended.

Many in Congress are coming to this conclusion and are working toward a reversal of the imbalance. The 1980 modification of the Hughes-Ryan Amendment to require notification of covert actions to only the two Intelligence Committees is one such step, as is the Senate's October 22, 1981, vote to repeal the Clark Amendment.

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Further efforts in this direction are essential if we are to have the maximum flexibility required to respond to a fast-changing world.

In addition to reversing much of this legislation, we should also look at new legislation which may be appropriate. There are strong arguments in favor of creating an unspecified contingency fund for economic and military assistance. One of the consequences of the 1970s legislation was that such funds which had previously existed were either abolished or severely curtailed. Reestablishment of such funds would grant the President the flexibility he needs to be able to respond quickly to help new friends that emerge unexpectedly, or old friends who are suddenly endangered. While disbursement of these funds should be made with appropriate notification to Congress, the inevitable delays involved in waiting for new Congressional authorization should be avoided.

For example, when Zimbabwe became independent on April 18, 1980, the new government was strongly anti-Soviet, pro-West and in need of economic assistance. On the day he took office, President Mugabe invited the United States to be the first nation to establish diplomatic relations with and open an embassy in Zimbabwe. We responded with a pledge of economic assistance, but due to the lack of funds for such contingencies, were able to grant only \$2 million. We had to wait almost ten months, until the next appropriations cycle could be completed, to grant Zimbabwe the amount of economic assistance it needed.

We face a similar situation in northern Africa today. In the confusion cast over the area in the wake of the Sadat assassination, Libyan President Qaddafi has heightened threats against the anti-Soviet government of Sudan. The Libyan army appears to be on an alerted posture. Were Libya to attack Sudan tomorrow, there is very little the United States could do right away to assist President Nimeiry.

As legislation now stands the President has certain limited flexibility to grant military assistance to respond quickly to unplanned situations. The Foreign Assistance Act of 1961, as amended, permits the President, in the interests of national security, to draw on U.S. military stocks, defense services, or military education and training, up to \$50 million in any fiscal year for foreign use. In 1981 the Reagan Administration requested that new contingency funds totalling \$350 million be established for emergency economic and military assistance. As of mid-November 1981 Congressional action on this request is still pending, although it appears that both Houses are moving to reduce significantly the size of these contingency funds.

In supporting such discretionary authority and appropriations, and urging the repeal of the excessively restrictive legislation of the 1970s, I am in effect proposing a return to the situation that prevailed in the 1950s and 1960s.

At that time the Congress did provide discretionary authority and substantial contingency funds for the use of Presidents Truman, Eisenhower, Kennedy and Johnson. Each of these Presidents employed his authority to act quickly and decisively in ways which, on balance, served the national interest—especially in new and unforeseen situations emerging in what we now call the Third World. The basic authority of the Congress to appropriate funds for the armed forces and foreign activities remained constant. *CONTINUED*

Indeed, the Congress from time to time expressed its views forcefully as to the desirability of support for nations that acted in ways prejudicial to American interests. (An early example of such legislation was the Hickenlooper Amendment, which for many years expressed Congress' general opposition to continue aid to countries that nationalized private American companies without adequate compensation.) The crucial difference is that such expressions of Congressional sentiment almost invariably contained a saving clause that permitted the President to go ahead if he certified to the Congress that the action was necessary for overriding national security reasons. This is a perfectly sound and reasonable practice, and one that avoids the immense complications and possible unconstitutionality of the legislative vetoes introduced by the various amendments of the 1970s.

In short, what I propose above is vastly more effective than the present situation, sounder from every constitutional standpoint, and fully in keeping with past precedents.

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Finally, in reconsidering the legislation of the 1970s, it is useful to reexamine it and its causes in a more dispassionate light than that of the period. At the time, much of this legislation was considered a necessary response to counter the excesses of the presidency. Since the Vietnam War had never been formally declared by Congress, it was seen as the President's war. Watergate, along with the war, was considered to be the result of a Presidency grown too authoritarian. If the war were ever to end, and if future Vietnams were to be prevented, the President's foreign policy authority would have to be proscribed. As Arthur Schlesinger put it, the theory "that a foreign policy must be trusted to the executive went down in flames in Vietnam. . . . Vietnam discredited executive control of foreign relations as profoundly as Versailles and mandatory neutrality had discredited congressional control."<sup>3</sup>

If this legislation was motivated by an "Imperial Presidency," whose ultimate manifestation was an undeclared war, then the motivation is flawed. Blame for Vietnam can be laid at many doors: a series of American Presidents, and those in the civilian leadership who advocated gradual escalation and limited rules of engagement. But Congress was not blameless. The war in Vietnam, while undeclared by Congress in a formal sense, had de facto Congressional support. Beginning in the mid-1960s the Administration sent defense authorization and appropriations bills to Congress—legislation which clearly designated certain men and monies for the war effort. Year after year Congress acquiesced in the Vietnam War, by authorizing and appropriating resources for it. As former Senator J. William Fulbright remarked, "It was not a lack of power which prevented the Congress from ending the war in Indochina but a lack of will." With waning public support for a war which seemed to drag on forever, many in Congress and the media looked to a single explanation—for a scapegoat who could be held accountable for an unpopular war.

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Blame for the war in Vietnam was attributed to the usurpation of power by the President.

In the early 1970s Congress reversed itself and belatedly attempted to use its appropriation authority to end the war. While this was certainly within its prerogative, the timing was of questionable wisdom. Our efforts to disengage from Vietnam and to negotiate with the North Vietnamese were made more difficult by Congressional intervention. Congressional action made a settlement all the more difficult to achieve and, ultimately, impossible to enforce. The view that the Vietnam War discredited forever Executive control of foreign policy was an emotional reaction, driven by the passion of the moment. Because of it, Congress embarked on a course to limit not only President Nixon's flexibility, but also that of future Presidents. Congress prescribed a cure for a nonexistent disease. The lasting effect was that Congress institutionalized its foreign policy differences with the President by legislating permanent solutions for a temporary situation.

As Cyrus Vance said at the 1980 Harvard commencement, "Neither we nor the world can afford an American foreign policy which is hostage to the emotions of the moment." The authority to conduct external relations should not vacillate between Congress and the President as a result of failed or unpopular initiatives. The whole point of a written constitution and body of judicial opinion is to establish a consistent mechanism for apportioning authority. Whereas the Constitution confers on the Senate the duty of advice and consent in the making of treaties, on the Congress the power to appropriate monies for armed forces and to declare war, and special authority in the field of trade, it confers on Congress no other special rights in the field of external affairs.

The cumulative effect of this legislation is that, as the United States enters a period when the greatest flexibility is required of an American President to deal with fast-changing situations in the world, Congress has inhibited the President's freedom of action and denied him the tools necessary for the formulation and implementation of American foreign policy. We know that the Soviet Union maintains clandestine operations which are well organized, well disciplined, well financed, well trained and often well armed, in virtually every Third World country. They are in a position to exploit many restive political situations which they may or may not originate. To inhibit the United States in its ability to conduct covert operations, to provide military assistance to pro-West governments or groups, and to respond quickly to military crises is to concede an enormous advantage to the Soviet Union and its proxies.

It is my sincere hope that Congress will reexamine its role in the conduct of foreign policy and repeal or amend, as necessary, the legislation of the 1970s. The end towards which we should work is to do whatever is necessary to strengthen America's ability to formulate and implement a unified, coherent and cohesive foreign policy to face the challenges of the 1980s.

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<sup>1</sup> The Clark Amendment to the Arms Export Control Act of 1976 (Sec. 404, P.L. 94-329), which became law on June 30, 1976, further tightened the restriction by prohibiting "assistance of any kind . . . for the purpose, or which would have the effect, of promoting or augmenting, directly or indirectly, the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola."

<sup>2</sup> In one of the few reversals of the 1970s legislation, in October 1980 the President signed into law an amendment to the National Security Act (P.L. 96-450), which stipulates that he must report covert operations to only two Congressional Committees, the House and Senate Select Committees on Intelligence.

<sup>3</sup> Arthur M. Schlesinger, Jr., *The Imperial Presidency*, Boston: Houghton Mifflin, 1973, pp. 282-83.

**EXCERPTED**

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John G. Tower has been a Senator from Texas since 1961. He is currently Chairman of the Senate Armed Services Committee.