

## Deference and Defiance: The Shifting Rhythms of Executive-Legislative Relations in Foreign Policy

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*The return of the deferential Congress after September 11 was another chapter in the fluctuating balance of power in executive-legislative relations on foreign policy. The reason for this ebb and flow lies not in the Constitution but in politics. How aggressively Congress exercises its formal foreign policy powers turns foremost on whether the country sees itself as threatened or secure and to a lesser extent on how well the president handles foreign policy. Congress's action on the 2001 Use of Force Resolution, the 2002 Iraq Resolution, the U.S.A. Patriot Act, and other issues illustrates the nature of, and limits to, congressional deference.*

The presidencies of Bill Clinton and George W. Bush contrast in many ways, perhaps no more so than in their divergent experiences in dealing with Congress on foreign policy. Clinton confronted a Congress that frequently sought to defy his initiatives and at times seemed to take glee in doing so. His list of defeats on Capitol Hill is long. Congress forced him to withdraw U.S. troops from Somalia in 1994. It slashed his foreign aid requests. It refused to grant him fast-track trade negotiating authority. It forced him to accept national missile defense and regime change in Iraq as goals of U.S. foreign policy even though he and many of his advisers doubted the wisdom and practicality of both. It blocked his efforts to pay U.S. back dues to the United Nations. The Senate rejected the Comprehensive Test Ban Treaty. Even when Congress backed Clinton on foreign policy, as with the dispatch of U.S. peacekeepers to Bosnia and the Senate's approval of the Chemical Weapons Convention and NATO enlargement, the victories seemed to require inordinate administration effort.

Bush's experience has been far different. Congress was eager to defer to his leadership on many foreign policy issues. It overwhelmingly authorized him to wage not one but two wars. It acceded to his decisions to leave the 1972 Anti-Ballistic Missile (ABM) Treaty and move to develop an expansive new national missile defense. It gave him most everything he requested for defense and foreign affairs spending. It embraced his request to begin the largest reorganization of the federal government in more than a century. It gave him the trade-promotion (formerly fast-track) authority it had denied

Clinton. Perhaps most significant, he had all Republicans and many Democrats rushing to tell voters that they supported his national security policies.

September 11 explains Congress's shift from defiance of Clinton to deference to Bush. The attacks on the World Trade Center and the Pentagon altered the American political landscape in the United States. Members of Congress who previously took pride in standing up to the White House suddenly saw the better part of good policy and good politics lying in a willingness to rally around the president.

The change that September 11 caused in executive-legislative relations was extreme but not unprecedented. The pendulum of power on foreign policy has shifted back and forth between Congress and the president many times over the course of American history. The reason for this ebb and flow does not lie in the Constitution. Its formal allocation of foreign policy powers, which gives important authorities to both Congress and the president, has not changed since it was drafted. Rather, the answer lies in politics. How aggressively Congress exercises its foreign policy powers turns on the critical questions of whether the country sees itself as threatened or secure and whether the president's policies are succeeding or failing. Simply put, times of peace and presidential missteps favor congressional defiance. Times of war and presidential success favor congressional deference.

## The Constitution and Foreign Policy

Ask most Americans who makes foreign policy in the United States and their immediate answer is: the president. To a point they are right. Still, even a cursory reading of the Constitution makes clear that Congress possesses extensive foreign policy powers. Article 1, Section 8 assigns Congress the power to "provide for the common Defence," "To regulate Commerce with foreign Nations," "To define and punish Piracies and Felonies committed on the high Seas," "To declare War," "To raise and support Armies," "To provide and maintain a Navy," and "To make Rules for the Government and Regulation of the land and naval Forces." Article 2, Section 2 specifies that the Senate must give its advice and consent to all treaties and ambassadorial appointments. Congress's more general powers to appropriate all government funds and to confirm Cabinet officials provide additional means to influence foreign policy.

The lesson here is that when it comes to foreign affairs, Congress and the president *both* can claim ample constitutional authority. The two branches are, in Richard Neustadt's (1990, 29) oft-repeated formulation, "separated institutions *sharing* power." The question of which branch should prevail as a matter of principle when their powers conflict has been disputed ever since Alexander Hamilton and James Madison squared off two centuries ago in their famed Pacificus-Helvidius debate. Hamilton argued that the president was free to exercise his powers as he saw fit even if those actions might "affect the exercise of the power of the legislature. . . . The legislature is still free to perform its duties, according to its own sense of them; though the executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decision" (Smith 1989, 52). Madison denied that there

be such a thing as concurrent authority and insisted that the president could not exercise his authority in ways that would “abridge or affect” the enumerated powers of the legislature (Smith 1989, 56).

At the start of the twenty-first century, Hamilton’s and Madison’s intellectual descendants continue to spar, and they will undoubtedly continue to do so for years to come. Their battles often unleash the same passion they did two hundred years ago. Yet, these battles are also largely academic, interesting intellectual exercises but seldom applicable to real world policy debates. The fact that the Constitution grants Congress extensive foreign policy powers means that most executive-legislative disputes do not raise constitutional issues. They instead raise political issues and involve the exercise of political power. That is the insight behind Edward Corwin’s oft-repeated observation that the Constitution is “an invitation to struggle for the privilege of directing American foreign policy” (Corwin 1957, 171).

To say that Congress can put its mark on foreign policy, however, is not the same as saying that it will try to do so. To understand why congressional activism on foreign policy varies over time, it is necessary to leave the realm of law and enter the realm of politics.

### Politics and Foreign Policy

The first explanation for Congress’s fluctuating say in foreign policy lies in an observation that Alexis de Tocqueville made more than 150 years ago. Surprised to find that the pre-Civil War Congress played a major role in foreign policy, he speculated that congressional activism stemmed from the country’s isolation from external threat. “If the Union’s existence were constantly menaced, and if its great interests were continually interwoven with those of other powerful nations, one would see the prestige of the executive growing, because of what was expected from it and of what it did” (de Tocqueville 1969, 126).

Why might threat perceptions affect how Congress behaves? When Americans believe they face few external threats—or think that international engagement could itself produce a threat—they see less merit in deferring to the White House on foreign policy and more merit to congressional activism. Debate and disagreement are not likely to pose significant costs; after all, the country is secure. When Americans believe the country faces an external threat, however, they quickly convert to the belief that the country needs strong presidential leadership. Congressional dissent that was previously acceptable suddenly looks to be unhelpful meddling at best and unpatriotic at worst. Members of Congress are no different than their constituents. They feel the same shifting sentiments toward the wisdom of deferring to the president. They are also profoundly aware that being on the wrong side of that shift could hurt them come the next election.

Throughout American history, power over foreign policy has flowed back and forth between the two ends of Pennsylvania Avenue according to this basic dynamic. In the second half of the nineteenth century, the United States was as secure from foreign attack

as at any time in American history. This was also a time when Congress so dominated foreign policy that it has been called the era of “congressional government,” “congressional supremacy,” and “government-by-Congress.” When the United States entered World War I, the pendulum of power swung to the White House. Woodrow Wilson experienced few congressional challenges during his war presidency. But once the war ended, Congress—and the Senate in particular—reasserted itself. Congressional activism persisted into the 1930s and even intensified. Convinced that America would be safe only as long as it kept out of Europe’s political affairs, Congress’s isolationist majority bitterly resisted any step President Franklin Roosevelt might take that could involve the United States in the war brewing across the Atlantic.

Japan’s bombing of Pearl Harbor punctured the isolationists’ arguments and greatly expanded FDR’s freedom to conduct foreign policy. He made virtually all of his major wartime decisions without reference to or input from Capitol Hill. When World War II ended, Congress began to reassert itself. Senior members of the House Foreign Affairs and Senate Foreign Relations Committees helped draft the United Nations Charter, the peace treaties for the Axis satellite states, and mutual security pacts such as the NATO Treaty.

But growing concerns about the Soviet Union slowed the shift of power away from the White House. As Americans became convinced in the late 1940s that hostile communist states threatened the United States and the rest of the free world, they increasingly came to agree on two basic ideas: the United States needed to resist communist expansion, and achieving this goal demanded strong presidential leadership. Most members of Congress shared these two basic beliefs (and helped promote them); those who disagreed risked punishment at the polls. The process became self-reinforcing. As more lawmakers stepped to the sidelines on defense and foreign policy over the course of the 1950s, others saw it as increasingly futile, not to mention dangerous politically, to continue to speak out. By 1960, the “imperial presidency,” the flip side of a deferential Congress, was in full bloom (Schlesinger 1973). As one senator complained in 1965, members of Congress were responding to even the most far-reaching presidential decisions on foreign affairs by “stumbling over each other to see who can say ‘yea’ the quickest and loudest” (Sundquist 1981, 125).

The era of congressional deference to the imperial presidency came to a crashing halt with the souring of public opinion on the Vietnam War. Many Americans became convinced that communist revolutions in the third world posed no direct threat to core U.S. security interests, just as détente persuaded many that Leonid Brezhnev’s Soviet Union posed less of a threat to core U.S. security interests. With the public more willing to question administration policies, so too were members of Congress. Many more had substantive disagreements with the White House over what constituted America’s vital interests and how best to protect and advance them. Moreover, lawmakers had less to fear politically by the early 1970s in challenging the White House than they had only a few years earlier. Indeed, many calculated that challenging the president’s foreign policies could actually help them at the ballot box by enabling them to stake out positions that their constituents favored. The result was a predictable surge in congressional activism.

Members of Congress did not always succeed in putting their stamp on foreign policy in the 1970s and 1980s. Knee-jerk support of the president was gone, but elements of congressional deference persisted among senior lawmakers (who had come of age during the era of congressional deference) and moderates (who worried that defeating the president could harm the country's credibility). Presidents from Richard Nixon through the elder George Bush often prevailed on major issues because they could persuade these groups to join them with a simple argument: the administration's policy might have shortcomings, but rejecting the president's request would damage his standing abroad, perhaps embolden Moscow to act more aggressively, and ultimately harm American interests. Yet the mere fact that post-Vietnam presidents had to make this argument showed how much had changed from the days of the imperial presidency. Presidents Ford, Carter, and Reagan did not get the acquiescence from Capitol Hill that Presidents Eisenhower and Kennedy did.

Although perception of the external threat facing the country provides the primary impetus to the shifting pendulum of power along Pennsylvania Avenue, it is not the only one. A second, and interrelated, factor is how well the president's foreign policy initiatives work. Presidents like Ronald Reagan who spend their political capital wisely and can show successes for their efforts can take power back from a Congress accustomed to flexing its muscles. In contrast, presidents who commit major foreign policy blunders, as Reagan did with Iran-Contra and Clinton did in Somalia, invite congressional challenges to their power. In that respect, John F. Kennedy's (1962, 316-17) observation that "victory has 100 fathers and defeat is an orphan" is an iron law of the politics of foreign policy. In the extreme case where presidential decisions turn into historic debacles, as happened first with Lyndon Johnson and then with Richard Nixon in Vietnam, the result can be to change the very way Americans think about threats to their security and prosperity.

### Defiance Reborn

The end of the Cold War accelerated and exacerbated the trend toward greater congressional defiance that Vietnam had triggered. With the Soviet Union relegated to the ash heap of history, most Americans looked abroad and saw no threat of similar magnitude on the horizon. When asked to name the most important problem facing the United States, polls in the 1990s rarely found that more than 5 percent of Americans named a foreign policy issue. That was a steep drop from the upward of 50 percent who named a foreign policy issue during the height of the Cold War. Moreover, many Americans had trouble identifying *any* foreign policy issue that worried them. One 1998 poll asked people to name "two or three of the biggest foreign-policy problems facing the United States today." The most common response by far, at 21 percent, was "don't know" (Reilly 1999, 111).

These public attitudes meant that members of Congress who challenged the White House on foreign policy ran almost no electoral risks. With the public not caring enough to punish them for any excesses, lawmakers went busily about challenging Bill

Clinton's foreign policy. In April 1999, for instance, during the Kosovo war, the House refused to vote to support the bombing. Not to be outdone, the Senate six months later voted down the test ban treaty even though President Clinton and 62 senators had asked that it be withdrawn from consideration. These episodes were major departures from past practice. When members of Congress had squared off against the White House in the latter half of the Cold War on issues such as Vietnam, the MX missile, and aid to the Nicaraguan contras, they had vocal public support. On Kosovo and the test ban, however, few Americans were urging Congress to challenge Clinton. To the extent that they had opinions—and many did not—most Americans sided with the president.

Just as important, the once powerful argument that members of Congress should defer to the White House on key issues lest they harm broader American interests fell on deaf ears. In 1997 the Clinton administration sought to convince Congress to give it “fast-track” negotiating authority for international trade agreements. (With fast-track authority, Congress agrees to approve or reject any trade agreement the president negotiates without amendment. This simplifies trade negotiations because other countries do not have to worry that Congress will rewrite any trade deal.) When it became clear that he lacked the votes needed to prevail, President Clinton escalated the stakes by arguing that fast track was needed because “more than ever, our economic security is also the foundation of our national strategy” (Broder 1997, A1). The decision to recast a trade issue as a national security issue—a tried and true Cold War strategy—changed few minds, however. Recognizing defeat, Clinton asked congressional leaders to withdraw the bill from consideration, marking the first time in decades that a president had failed to persuade Congress to support a major trade initiative.

Besides encouraging members of Congress to flex their foreign policy muscles, the public's diminished interest in foreign affairs after the collapse of the Soviet Union also encouraged them to cater to groups with narrow but intense preferences on foreign policy. It did so for two reasons. First, with most people focused on domestic concerns, interest groups constituted a major source of political profit or loss for politicians who did focus on foreign policy issues. Groups that had something to gain by influencing government policy became squeaky wheels, and they got the grease. Second, with the broad public looking elsewhere, the cost to members of Congress of tending to narrow interests dropped. Voters could not punish behavior they did not see.

The result of both these trends was that foreign policy in the 1990s increasingly became—to paraphrase the famed German military strategist Clausewitz—the continuation of domestic politics by other means. Lawmakers were more interested in how ethnic, business, and single-issue groups might help them win reelection and less whether the programs they championed added up to a coherent foreign policy. As former Rep. Lee H. Hamilton (D-Indiana) put it: “Too many people place constituent interests above national interests. They don't see much difference between lobbying for highway funds and slanting foreign policy toward a particular interest group” (Mufson 2000, A1). U.S. Ambassador Chas W. Freeman, Jr., put the same point somewhat differently, arguing that the 1990s represented “the franchising of foreign policy” to interest groups (Mufson 2000, A1).

Of course, interest group influence on U.S. foreign policy was nothing new. In 1773, a group of Bostonians banded together as the Sons of Liberty and protested the tax policies of the British crown by throwing the Boston Tea Party. In the 1950s, the "China Lobby" pressed for greater support for Nationalist China. In the 1970s, human rights groups pushed for human rights legislation, and in the 1980s steel companies and automobile manufacturers demanded protection against lower-cost foreign imports. Interest groups are so much a part of American politics that the United States is in practice "the interest group society" (Berry 1989).

What changed in the 1990s was that the countervailing push from broader interests weakened and the grip that interest groups had on their policy issues became firmer. During the Cold War, the consensus that surrounded containment helped keep narrow interests in check. Demands for particular policies had to be and usually were balanced against broader strategic considerations. At the same time, with the mass public more worried about foreign affairs, members of Congress were more cautious about indulging interest groups, especially when the executive branch objected. That reluctance eroded with the disappearance of the Soviet Union. Deference to presidential wishes decreased because fewer lawmakers saw reason to forego rewards from interest groups simply because congressional activism made an administration's job harder.

A case in point was the House of Representatives' effort in 2000 to pass a non-binding resolution labeling the massacres of Armenians that occurred in the Ottoman Empire from 1915 to 1923 as "genocide." Rep. James Rogan (R-California) sponsored the resolution. He made no claim to be a foreign policy expert—none of his committee assignments dealt with foreign policy and he had traveled outside the United States only once in his life—but he was caught in a tight reelection race. And his congressional district happened to have the highest concentration of Armenian-Americans of any district in the United States. The resolution offered an easy way to build good will with constituents by promoting a cause they held dear. The Armenian Assembly of America, which routinely grades how members of Congress vote on issues affecting Armenia, had long lobbied for the resolution.

In another time, Rogan's resolution would have languished in committee. Party leaders would have allowed him to introduce the bill—enabling him to gain political credit with his constituents for "fighting the good fight"—but kept the bill from advancing—thereby protecting the country's broader interests. But in 2000, House Republican leaders, eager to maintain their slim majority in the face of potential Democratic inroads in the upcoming elections, embraced the bill. Speaker of the House Dennis Hastert (R-Illinois) promised Rogan that he would bring the resolution to a vote on the House floor. He personally placed the measure on the House legislative calendar. The House International Relations Committee subsequently approved it by a large margin.

As Rogan, Hastert, and other House members pushed the genocide resolution forward, they gave little thought to the consequences their symbolic gesture would have on broader U.S. interests. The result was escalating tensions with Turkey, a major American ally that among other things let U.S. and British fighter planes use Incirlik Air Base to patrol the skies over northern Iraq. Turkey's president expressed "grave reservations" about the resolution, repeating his country's long-standing insistence that there

had been no genocide (Mufson 2000, A1). Suddenly U.S. defense companies faced the possibility that they might lose sales to Turkey, and the Pentagon the possibility that it would lose the right to fly out of Incirlik. After a barrage of phone calls from Bill Clinton, other administration officials, and senior military officers warning that the resolution would significantly harm U.S. foreign policy, Hastert agreed to put off a vote on Rogan's bill.

### The Deferential Congress Returns

Congress's defiance of Bill Clinton in the first post-Cold War decade rested on the public's belief that what happened outside America's borders mattered little for their lives. September 11 punctured that illusion and ended America's decade-long "holiday from history" (Krauthammer 2001, 156). Foreign policy suddenly became a top priority with the public. Not surprisingly, the pendulum of power swung sharply back toward the White House.

#### Rally 'Round the Flag

Bush speechwriter David Frum (2003, 272) was probably not far off the mark when he wrote that "on September 10, 2001, George Bush was not on his way to a very successful presidency." The economy had slumped, corporate accounting scandals led the evening news, and the administration's unilateralist actions abroad on issues ranging from the Kyoto Treaty on global warming to the International Criminal Court had angered friends and allies abroad. Polls taken in early September 2001 showed that Bush's public approval rating stood at only 51 percent. With the exception of Gerald Ford, who saw his popularity plummet in the wake of his decision to pardon Richard Nixon, no president had enjoyed such low ratings during his first eight months in office (Smith 2002, 44).

The impact of September 11 on American public opinion was dramatic. President Bush's approval ratings in the Gallup Poll soared to 90 percent—a figure seen only once before, when his father waged the Gulf War. Whereas the elder Bush's approval ratings quickly returned to their pre-war levels, the younger Bush's remained high for months. On the one-year anniversary of the terrorist attacks, his approval rating stood at 70 percent (Jones 2003). Gallup found that two out of every three Americans named terrorism, national security, or war as the most important problem facing the United States. Foreign policy had reached this level of political salience only twice since the advent of scientific polling—during the early stages of both the Korean and Vietnam wars (Gallup Organization 2001). Equally important, Americans did not react to the attacks by seeking to withdraw from the world. Quite the opposite. In November 2001, 81 percent of those polled agreed that it would be "best for the future of the country if we can take an active part in world affairs" (Program on International Policy Attitudes 2001). This marked the highest percentage favoring active engagement in the more than half century that the question had been asked (Lindsay 2003, 43, 53).

The public rallied around Congress as well as the president—public approval of the way Congress was carrying out its job doubled from 42 percent in early September to 84 percent in early October (Smith 2002, 45). Nonetheless, the political benefits of the rally flowed to the White House and not Capitol Hill. The main reason was that the country was not split on what the government should do—as was the case, for example, during the later years of Vietnam—but remarkably unified. Bush was further helped by the fact that Democrats were in an especially weak political position to oppose any decision he might make about how to respond to the attacks. Polls had shown ever since the early 1970s that the American public had decidedly more confidence in the ability of Republicans to handle foreign affairs than Democrats. That left any Democrats disposed to criticize administration policy leery of being accused of being unpatriotic and skeptical that the American public was ready to listen to any criticism.

Republicans recognized the Democrats' vulnerability on this point and exploited it. The most telling incident came in February 2002. Senate Majority Leader Tom Daschle (D-South Dakota) told reporters that he believed the war on terrorism "has been successful" but that he worried that the administration's efforts to expand the war lacked "a clear direction" (Purdum 2002, A1). The Republican rebuttal was swift and unyielding. Senate Minority Leader Trent Lott (R-Mississippi) complained: "How dare Senator Daschle criticize President Bush while we are fighting our war on terrorism, especially when we have troops in the field? He should not be trying to divide our country while we are united." House Majority Whip Tom Delay (R-Texas) issued a one-word press release calling Daschle's comments "disgusting." Rep. Tom Davis (R-Virginia), chairman of the National Republican Congressional Campaign Committee, accused Daschle of "giving aid and comfort to our enemies," which happens to be the legal definition of treason (Dewar 2002, A6). Few of Daschle's Democratic colleagues came to his defense.

### Early Actions

The shift in political power from Capitol Hill to the White House was evident immediately. On September 14, 2001, after little debate about the consequences of what they were about to do, all but one member of Congress voted to give the president authority to retaliate against those responsible. The resolution was stunning in the breadth of authority it granted. It stated that the president could "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons." In short, Congress effectively declared war and left it up to President Bush to decide who the enemy was.

The new congressional deference manifested itself quickly on other issues as well. In 1997, the Clinton administration had struck a deal with Senators Jesse Helms (R-North Carolina) and Joseph Biden (D-Delaware), the chair and ranking member of the Senate Foreign Relations Committee, respectively, to pay most (but not all) of the back dues the United States owed to the United Nations. Efforts to appropriate all the funds needed to carry out the so-called Helms-Biden law, however, bogged down in the House. Many House Republicans were deeply skeptical of the value of the United Nations, and

some representatives used the bill in an attempt to force changes in the Clinton administration's policy on the International Criminal Court and assistance to family planning organizations.

The Bush administration had taken up the cause of Helms-Biden when it assumed office. As of early September 2001, however, it had little to show for its efforts. Once the attacks on the World Trade Center and the Pentagon occurred and it became essential to build a multinational coalition to prosecute the war on terrorism, the White House found Congress much more receptive to its arguments. House leaders quickly agreed to work for passage of a stand-alone bill providing the necessary funding. They placed it on the suspension calendar, which limited debate but also required a two-thirds majority vote to pass. The bill, which the Senate had passed in February 2001, cleared on a voice vote (Pomper 2001b, 2276).

The Bush White House also tackled another previously hot issue—sanctions on Pakistan. Islamabad had triggered one set of sanctions with its May 1998 nuclear tests. U.S. law required the imposition of another set of sanctions in response to Gen. Pervez Musharraf's overthrow of Pakistan's democratically elected government in October 1999. The Clinton administration recognized that these sanctions did not necessarily serve U.S. interests. However, persuading Congress to accept that judgment was another matter entirely. In the 1990s, congressional sentiment had tilted sharply in favor of Pakistan's rival India. More than a hundred lawmakers belonged to the Congressional Indian Caucus, and the Clinton administration decided not to expend its limited foreign policy capital invoking a provision in the law that allowed the president to waive the sanctions imposed in response to the nuclear tests. Immediately after the September 11 attacks, however, President Bush exercised that waiver as part of his effort to ensure Pakistani support for the war on terrorism and military action against Afghanistan. In mid-October, Congress passed legislation authorizing him to waive the other sanctions that had been placed on Islamabad (Pomper 2001a, 2487).

One issue that saw congressional Democrats reverse themselves was national missile defense. Throughout the spring and summer of 2001 they had regularly criticized the administration for suggesting that it was preparing to withdraw the United States from the ABM Treaty. They argued that destroying what they called the "cornerstone of international stability" so that the Pentagon could test unproven defensive technologies was reckless at best. Many Democrats also concluded that opposing the Bush administration's missile defense plans would be politically rewarding. They believed that their decision to oppose Ronald Reagan's Strategic Defense Initiative in the 1980s had been politically profitable, and they hoped to reprise that success.

Democrats had one strong card to play in this debate—their control of the Senate. Sen. Carl Levin (D-Michigan) used his prerogative as chair of the Senate Armed Services Committee to insert a provision in the fiscal year 2002 defense authorization bill that would have cut \$1.3 billion of the \$8.3 billion the administration had requested for missile defense and prohibited the Defense Department from conducting any anti-missile test that violated the ABM Treaty. The committee sustained his "chairman's mark" on a straight-line party vote. A "fierce Senate showdown" looked to be in the offing (Towell 2001, 2079). In the wake of September 11, however, Senate Democrats

stripped the authorization bill of the testing provision and restored nearly all the funding the White House had requested. (A small amount was shifted to counter-terrorism accounts.) In December 2001, President Bush announced U.S. withdrawal from the ABM Treaty. The decision passed without much comment on Capitol Hill.

Just weeks before the ABM withdrawal announcement, the White House issued the Military Order of November 13 (Bush 2001). It declared that the foreign citizens the United States detained while waging its war on terrorism could be tried before military commissions. The order offended many civil libertarians and prompted more than 300 law professors to sign a letter calling the commissions “legally deficient, unnecessary, and unwise” (Seelye 2001, B7). The order presumably implicated Congress’s constitutional authority to “define and punish . . . offenses against the law of nations” and its power to make all other laws “necessary and proper” for executing the federal government enumerated power (Tribe 2001). Still, Congress neither rejected the president’s decision nor acted to reinforce its legal basis. Even lawmakers who strongly endorsed the idea, such as former vice presidential candidate Sen. Joseph Lieberman (D-Connecticut), saw no need for congressional action. Those lawmakers who doubted the wisdom of the military commission idea, or who worried that it might have consequences for the civil liberties of American citizens, were either few in number or remarkably quiet. Little changed when the Justice Department turned Jose Padilla, a suspected American-born member of al Qaeda, over to the Defense Department to be held as an enemy combatant.<sup>1</sup> Few members wanted to be seen sympathizing with an alleged terrorist and criticizing a very popular president.

### From Tora Bora to Baghdad

President Bush’s dominance of foreign affairs continued into 2002. In February 2002, he proposed increasing the defense budget by \$48 billion. It was the largest requested increase in real dollars in defense spending since the early years of the Reagan buildup—and a sum roughly equal to China’s total defense budget. The request elicited few complaints from Congress, even though the bulk of the spending increase was targeted at funding defense programs that had been on the drawing boards for years rather than to meet new needs created by the war on terrorism. Congress did make technical adjustments that cut slightly more than \$1 billion in funding. It also stripped out a provision to create a \$10 billion contingency fund that the Pentagon could have used as it saw fit; even deferential lawmakers were reluctant to give the Defense Department that much walking around money. Nonetheless, they signaled that they would be receptive to any specific funding requests that the Pentagon might submit. The eventual FY 2003 appropriation increased defense spending by nearly \$37 billion, or a sum equal to Great Britain’s entire military budget.

While President Bush was riding high in the polls in early 2003, some Democrats were deeply disappointed with what they saw as his failure to prepare the federal government to handle counter-terrorism efforts. Bush initially responded to September 11 by creating a new Office of Homeland Security in the White House. Critics led by

1. The military commission order explicitly applies only to foreign citizens. Padilla’s ultimate legal fate was undetermined as of March 2003.

Senator Lieberman recommended going further and proposed establishing of a new Cabinet department of homeland security. They argued that putting the major agencies responsible for homeland security under one roof would make it easier to coordinate their activities and thereby improve the country's security. What was probably not lost on many Democratic proponents of reorganization was that it enabled them to criticize the president from the right, a politically safe vantage point for a party thought to be weak on security issues. They could argue that the White House was not doing enough to protect Americans from the threat posed by al Qaeda and similarly inspired terrorists.

The Bush administration resisted the idea of a new Cabinet department for months. In March 2002, Ari Fleischer (2002), the White House spokesman, said that "creating a cabinet department doesn't solve anything." Other administration officials argued that reorganization would make Americans less secure because it would divert Washington's resources and focus away from the war on terrorism. The White House also knew that many congressional Republicans were at best lukewarm toward the idea of a new Cabinet department. They believed reorganization would produce a bigger, more costly, more intrusive federal government—precisely what they had fought for years to prevent.

On June 6, President Bush surprised the country by announcing on nationwide television that he wanted to create a new Department of Homeland Security (DHS). It was doubly surprising that his reorganization plan dwarfed anything being considered on Capitol Hill. It proposed merging 22 agencies, employing nearly 170,000 workers and spending more than \$35 billion annually. To top it all off, the president wanted Congress to pass the legislation authorizing the reorganization—which would be the most ambitious and complex government reshuffling since the creation of the Department of Defense in 1947—by the end of the year.

The White House insisted that the change of view reflected the merits of the argument for reorganization. Democrats argued that it reflected politics. In mid-May, the Senate Governmental Affairs Committee, which Senator Lieberman chaired, had approved a reorganization bill. The legislation had picked up a few Republican supporters. Even if the administration's allies on Capitol Hill succeeded in blocking the bill, however, the administration risked giving its critics an issue with which to attack the president. To make matters worse, at the same time that reorganization was picking up political steam, the administration was being buffeted by a string of news stories that questioned its competence in the weeks leading up to September 11. Reporters had uncovered evidence that miscommunication and squabbling between and within the CIA and FBI had contributed to the government's failure to uncover the terrorist plot. Indeed, President Bush announced his reorganization proposal the night before FBI agent Colleen Rowley was scheduled to give her much-awaited congressional testimony on how FBI headquarters had failed to pursue possible leads that might have uncovered the September 11 plot.

Whatever the motives behind the reorganization proposal, most members of Congress found it hard to oppose. Many congressional Republicans continued to dislike the idea, and Bush (2002c) had sought to defuse objection in announcing the plan by insisting that "by ending duplication and overlap, we will spend less on overhead, and more on protecting America." Even though experts dismissed the president's claim as unre-

alistic, most Republicans recognized that political necessity dictated that they support their party's leader. Democrats faced a different problem. After demanding the creation of a homeland security department for months they could not suddenly denounce it as a bad idea. So Democrats could only applaud the president's change of heart and hope that voters remembered it had been a Democratic idea first. Richard Gephardt (D-Missouri), the House minority leader, went even further. He tried to top Bush's announcement by committing Democrats to passing a reorganization bill by the first anniversary of the September 11 attacks.

Congress ultimately failed to meet Gephardt's deadline but not because of disagreement over the substance of the reorganization. Numerous experts weighed in on the shortcomings of the administration's plan, and individual committee chairs took issue with aspects of the reorganization that affected agencies under their jurisdiction (Daalder et al. 2002; Williams and Nather 2002). Nonetheless, House and Senate leaders were determined to act quickly, and these quashed any potential revolts. By early August, each chamber had prepared legislation that reflected the basic outlines of the department the White House wanted to create.

This seemingly unstoppable legislative locomotive suddenly derailed, however, but not over the matter of which agencies would not be folded into the new organization or what authorities it would wield. Instead, the stumbling block was the question of how much freedom President Bush would have to strip workers in the new department of the civil service protections they had previously enjoyed. Democrats saw the proposal as a domestic political issue that threatened the interests of a key Democratic constituency—organized labor. They calculated that opposing the White House's request for maximum flexibility would mobilize union supporters and benefit Democratic candidates in the November midterm elections. Republicans, by contrast, calculated that the public would see the dispute as a national security issue and punish the Democrats for being willing to place narrow interests ahead of the broad public interest. The results on Election Day bore out the arguments of Republican strategists. In mid-November, a lame-duck Congress passed legislation creating a new homeland security department largely along the lines of what President Bush had proposed.

As the dispute between Democrats and Republicans over civil service protections for DHS workers built up steam in late summer 2002, so too did suspicions that President Bush intended to go to war with Iraq. In his January 29, 2002 State of the Union Speech, Bush (2002b) had named Iraq, Iran, and North Korea as members of an "axis of evil, arming to threaten the peace of the world." He went on to declare that "time is not on our side. I will not wait on events, while dangers gather." He and his aides subsequently ruled out using military force to deal with the threats from Iran and North Korea. They gave no such reassurances about U.S. dealings with Iraq. Concerns that Bush (2002a) was planning to attack Iraq grew after he declared in his June 1, 2002 commencement address at West Point that Americans must "be ready for preemptive action" and his senior aides talked openly of the need for a regime change in Iraq.

The administration's threats to overthrow Saddam Hussein prompted calls for members of Congress to speak to the possibility of war. The Senate Foreign Relations Committee held its first hearings on the topic at the end of July. Over the next several

weeks, lawmakers from both parties began arguing that the administration could not take the country to war without congressional approval. The White House's initial response was that the 1991 Gulf War resolution, the September 11 resolution, and the president's inherent powers as commander in chief made that step unnecessary. But then in early September, the White House relented and sent to Capitol Hill a draft use-of-force resolution that would have given the president nearly unbounded power. The decision to reverse course was easy to make. Administration officials recognized that Congress was virtually certain to grant its request. If Democrats decided to vote against a use-of-force resolution, Republicans could use that against them in the midterm elections.

The administration's calculations proved correct. Democratic attempts to postpone the vote until after the elections failed. Senate Majority Leader Daschle's fallback position was to substitute a restrictive resolution for the open-ended one the White House had proposed. That strategy collapsed, however, when House Minority Leader Gephardt broke ranks. He met privately with the president and agreed to support a slightly modified version of the White House proposal. Other lawmakers quickly abandoned their efforts to craft alternative resolutions. In early October, both the House and Senate voted overwhelmingly to authorize the president to go to war.

The resolution that Congress passed differed in a few ways from the one the White House initially proposed. The final resolution dropped the most egregious provision in the original, which would have authorized the president "to use all means that he determines to be appropriate" to "restore international peace and security in the region." The final resolution also contained greatly expanded language detailing the horrors of Saddam Hussein's rule, and it imposed reporting requirements on the White House. Nonetheless, the thrust of the operative paragraph remained the same: the president could take the country to war as he saw fit. In that respect, the October 2002 Iraq War resolution is unique in American history. Congress authorized the president to wage a war that he himself had not yet decided (at least publicly) to fight.<sup>2</sup>

When asked why Democrats had not done more to oppose a resolution so many of them thought unwise, Senate Majority Leader Daschle wearily replied: "The bottom line is . . . we want to move on" (Rich 2002, A21). Congress's eagerness to delegate its war power to the president drew the ire of Sen. Robert Byrd (D-West Virginia), a veteran of five decades of service on Capitol Hill. "How have we gotten to this low point in the history of Congress? Are we too feeble to resist the demand of a president who is determined to bend the collective will of Congress to his will?" (Byrd 2002, A39).

### The Limits to the Deferential Congress

The return of the deferential Congress after September 11 did not carry over to all policy issues or even all foreign policy issues. As the debate over civil service protec-

2. The founders rejected the notion that Congress could, or should, give such contingent authority to the president (Schlesinger 1973, 26-29).

tions for employees in the Department of Homeland Security showed, on some issues lawmakers conducted themselves as they had before September 11. As a general rule, the willingness of members to defy the president varied directly with the threat his policies posed to the tangible interests of their constituents.

The limits of Congress's willingness to defer to the White House were evident in domestic policy. Despite Bush's soaring poll numbers in late 2001 and early 2002, Democrats felt safe blocking his economic stimulus plan. Despite administration insistence that national security considerations made it imperative to find new energy sources in the United States, the Senate defeated a bill to open up the Arctic National Wildlife Reserve to oil exploration. Senate Democrats also used their majority status to block votes on federal judicial nominees they deemed to be too conservative. In these and other cases, "normal" politics prevailed because the issues mattered to key constituencies and the argument that opposing the president's position would harm the war on terrorism struck most people as strained at best.

Congress's efforts to question and revise presidential initiatives could also be seen on other issues more closely linked to the war on terrorism. Immediately following September 11, the White House submitted legislation that eventually became the U.S.A. Patriot Act. The bill proposed numerous changes to the rules governing surveillance and intelligence activities. Many of the proposed changes had been discussed for years but never enacted because the issue had never been urgent enough to overcome legislative inertia. Other proposed changes, however, went beyond anything that had been discussed before the terrorist attacks and had tremendous potential consequences for individual privacy and other civil liberties. Although Congress accommodated the White House's insistence that it move quickly on the legislation—it was on the president's desk five weeks after September 11—lawmakers made a significant change. They stipulated that its most controversial provisions would expire in 2005 unless Congress voted to renew them. The push to insert these sunset provisions came from civil libertarians in both parties who both responded to and encouraged public fears that the Patriot Act otherwise went too far in curtailing individual freedoms (Bettelheim and Palmer 2001).

The Bush White House encountered even stiffer resistance on the trade front. Despite the backdrop of September 11 and despite the fact Republicans were the majority party in the House, the House passed legislation giving the president trade-promotion authority by only a single vote. Even that victory came only after the administration promised to roll back some of the access to American textile markets that previous trade legislation had given to Caribbean and Central American countries. The White House also promised that any assistance given to Pakistan for its participation in the war on terrorism would be designed "to minimize the impact on the U.S. textile and apparel industry" (Faler 2002, 45). The administration subsequently backed away from its promise to Islamabad to allow Pakistani apparel exports greater access to the U.S. market (Brainard 2001, A19).

The Senate did not vote on the trade-promotion authority bill until July. This vote took place only after Democrats forced Republicans to increase spending on Trade Adjustment Assistance programs designed to help workers who lose their jobs because

of foreign competition by \$12 billion. The House passed the conference report on the trade-promotion bill only after Republican leaders suppressed several revolts against its provisions. The lesson in the trade debate was clear: Lawmakers were willing to defer to the White House on issues of war and peace but not on issues that directly affected the livelihood of their constituents.

## Conclusion

Congress's shifting deference to and defiance of presidential leadership in foreign affairs reflects a political dynamic that stretches back to the beginnings of the American republic. Lawmakers are willing to assert their constitutional prerogatives when they believe the United States has little to worry about abroad or the president's proposed course of action threatens to imperil American security. Conversely, when threats are clear and presidential decisions have produced success rather than failure, both politics and a sense of good policy encourage members of Congress to rally 'round the flag.

It is impossible to say how long the current era of congressional deference will last. Unlike domestic policy, where critics have strong political incentives to criticize the White House, the political winds at the start of April 2003 blew briskly in the opposite direction. A sustained period of peace could change those calculations, but that hardly seemed to be in the offing. The country was at war with Iraq, al Qaeda's most senior leaders remained on the loose, and a confrontation over North Korea's nuclear program threatened to escalate.

The greater threat to the imperial presidency seemed to come then from the opposite direction—the threat of executive overreaching. In deciding to wage war on Iraq, President Bush took a strategic gamble of potentially historic proportions. He vowed not just to unseat a ruthless dictator and destroy his weapons of mass destruction but also to bring democracy to the Iraqi people and to the Middle East. Should the war be far bloodier and costlier than the American public is willing to tolerate, or perhaps more likely, should the military occupation needed to win the peace begin to look like the U.S. peace-keeping mission in Lebanon in 1983, the political winds could quickly reverse. In that event, President Bush would discover what President Johnson learned more than three decades ago—the fact that members of Congress defer to the White House when his foreign policy takes off does not mean they will be deferential when it crashes.

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