# FOR A STRENGTHENED PRESIDENCY

by

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Every generation of Americans to some degree has had to come to grips with the issue of congressional vs. presidential dominance in the area of foreign policy. Thomas Franck and Edward Weisband have recently identified four major periods in American history when Congress became the predominant institution of foreign policy. We are currently in the fourth period, which began in the aftermath of Vietnam and Watergate. Franck and Weisband are convinced that this most recent phase represents more than just a swing of the pendulum—that it is rather "a revolution that will not be unmade."[1] But is congressional predominance a permanent state of affairs and is it a good thing? My thesis in this essay is that American foreign policy will be better served with fewer rather than more congressional restraints. I have no doubt that the American people will perforce come to perceive the necessity of a strong presidency.

Reacting to perceived excesses of the exercise of presidential power in the 1960s and 1970s, critics popularized the term "the Imperial Presidency," resonant with connotations of kingly authoritarianism.[2] And however erroneous and mischievous the term was, in less than a decade Congress cut the Imperial Presidency down to size and assumed for itself unprecedented powers over the conduct of foreign policy. Its most significant act has been the War Powers Resolution, which curtails the presidential use of military force abroad and empowers Congress to bring home engaged forces on short notice. Further, Congress has given itself the right to veto military sales abroad. It has imposed detailed conditions for the sale of nuclear fuel and for the giving of military and economic assistance, even assuming the right to determine whether specific sales of weapons or nuclear fuel should be consummated. Congress has forbade the president to assist one party in an African civil war. It has set stringent limits on the conduct of covert operations by the CIA and forced the administration to keep Congress informed of the agency's intelligence operations. Congressional authority has been

extended into matters of detail as well as the broad general direction of American foreign policy. Former Senator J. William Fulbright, who was in the forefront of this congressional revolution, noted that "those of us who prodded what seemed to be a hopelessly immobile herd of cattle a decade ago now stand back in awe in the face of a stampede."[3] Many of those who originally supported the growth of congressional power in foreign affairs are having second thoughts. Fulbright, for example, now confesses "to increasingly serious misgivings about the ability of the Congress to play a constructive role in our foreign relations."[4]

For some the presidency is eternally tarnished with the guilt of Vietnam. They forget that Congress, too, supported that war until almost the end. The issue of what should be the proper distribution of powers between the president and Congress is not fundamentally ideological. Neither is it a question of whether one favors a passive or activist posture for the United States in world affairs. Historically, Congress has been on both sides of this issue. At times—in 1812 and 1898 for example—Congress was the advocate of a war policy. In the period between the two world wars it demanded isolationism. If during the past decade it was the liberal position to restrict executive powers, one should remember that, in the 1950s, limiting the authority of the president to act in foreign affairs (as exemplified by the proposed Bricker amendment to the Constitution) was one of the tenets of conservative orthodoxy. The War Powers Resolution in effect today is as undesirable as would have been the Bricker amendment a generation ago—and for essentially the same reasons. Too often the position taken in the debate on congressional vs. presidential power has been linked with one's view of the policies being pursued by the executive branch. The trouble with that approach is that the positions of both branches of government regarding the great issues of public policy are constantly changing. We too often look to structural remedies for problems that are basically political in character.

The issue has frequently been debated in terms of constitutional principles and law. What did the Founding Fathers intend? It is generally agreed that the framers of the Constitution acted wisely in not specifying in detail the powers of the two branches of the federal government in the realm of foreign policy. The ambiguity of the constitutional mandate is well summed up in the oft-quoted observation of constitutional scholar Edwin S. Corwin that the Constitution was "an invitation to struggle for the privilege of directing American foreign policy."[5] Alton Frye, however, rejects the idea of legislative-executive competition as misinterpreting the true purpose of the constitutional framework, which in his view was to guarantee that the concerns of as many citizens as possible be taken into consideration.[6] Whether or not conflict was intended or anticipated, there seems to be little doubt that the constitutional framers did intend that both branches of government be directly involved in the realm of foreign policy.

The powers of the president are sketched out only briefly in the Constitution. They consist principally of the following: the president (1) is empowered with the executive authority of the government; (2) is commander-in-chief of the Army and Navy; (3) can negotiate treaties; (4) appoints ambassadors, public ministers, and consuls; and (5) receives ambassadors and other

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public ministers. Some of these prerogatives, such as the treaty-making and appointive powers, are subject to senatorial concurrence. Presumably, the Founding Fathers saw these powers as the means by which the president would exercise the guiding hand in the conduct of the nation's foreign relations. One reason they called the Constitutional Convention into existence in the first place was the mismanagement of foreign affairs by Congress under the Articles of Confederation.[7]

That does not mean that Congress was to be only a minor partner in foreign affairs. Far from it. The powers of Congress are extensive. Chief among them are the powers to (1) declare war; (2) authorize and appropriate funds; (3) raise and support an army and a navy; (4) legislate; (5) advise on and consent to treaties (Senate only); and (6) confirm executive appointments (Senate only). Thus the Constitution establishes a system of checks and balances with the potential for executive and legislative authority to develop in one of several different directions. What is true of foreign policy in this regard applies as well to the domestic sphere and to the relations between the federal government and the states.

Notwithstanding the swings of the pendulum between presidential and congressional ascendancy in foreign affairs, the long-term trend has clearly been toward the former. The reasons for executive supremacy are complex and controversial. In part, the growth of executive power is related to the pragmatism of the American character: American security and prosperity required a strong leader and so the political system in the United States adapted to meet that requirement. The contention here is that the post-Vietnam congressional reforms are moves in the wrong direction because they undermine the capability of the executive to do what is inherently beyond the capacity of the legislature: to develop and administer a responsive, coherent, and rational foreign policy. While lack of such a policy in the past might merely have been unfortunate, such a lack in the thermonuclear world of today could well prove fatal.

## THE WEAKNESS OF CONGRESS

Central to the goal of a coherent policy is the requirement of leadership. Never before in American history has the problem of leadership been so linked with the security and well-being of the nation; and rarely have the circumstances of domestic life made the creation of that leadership more difficult to obtain. The problem confronting American national political institutions is how to mobilize a fragmented public to support a sound and unitary foreign policy. In large part, the fragmentation of American political life is the product of a crisis of authority in American society. The institutions and values that have united Americans in the past no longer hold the sway they once did. American political activity increasingly stresses the separation of the individual from the larger society rather than his unity with it. Separative forces today include affiliation with political groups based upon racial, ethnic, sexual, generational, ideological, religious, professional, economic, and other such categories. We have "single issue," "special interest," and "political action" committees whose focuses are narrow rather than general. National political parties have steadily declined in appeal and importance. The number of voters who reject both major political parties has risen steadily in recent years to the point where independents now outnumber one of the major parties.

Congress inevitably reflects the fragmentation of American political life. The decline in strength of the national political parties is reflected in the weakness of party authority in both houses of Congress. Not only party leaders but all authorities of Congress—its officers and committee chairmen—are challenged today as never before.[8] Seniority, which used to carry great weight, is now sharply reduced in importance. The new breed of congressman insists upon maintaining his or her independence. Until fairly recently, the practice was for committee recommendations to be accepted almost automatically by the full membership. This is no longer true, particularly in the area of foreign and defense

policy. Some of the individual independence is the result of structural reforms designed specifically to weaken central control. For example, the availability of increased staff support now makes it possible for a congressman or senator to obtain his own legislative data and thereby come to policy conclusions independently of the party or congressional leadership. Thus Congress today is more decentralized than it ever has been. According to one recent study, "The chief consequence of this structural disunity is to divide the congressional perspective, making the creation of an integrated and coherent legislation and policy almost impossible."[9]

The attenuation of centralized control and party discipline reinforces the traditional tendency of legislators to reflect local and regional interests to the detriment of national interests. Every congressman represents a specific constituency and is expected to support the interests of his district whether or not that coincides with the broader interests of the nation. Illustrative is the case of the chairman of the House Naval Affairs Committee who, when asked whether the navy yard in his district was too small to accommodate the latest battleships, replied: "That is true, and that is the reason I have always been in favor of small ships."[10] As David Mayhew has noted in his study of Congress, the overriding goal of all members is to be reelected.[11] Legislators must perforce be reponsive to pressures from ethnic, racial, and religious minorities whose concerns may well be narrower and more parochial than those of the nation as a whole.

Foreign policy issues rarely have the support "back home" to induce a congressman to make them a major part of his legislative repertory. Indeed, as James Sundquist notes, "being national-minded can be a positive hazard to a legislative career."[12] There are many congressmen ready to support defense appropriations because of sizable defense or defense-related industries in their districts. But who, for example, speaks for arms reduction? Apparently few. As Alan Platt has noted,

> Perhaps most importantly, virtually no member of Congress felt compelling constituent pressure to play a more active role in the SALT process. . . . During the 1969-1976 years, there was little electoral incentive for any senator to be actively involved in the SALT policy process. On the contrary, almost all senators felt pressure to focus their attention on matters of higher political salience and more immediate urgency to their constituents. . . .[13]

Generally, foreign policy issues are far removed from the experience and knowledge of most congressmen. On domestic issues, in contrast, they have the benefit of information (selected, of course) made available by constituency lobbies and special interests. As Congressman Les Aspin puts it, "Almost every Congressman feels that he is an expert on education, or economics, or any number of domestic issues. But when it comes to defense, most Congressmen lack confidence, and so they turn to 'experts.'"[14]

Further undermining the capacity of Congress in the foreign policy field is the process by which it does its business. An effective foreign policy must bring into balance numerous diverse issues involving many different nations. This is what is meant by coherence. The difficulty with the legislative process is that there is no one place in Congress where foreign policies are aggregated and synthesized. Every piece of legislation is examined independently in committee and acted upon in relative isolation from other related bills. Though principal responsibility falls upon the Foreign Relations Committee of the Senate and the Foreign Affairs Committee in the House, these are by no means the sole examining bodies of important foreign policy matters. According to one account, issues involving national security matters are dealt with by 16 Senate and 19 House committees and an even larger number of subcommittees, and it is not uncommon for the same matter to be considered by multiple committees.[15] Sometimes important foreign policy issues are acted upon by committees only

peripherally connected with foreign policy. The House Post Office and Civil Service and Judiciary Committees, for example, considered the bill for implementing the Panama Canal treaty. The effect is to isolate issues that are very much connected in the real world. It is difficult if not impossible in most cases for Congress to make the necessary trade-offs, bargains, and compromises which are called for in an effective foreign policy. Thus, George Kennan observed that

> Congress can act upon foreign policy only fitfully, in great ponderous lurches which establish its direction, and the limits within which it can vary, for often prolonged periods into the future. This may well have a certain negative value, as an insurance against Executive folly; but it greatly limits, of course, flexibility of reaction on the part of the Executive, where it does not rule it out entirely. It makes it impossible for the Executive branch to react sensitively and effectively to changes in the objective situation that were not foreseen and could not have been foreseen (and the course of international affairs is replete with such changes) at the time when the respective congressional norm was laid down.
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> Congressional participation in the policy-making process, in short, not only reduces privacy of decision but inflicts upon that process a high degree of cumbersomeness and inflexibility; and these conditions, in combination, deprive the policymaker of the possibility of initiative, the advantages of surprise, and the capacity for sensitive response to the unexpected.[16]

## THE PRESIDENTIAL IMPERATIVE

I noted above that some of the weakness of Congress in the foreign policy realm has its roots in the fragmentation of American politics and the diffusion of public authority. I have also suggested that Congress is today too decentralized to provide the leadership which a strong foreign policy requires. We turn now to the reasons why, more than ever, the United States must have a strong and coherent foreign policy. Those reasons have to do with the nature of the international system and the character of international politics.

Since World War II, the international order has undergone enormous change. Such change is continuing even at this moment, making it difficult to discern what kind of a world we will confront tomorrow. However, certain basic features are clearly evident. The nation-state remains the dominant—though not the sole—political actor. The international system continues to be decentralized, that is, lacking a central guarantor of world order. Thus nations are compelled to look to their own means for security. War and the use or threat of force remain live options for achieving national objectives in many cases. There is general agreement that a degree of interdependence exists among nations, particularly in the economic realm, but this interdependence does not limit political behavior in such a way as to keep nations from going to war against each other.

International politics is characterized by a high degree of tension and conflict, the major manifestation of which is the East-West conflict. What keeps the leaders of the North Atlantic and Warsaw Pact alliances from going to war against each other is, of course, the nuclear arsenals possessed by the two superpowers. There are numerous other conflicts outside the major-power polarity. Within the Third World, ethnic, racial, and nationalistic tensions have found frequent expression in war, the Iraqi-Iranian squabble being the most recent example. In addition, there is the nonviolent but bitter struggle between the industrialized northern countries and the underdeveloped southern nations for economic leverage and benefit.

Though international politics has always been characterized by a high degree of anarchy, there have been periods in the past when a greater degree of political consensus prevailed among the leading actors than today. For example, in the aftermath of World War II there was a more discernible commitment among the nations of the world against the use of force than at present. Following the defeat of the Axis Powers the victorious allies were determined to prevent

another world war and to that effect created the United Nations as an instrument of collective security. The first purpose of that organization, as declared in its Charter, was "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace."[17] Many observers looked upon the United Nations as a step in the direction of a world government. The system of collective security established in the United Nations never came into operation and is now recognized as defunct. But perhaps of greater significance has been the general decline in the commitment of nations to the renunciation of the use of force as an instrument of national policy. Many UN General Assembly declarations attest to the readiness of most of its members to resort to the use of force to attain some political end. There is little doubt that the United Nations today is far less united than it was in the 1940s, and little doubt as well that the prospects for world government are more remote than at any time since World War II.

What the disunity of world politics implies for the United States—and, indeed, for all great powers—is the necessity of a strong, coherent, and rational foreign policy to guide the affairs of state in a world that regrettably must still be characterized as anarchical. The existence of nuclear weapons may make war among the major powers more dangerous than ever, but the only guarantee that any superpower has that these weapons will not be used is the maintenance of a credible deterrent. And it is unrealistic not to anticipate that force and that threat of force at the nonnuclear level will continue to be an important feature of international politics. The argument for a strong president rests on several principles—that the United States must speak with one voice to other states; that the executive branch is better able than the other branches of government to provide national leadership and mobilize the nation when national interests are threatened; that the conduct of diplomacy often requires a government to act with speed and efficiency; and that the president has inherent access to vital sources of information which are unavailable to Congress. Institutional reform, to be sure, does not guarantee leadership. For example, many observers, both here and abroad, expressed the belief that former President Carter lacked those leaderly qualities needed to capitalize on the powers of his office.[18] In any case, there is no substitute for a capable, determined, and knowledgeable president. Still, I would argue, every effort should be made to strengthen the institutional framework of the presidency so that the occupant has the best possible chance to put his political skills to work for the country's interest.

## SOME PROPOSED REFORMS

Toward that end, I would propose two reforms to strengthen the weak link in the foreign policy process. The first is the repeal of the War Powers Resolution, probably the most pernicious assertion of congressional power in a generation. The second is that the routine treaty-making process be revised so that an international treaty cannot be thwarted by only 35 senators. Though such revision would nominally entail an amendment to the Constitution, it may be possible, as we shall see, to obviate such a step.

There are constitutional authorities who believe that the War Powers Resolution is unconstitutional,[19] though given the nature of the subject the act is not likely to be challenged in the courts. Presidents Nixon, Ford, and Carter have each complained that the resolution impeded their ability to achieve diplomatic objectives.[20]

The War Powers Resolution (a joint resolution which has the force of law) provides in substance that the power of the president as commander-in-chief to use military force abroad is limited to three circumstances: (1) when Congress has declared war; (2) when the president has been given specific statutory authorization; or (3) when there occurs "a national emergency created by attack upon the United States, its territories or possessions, or its armed forces." The president "in every possible

instance" is required to consult with Congress before using military forces. In addition, if he uses military forces in the absence of a declaration of war, the president must report to Congress within 48 hours and periodically thereafter if hostilities continue. Further, within 60 days—or in special circumstances 90 days—the president must terminate the use of armed force unless Congress specifically authorizes otherwise. However, Congress can terminate the use of military forces in less than 60 days simply by passing a concurrent resolution (which cannot be vetoed).[21]

There are three significant innovations in this legislation. First is the limitation of the power of the president to use armed forces on his own. Under the War Powers Resolution, there must be a national emergency caused by an attack on the United States or its armed forces. This does not include a national emergency arising from other crises or an attack on American civilians. The requirement for the use of force is clearly too restrictive. There is ample precedent for the presidential use of armed forces to protect and evacuate American citizens from dangerous situations abroad, and yet, technically, the president cannot now do that without seeking congressional approval. The law makes no allowances for emergencies or unusual situations requiring rapid, clandestine movement of military forces to protect American lives abroad. Up to the time of the War Powers Resolution, there had been more than 150 instances in which the president resorted to force to protect American property or lives without prior congressional authorization. Indeed, in the entire history of the republic, Congress has declared war only five times. Parenthetically, one might note that since the end of World War II the practice of declaring war has virtually ceased altogether. That does not mean, however, that war has ceased. According to one study of the War Powers Resolution, the president's use of military force to evacuate American and allied personnel from Saigon and to rescue the *Mayaguez* from Cambodian seizure in April 1975 were illegal because in neither case was there a "national emergency" created by an attack on US military forces.[22] The same argument would apply to the effort by former President Carter to rescue the 53 American hostages in Iran in April 1980. Under the War Powers Resolution, that attempt could be considered an illegal use of military force by the President. Presumably, Congress did not consider these actions to be illegal because no effort was made to impeach either President Ford or President Carter. Indeed, on the whole Congress supported these actions, as did the public. But it seems clear that Congress acted hastily in trying to specify the conditions under which the president can use military force abroad. For as now written the law is so restrictive that the president is encouraged to ignore it.

A second important innovation of the law is the consulting and reporting feature. Here, the law has been interpreted so loosely that one could argue that it has been selectively ignored. President Ford reported to Congress on four occasions, all within a period of six weeks. These reports were in connection with the use of American troops to assist in the evacuations from Da Nang, Phnom Penh, and Saigon, and the rescue of the *Mayaguez* and its crew. President Carter reported only in connection with the use of military forces to attempt the rescue of the hostages in Tehran. Significantly, there was no reporting to Congress of the use of military personnel to rescue Americans from Cyprus during the disorders on that island in 1974; or of two evacuation operations in Lebanon in 1976; or of the 18 Air Force C-141s sent by President Carter to airlift Moroccan troops to Zaire in 1978. In all of these instances, there was some dissatisfaction within Congress about either the adequacy of the reporting or the lack of consultation. But, again, Congress as a body did not feel inclined to press the issue on technicalities when basically it supported the Presidents' actions. Thus, Jacob Javits, one of the principal architects of the War Powers Resolution, simply closed his eyes to the Carter airlift of Moroccan troops in 1978: "I didn't see fit to challenge the President," he noted. "On pragmatic grounds I let it go."[23]

However, both Senators Frank Church and Jacob Javits expressed displeasure over the failure of President Carter to consult with Congress *before* he initiated the rescue effort for the American hostages in Iran in April 1980. This appears to have been a case where the risks of disclosure outweighed the benefits of consultation. Thus, the resolution poses a continuing dilemma for the president: whether to inform Congress of impending actions that must be secret to be successful and risk leaks which might alert an adversary; or to maintain secrecy in order to enhance success but face the prospect of congressional censure.

A third important innovation of the resolution is the restriction on presidential use of military force to a maximum of 90 days or less if Congress so decrees. To date, this part of the law remains unused. But in the long run it could be the most damaging to the security of the United States. The law may very well inhibit the willingness of the president to use force to protect American interests where there is no likelihood of a quick victory. The president may in the future be faced with the situation of having to weigh the risk of not using needed military forces in a crisis against the risk of using them only to have the operation terminated by Congress. Possibly more disconcerting, an approaching time limit might pressure the president prematurely to curtail US involvement or, conversely, to escalate the level of involvement to forestall congressional restrictions. There is also the possibility that adversaries could be encouraged to prolong conflict in the hope that Congress would refuse support for continued commitment. That is precisely what the North Vietnamese did during the latter phases of the Vietnam War—successfully!

In the words of one of its architects, "The War Powers Act is a great restrainer."[24] There is no doubt that it is. No other great power today operates under that kind of a restraint. Certainly it raises serious questions about the capability of the United States to exercise leadership in a world where the use of force continues to be an instrument of foreign policy, particularly by those states likely to be adversaries of the United States. The problem was well described by President Nixon in his (unsuccessful) veto message of the War Powers Resolution:

> [Its passage] would seriously undermine this nation's ability to act decisively and convincingly in times of international crisis. As a result, the confidence of our allies in our ability to assist them could be diminished and the respect of our adversaries for our deterrent posture could decline. A permanent and substantial element of unpredictability would be injected into the world's assessment of American behavior, further increasing the likelihood of miscalculation and war.[25]

Against all of these objections is the argument that Congress is now in a better position to restrain a chief executive who might be tempted to abuse his warmaking powers (as it is contended Presidents Johnson and Nixon did). But it is a questionable assumption that the Congress is any more of a safe repository of the power to make war than the president. When public opinion presses for intervention, the impact is as likely to be registered as quickly and as strongly on Congress as it is on the president. Even so ardent a supporter of the War Powers Resolution as former Senator Frank Church had second thoughts about its value:

> I voted for the bill because it came in the aftermath of the Vietnam experience and it seemed that Congress should at least endeavor to prevent another war initiated and pursued on the basis of executive decision. Still, I have had my doubts that it is possible to accomplish such an objective by statute. . . . [I]f the President . . . uses the Armed Forces in an action that is both swift and successful, then there is no reason to expect the Congress to do anything, other than applaud. If the President employs forces in action which is swift, but unsuccessful, then the Congress is faced with a fait accompli, and although it may rebuke the President, it can do little else. If the President undertakes to introduce American

forces in a foreign war that is large and sustained, then it seems to me that the argument that the War Powers Resolution forces the Congress to confront that decision . . . overlooks the fact that Congress in any case must confront the decision, because it is the Congress that must appropriate the money to make it possible for the . . . action to be sustained. So, I wonder really whether we have done much in furthering our purpose through the War Powers Resolution.[26]

My second proposal for reform concerns revision of the treaty-making process. One approach, slow and tortuous to be sure, would be through amendment of the Constitution: authority for ratification of treaties could be given to a simple majority of the Senate or even to a majority of both houses of Congress. The present two-thirds rule is objectionable first of all because it is undemocratic. By its very makeup, the Senate is unrepresentative of the whole nation. Giving a veto voice to a third of the membership plus one only compounds the undemocratic aspect of the rule. It is possible for senators representing no more than a fraction of the electorate to frustrate the will of the majority; and the record indicates that the two-thirds rule has in fact destroyed agreements which the overwhelming majority of Americans felt were in the best interest of the country.[27]

One cannot defend the two-thirds rule simply on the ground that it was created by the framers of the Constitution, whom we revere for their great work, since the conditions under which the rule was devised no longer exist. John Jay in the *Federalist* supported the two-thirds rule because the Senate was to be composed of a select appointed elite who would be uniquely equipped to advise the president on foreign policy, a condition that certainly does not apply to the popularly elected Senate that was ultimately put in place.[28] Furthermore, the device of an extraordinary majority was favored by the Founding Fathers because they distrusted Europe and wanted to limit as much as possible US involvement in international politics. As we all recognize, isolation and insularity are anachronistic in today's world; hence, the constitutional machinery that would enforce such isolation is anachronistic as well.

In any effort to amend the constitutional two-thirds rule, of course, the Senate itself would have to approve the change, and that is not likely, given its understandable determination to protect its own prerogatives. One consequence of a deadlock between the executive and legislative branches of government would be for the president to resort to the use of treaties less and executive agreements more. This device, in fact, appears to be the trend. Since World War II, approximately 95 percent of the understandings with foreign governments have taken the form of executive agreements.[29] According to Richard Haass, "The role of the treaty as the accepted form of international compact between the United States and foreign countries has been steadily declining."[30] He suggests as a possible compromise between the two-thirds rule and presidential efforts to evade it with executive agreements the combined use of the executive agreement and the congressional joint resolution, a process that involves the approval of a simple majority of each chamber and the signature of the president. Something like that may, in time, make the Senate's treaty power effectively obsolete.

## CONCLUSION

To argue for more presidential control over foreign policy is not to deny the vital role that Congress must and does play in that activity. Two general qualifications of the argument for presidential power need to be noted. First, neither the legislative nor the executive branch of government is monolithic. There are two houses of Congress, and they by no means always see eye to eye on questions of foreign policy. It is not uncommon for one house to oppose the other in support of the president; indeed, Congress has on occasion saved the president in spite of himself. This was the case when the House of Representatives in supporting Rhodesian

sanctions in the late 1970s preserved the chief executive's flexibility against the rigidity of the Byrd amendment. On the other hand, in the case of the Panama Canal Treaty, the House in resisting implementation legislation came very close to undermining the treaty. But to the extent that Congress is vulnerable to a split perspective, it becomes all the more important that the executive branch speak with a single voice.

Unfortunately, there is a parallel division in the executive branch between the National Security Adviser and the National Security Council staff, on one hand, and the Secretary of State and the State Department bureaucracy, on the other. As Leslie Gelb has pointed out, each of these bureaucratic organizations tends to approach foreign policy issues from a different perspective and frequently comes to sharply differing foreign policy recommendations.[31] Obviously, if a president cannot or will not harmonize his own executive instrumentalities in behalf of a unitary foreign policy, no amount of enhanced presidential power at Congress's expense is going to help.

However, there is a more profound qualification to presidential power, and that is the inescapable necessity of Congress to involve itself in foreign policy in certain of its aspects so as to preserve our democratic political system. The term "intermestic" reminds us that a large range of foreign policy decisions today are closely interwoven with domestic issues. Energy is a classic illustration. In theory one might agree with Henry Kissinger that

> The Congress can set broad guidelines and decide basic policies. But the Congress does not have the organization, the information, or the responsibility for deciding the tactical questions that arise daily in the conduct of our foreign relations or for executing a coherent, consistent, comprehensive policy. The President has this responsibility and must be permitted to exercise it on behalf of the entire Nation.[32]

But in the real world these distinctions are not as easy to discern as they are to describe. American democracy has had to come to grips with a fundamental problem from its very inception, and that is the necessity of American institutions to protect domestic liberty while at the same time operating effectively in the international system. Liberty requires a strong Congress; security requires a strong president. The thrust of this essay reflects the ineluctable truth that, without security in this precarious world, neither Congress nor any other entity can maintain our liberty.

**NOTES**

1. Thomas M. Franck and Edward Weisband, "Congress as a World Power," *Worldview*, October 1979, p. 6. For an elaboration of these views, see their book, *Foreign Policy by Congress* (New York: Oxford Univ. Press, 1979).
2. See Arthur M. Schlesinger, *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).
3. J. William Fulbright, "The Legislator as Educator," *Foreign Affairs*, 57 (Spring 1979), 726.
4. Ibid., p. 719.
5. Edwin S. Corwin, *The President: Office and Powers, 1787-1957* (New York: New York Univ. Press, 1957), p. 171.
6. Alton Frye, "Congress and President: The Balance Wheels of American Foreign Policy," *The Yale Review*, 69 (October 1979), 2.
7. Cecil V. Crabb Jr. and Pat M. Holt, *Invitation to Struggle: Congress, the President and Foreign Policy* (Washington: Congressional Quarterly Press, 1980), p. 34.
8. As Lloyd Cutler, Counsel to former President Carter, recently observed: "The former ability of the President to sit down with ten or fifteen leaders in each House, and to agree on a program which those leaders could carry through Congress, has virtually disappeared. The committee chairmen and the leaders no longer have the instruments of power that once enabled them to lead" ("To Form a Government," *Foreign Affairs*, 59 [Fall 1980], 135).
9. Richard Haass, "Congressional Power: Implications for American Security Policy," Adelphi Paper, No. 153 (London: International Institute for Strategic Studies, 1979), p. 7.
10. This irresistible story was told by Henry Stimson and is recounted in James L. Sundquist, "Congress and the President: Enemies or Partners?" in *Congress Reconsidered*, ed. by Lawrence C. Dodd and Bruce L. Oppenheimer (New York: Praeger, 1977), p. 230.
11. David Mayhew, *The Electoral Connection* (New Haven: Yale Univ. Press, 1974).
12. Sundquist, p. 230.
13. Alan Platt, *The U.S. Senate and Strategic Arms Policy, 1969-1977* (Boulder: Westview, 1978), p. 101.
14. As quoted in Platt, pp. 100-01.
15. Haass, p. 7.
16. George F. Kennan, *Cloud of Danger* (Boston: Little, Brown, 1978), p. 6.
17. United Nations Charter, Article 1, Section 1. A convenient source for the text of the United Nations Charter is Alf Ross, *Constitution of the United Nations* (New York: Rinehart, 1950).
18. Some of the problems of Jimmy Carter's Administration are discussed in Richard E. Neustadt's

*Presidential Power: The Politics of Leadership from FDR to Carter* (New York: John Wiley & Sons, 1980), pp. 212-20.

19. John Norton Moore questions the constitutionality of parts of the resolution. See US Congress, Senate, Committee on Foreign Relations, *Hearings, War Powers Legislation*, 92d Cong., 1st Sess., 1971, p. 470.

20. Crabb and Holt, pp. 46-47.

21. Public Law 93-148, 93d Cong., H. J. Res. 542, 7 November 1973.

22. Crabb and Holt, p. 24.

23. Martin Tolchin, "Congress Broadens Its Influence on Foreign Policy," *The New York Times*, 24 December 1979, p. A9.

24. Ibid., quoting Jacob Javits.

25. Quoted in Haass, p. 21.

26. Quoted in Pat M. Holt, *The War Powers Resolution, the Role of Congress in U.S. Armed Intervention* (Washington: American Enterprise Institute, 1978), pp. 38-39.

27. Daniel S. Cheever and H. Field Haviland Jr., *American Foreign Policy and the Separation of Powers* (Cambridge: Harvard Univ. Press, 1952), p. 179.

28. Federalist Paper No. 64. A convenient source is Alexander Hamilton, John Jay, and James Madison, *The Federalist*, Modern Library (New York: Random House, 1941), pp. 416-23.

29. Crabb and Holt, p. 13. There are different types of executive agreements. Some require congressional approval, others do not. Where congressional approval is required, it is by a simple majority of both houses.

30. Haass, p. 13.

31. Leslie H. Gelb, "Muskie and Brzezinski, The Struggle over Foreign Policy," *The New York Times Magazine*, 20 July 1980, pp. 26-40.

32. Henry Kissinger, "America's Destiny: The Global Context," *The Department of State Bulletin*, 1 March 1976, p. 256.