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Congressional Accountability in Shaping United States Foreign Policies 1970-2020

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Abstract

Congress enacted sweeping reforms of the foreign policymaking process in the 1970s. These legislative initiatives constituted a direct challenge to presidential powers, which had grown since U.S. involvement in World War II, culminating in the ‘imperial’ presidencies of Lyndon Johnson and Richard Nixon. Since 1981, there has been a steady erosion of congressional powers to shape national security policies. This study examines the fate of congressional reforms enacted in the post-Vietnam, post-Watergate era, asking: what became of these reform laws? How has congressional authority and accountability been weakened? Interviews with key policymakers inform the study and a bibliographic essay surveying recent research and academic literature provides grounding in extant scholarship. The study concludes with delineation of options for 2021 and beyond for policymakers seeking to restore the constitutional powers of Congress for greater engagement in advancing sustainable national foreign policy commitments.

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I. Introduction: Interbranch Policy Competition, Then and Now

The American system was designed to give U.S. legislators a strong voice in shaping foreign policy.⁽¹⁾ The exclusive power to declare war and fund its prosecution, as well as Senate authority to approve ambassadors and treaties, was deliberately placed in Congress. In recent years, Congress has ducked responsibility for key international security decisions. To better secure long-term national security interests, this erosion of accountability must be reversed and reforms adopted by the next Congress. To accomplish these goals, policymakers must be clear on how the constitutional balance has been upended and have a plan for its restoration.

Cold War governance from 1945 to 1970 saw an accumulation of substantial foreign policymaking powers by U.S. presidents. These presidential powers diminished the constitutional authorities of the ‘first branch’ of national government, the U.S. Congress. President Franklin Roosevelt first exploited these authorities in his third term when he finally overcame congressional isolationists to aid allies against Nazi Germany and Japan—but only after the devastating surprise attack on Pearl Harbor rallied public opinion. Then he used presidential powers to direct U.S. foreign relations on a notably *ad hoc* basis. Post-WW II reforms of the Truman Administration created the modern national security structure, including the National Security Council and the Central Intelligence Agency. Presidential powers accumulated in the nuclear age, especially under the pressure of such events as the Cuban Missile Crisis in the Kennedy Administration. These powers expanded under the so-called ‘imperial’ presidencies of Lyndon Johnson and Richard Nixon, as the White House deepened U.S. military commitments in Vietnam, Cambodia and Laos in the undeclared war against North Vietnam.

Then, in a systematic campaign over the course of a decade, congressional leaders of both parties reasserted legislative prerogatives, while citing the formidable powers Article I of the Constitution grants Congress. Congress enacted in the 1970s a series of sweeping reform measures. In the international arena, these included the War Powers Resolution, to the Arms Export Control Act, to the Nuclear Nonproliferation Act. Each of these measures was designed to write Congress back into the process of shaping U.S. international security policies. From the budget to foreign aid, from sensitive exports to trade sanctions, Congress pushed to realign the exercise of domestic and international policymaking powers consistent with the Constitution. Congress also made significant internal reforms challenging legislative leaders to enhance individual legislators' powers, while leaders of both parties in Congress defended institutional prerogatives. As John Lawrence notes in his first-hand account of the 1970's reforms: "the new generation of legislators (were) assertively independent, skeptical of government institutions and their leaders, and determined to modernize, democratize, and energize (Congress).(2)

These reforms facilitated congressional initiatives at a time when the legislative branch generally had a much higher reputation than at present. Also easing reformers' path was the fact that President Nixon faced a Congress controlled by the opposition party, as did his unelected successor, Gerald Ford.

Legislators made substantial changes to White House foreign policy proposals in the 1970s. An embargo was placed on arms sales to an ally (Turkey). Nuclear fuel exports to another important democracy (India) were barred. Trade with an adversary (USSR) was curbed on human rights grounds through the Jackson-Vanik amendment. Funding for additional military commitments (Vietnam and Cambodia) was limited, then, in the end, denied. Conditions were attached to ratification of major treaties (Panama). Covert support for assassination of foreign

leaders was banned by law. Relations with a former ally (Taiwan) were dramatically bolstered through congressional initiatives without jeopardizing new diplomatic relations with communist China. Other legislators argued for greater emphasis on human rights in U.S. relations with countries as diverse as Indonesia, Chile, Angola and Uruguay.(3) Even junior members of the House had a direct impact on U.S. bilateral relations and, in the case of Angola, war and peace decisions.

The context of the times drove reform. As the political historian Julian Zelizer's definitive study notes, "(g)overnment reforms were a central part of the 1970s as the federal government moved from a relatively insulated, hierarchical and stable governing structures that had existed since the Progressive Era into a polity that was uncertain, partisan and highly conflictual."(4) Of most enduring significance in terms of national security policymaking, legislators in the 1970s established in law a series of *procedural* gauntlets that future presidents would have to run before committing the nation to sustainable long-term international initiatives. Arms sales, nuclear exports and trade deals would be subject to review by Congress. Sustained overseas combat commitments would require congressional approval. Intelligence programs and covert activities would be subject to sustained Capitol Hill oversight. White House declarations of emergency could be terminated by legislative veto.

Half a century later, the U.S. faces international challenges of a dramatically different nature. The Cold War has been replaced by a series of asymmetrical security threats presented by terrorist organizations and rogue regimes. The global pandemic, the rise of economic competitors, disinformation, and climate change pose new threats to U.S. security interests. And, of course, the institution of Congress enjoys far less voter support, as legislators are assailed for dodging accountability and failing to act on major policy challenges both foreign and domestic.

There are, nevertheless, some striking parallels between 1970 and 2020. Then, as now, presidents elected by a minority of voters challenged norms to press their hyper-partisan agendas on an ideologically divided country. Then, as now, protracted foreign conflicts have been funded absent declarations of war, and with diminished U.S. voter support. Efforts to repeal the open-ended authorizations Congress approved—the 1964 Gulf of Tonkin resolution and the 2001 Authorization for the Use of Military Force—failed. Although Presidents Carter, Reagan and George W. Bush made championship of human rights a prominent element of many policies, President Donald Trump, like President Nixon, pursued relations with dictators contemptuous of human rights and American values—in Asia, Moscow and the Middle East. Trump went further at home, assailing domestic institutions many Americans respect, from the FBI and CIA to network news and leading national newspapers. He has failed to consult with congressional leaders prior to rash moves vis-à-vis Ukraine, Russia, North Korea and Iran, with his actions leading to the House adoption of articles of impeachment in December 2019.

A direct consequence of executive overreach is that the crucial public education function of Congress exalted by James Madison—one deemed essential to governance in a democracy—has been tested. Procedural rights and constitutional obligations have been forfeited by a succession of congressional leaders. While the U.S. is again bogged down in protracted overseas conflicts, now in the Middle East and Southwest Asia, Congress has ducked accountability on key foreign policy and defense decisions. “Congress suffers from a lack of backbone on war votes,” Senator Tim Kaine, a Virginia Democrat, laments. “Congress has shown a complete unwillingness to defend its Article I power to declare war.”(5)

Legislators have questioned strategy and tactics in Iraq and Afghanistan, while resisting efforts to have roll call votes to define troops’ missions. Senate leaders have resisted bipartisan

proposals to clarify and tighten war powers accountability.(6) “Congress has gotten very comfortable having it both ways,” veteran Congressman Gerry Connolly (D-VA) notes, “handing over more and more power to the President that the Founders had never intended.”(7) Until the January 2019 switch in party leadership in the House of Representatives, there were few legislative efforts to set goals and limits on U.S. overseas engagements, or to curb funding for protracted wars.(8) Policymaking muscles no longer exercised by Congress have been weakened. While some authorities over spending have been retained by the appropriations committees, the body of national security laws enacted in the 1970s “have been eviscerated, ignored or otherwise interpreted by the Executive Branch in ways that were never intended,” as veteran Senate Appropriations Committee clerk Timothy S. Rieser observes.(9)

Why has this happened? Why did Congress forfeit its hard-won prerogatives? Why did leaders of the institution acquiesce in the diminution of congressional accountability?

The public laws enacted by reformers in the 1970s remain on the books. They create options for policy entrepreneurs prepared to challenge the White House on issues as diverse as ‘emergency’ arms sales to Saudi Arabia to sanctions on the Russian oligarchy led by Vladimir Putin. It is therefore important to ask: *how can policymakers and scholars best understand the prolonged legislative retreat? This forfeiture does not advance the long-term interests of either major political party, or of either branch of government. What options exist for legislators eager to restore the powers of Congress and re-establish the checks and balances at the heart of the Founders’ work at the 1787 Constitutional Convention?*

This inquiry focuses on U.S. foreign policymaking from the 1970s to the current decade. It compares and contrasts interbranch competition in the two eras, with an interest in both process and outcomes. *Which legislative challenges are similar, and which are different? What*

tactics used by reformers in the 1970s might find success again now? What has changed in the context under which U.S. foreign policymaking powers are contested? What are the key lessons learned for practitioners from a half century of policymaking history?

This inquiry draws upon an extensive survey and analysis of academic research in this field produced over the past half century. It is complemented by interviews with key elected officials and staff participants in this struggle—then and now—who have represented different parties, different branches of government and institutions.

The design is both to gain a better understanding of the recent past, as well as to inform current challenges and future opportunities. A supplementary bibliographic essay offers commentary on those research efforts offering the richest insights for scholars and practitioners.⁽¹⁰⁾ Readers should be alert to a bias for action: anticipating options for real world policy-makers intent upon supporting or contesting White House initiatives. This study emphasizes four policymaking challenges engaging legislators: making war, exporting arms, curbing nuclear proliferation, and funding foreign aid. The inquiry also notes issues where the role of Congress has proven in recent years to have less impact. The latter list includes trade, defense spending, intelligence oversight, and use of the Senate's treaty ratification powers.

II. What Does a 'Resurgent' Congress Look Like?

To understand the limitations on congressional initiative in international policy today, it is important to identify the key factors that drove the resurgence of Congress during the 1970s. Their legacy remains quite strong today; here, as Faulkner noted, "the past is never dead. It's not

even past.” Indeed, these factors can be traced over a half century, with distinct echoes in current policy disputes.

Congress was successful in reclaiming some constitutional authorities in the 1970s largely because of five developments:

--An unpopular war in Southeast Asia and a divided electorate made congressional committees the main locus of dissent for critics of White House policies.(11)

--Divisions within both major political parties gave legislators dissenting from their own party leadership national platforms.(12)

--Rapid growth in congressional staff resources and in Washington think-tanks facilitated more in-depth legislative fact-finding.

--Media criticism and investigative journalism challenged the official White House version of events, accelerating voter skepticism of executive authority, especially on Vietnam policy.

--Party primaries for congressional seats gained new relevance, rewarding candidates who pressed the idea that ‘the mission of the opposition party is to oppose,’ while imperiling centrists.

Congressional reform efforts in the 1970s were as much about challenging internal leadership on domestic issues as they were about combatting the executive branch over its conduct of foreign policy. Their taproot was the frustration of both urban Democrats and moderate suburban Republicans with the failure of congressional leaders to advance civil rights legislation (until 1964) and to curb commitments to fund an unpopular war in Southeast Asia (until 1975). Before they could challenge the White House, junior legislators first had to

challenge their own legislative leaders, both on desegregation and on Vietnam policy. The viewpoint of reformers—that Article I powers obliged them to challenge presidential excess—is best summarized by a current Member, who previously served for years as a Senate Foreign Relations Committee aide: “The powers of Congress with respect to war and peace are absolute,” Rep. Connolly argues. “While the President’s are more vague. After war has been declared by Congress, the President commands military assets in the field.”(13) Here a major flaw of the War Power Resolution is apparent: Congress has a limited ability to block initial military interventions; yet, once military forces are committed, few will vote to cut off funding for troops under fire. This fact hamstrung House Democratic leaders 2007-10, when they held a majority opposed to the Iraq “war of choice,” yet continued to vote for annual defense spending bills.(14)

III. What Were the Powers Congress Developed?

The foreign policymaking powers Congress developed were in response to White House actions at the height of the Vietnam War. Yet these legislative prerogatives remain available today. They include:

War Powers Resolution (1973): This measure, passed over President Nixon’s veto, requires timely votes by Congress to approve sustained overseas U.S. military combat deployments. Successive presidents of both parties have challenged its constitutionality; some have reported deployments ‘consistent with’ but not ‘pursuant to’ the War Powers Resolution.(15)

Budget Impoundment and Control Act (1974): A response to President Nixon’s refusal to spend appropriated funds, this measure gave Congress powerful tools to develop budgeting data through the nonpartisan Congressional Budget Office, resist rescissions proposed by the

President, and restrict ‘emergency’ spending not approved by legislators, as required by the Constitution’s Article I.(16)

Arms Export Control Act (1976): Originally the ‘Nelson-Bingham’ amendment, this measure required congressional review—with procedures for votes on privileged resolutions of disapproval—of all major U.S. arms exports to non-NATO allies.(17)

International Economic Emergency Powers Act (1977): This measure rescinded dozens of emergency authorities granted presidents dating back to WW I, while granting new powers to the President, subject to congressional review. The powers Congress reserved via the IEEPA to the legislature via a ‘legislative veto’ were subsequently struck down by Supreme Court rulings in 1983.

Nuclear Nonproliferation Act (1978): Rep. Jonathan Bingham (D-NY) and Senator John Glenn (D-OH) authored this comprehensive rewrite of U.S. nuclear export laws to bar sales of weapons-capable fuel facilities. In the wake of India’s diversion of peaceful use technology from the U.S. to test in 1974 a nuclear weapon, the measure sanctioned allies who engaged in promiscuous nuclear export practices or who rejected ‘full-scope’ safeguards and UN inspections.(18)

Contemporaneously, Congress created House and Senate intelligence committees charged with conducting oversight of budgets and covert programs, building on investigations of the CIA led by Sen. Frank Church (D-ID) and Rep. Leo Ryan (D-CA). Congress created a ‘fast-track’ process for considering proposed trade deals. This forfeited congressional control over tariffs, traditionally a congressional prerogative, while providing for up-or-down votes on trade agreements. Congress also required review (with options for disapproval) of executive

agreements, anticipating the declining number of international accords submitted as formal treaties.(19) Subsequently Congress required annual reports on other nations' human rights records, as well as detailed annual reports on military threats posed by Moscow and, later, by Beijing. This era saw vigorous oversight by authorizers and appropriators, with the Senate Foreign Relations and Armed Services Committees routinely holding public hearings on both crises and opportunities for U.S. international security policies.(20)

IV. Why Has Congress Forfeited These Powers?

There are a number of factors to weigh in identifying the causes of congressional decline in shaping international security policies. One postulate needs to be debunked early on; it is *not* for lack of hearings that Congress has failed. True, there has been a decline in the number of challenges to an incumbent president during periods of unified government. Yet, numerous academic studies show that in periods of divided government—now the norm—Congress has shown itself capable of using hearings to challenge the executive, to educate the public, and to build the case for alternative policies.(21) Note the caveat: both Presidents Obama and Trump enjoyed two year 'honeymoons' where Congress was relatively quiescent, before their political opposition gained control of the House in 2011 and 2019. More vigorous congressional oversight ensued both times.

Much of the congressional posturing in this era was partisan, as former House Foreign Affairs Committee Chairwoman Ileana Ros-Lehtinen (R-FL) acknowledges: "The unwritten code of conduct now is to provide cover for a president of your own party, or to attack if he is not...every vote now is a 'gotcha' vote. And every election could be a wave election."(22)

“The Republicans in the Senate and in the House think they’re in a Parliament, and their responsibility is to a prime minister to whom they owe party loyalty,” maintains George W. Bush Justice Department official Stuart Gerson. “That’s not the American tradition. One can exercise substantial executive power, but that doesn’t mean the legislative branch should be dead.”(23) Partisans have avoided some subjects, as in 2017-18, when the GOP majority managed to go two years without a single public hearing on Russia, Crimea, and the influence of Moscow oligarchs’ money in undermining democratic elections.(24) Similarly, Democrats continued to fund military operations in Iraq and Afghanistan through the Obama years. Then in 2019, in the months leading up to the full House vote on impeachment of President Trump, the U.S. Senate “failed to have a single hearing on the successful campaign to sack a career ambassador (to Ukraine),” Kaine notes, “with profound negative impact on the Foreign Service through this outsourcing of U.S. foreign policy to the President’s lawyer, Rudy Giuliani.”(25) Research demonstrates that there has not been a drastic reduction in the number of foreign policy-related Hill hearings, however. It is not for lack of hearings that Congress has lost power.(26)

A second misleading postulate needs to be addressed. The argument is made that twenty-four-hour asymmetrical combat against non-state actors and terrorist threats is unique to the post-Cold War era, and thus justifies placing exceptional powers in a unified White House command. According to this line of argument, developed by then Rep. (and later Vice President) Dick Cheney (R-WY), the ‘Global War on Terror’ holds unique challenges that require Congress to take a back seat.(27) Of course, the same argument could be made for the Cold War world of 60,000 nuclear weapons, with forward based missiles in Cuba and Turkey capable of making decapitation strikes within minutes. Former Republican Chief of Staff for the Senate Foreign Relations Committee, later Assistant Secretary of State, Jeffrey Bergner best articulates this line

of reasoning: “As the face of war is shaped more and more by standoff weapons, drones, and cyberwarfare, it seems less and less likely that Congress will assert its role in authorizing military actions.”(28)

Conversely, the Cold War did not require Congress to forfeit its foreign policymaking powers. In fact, Congress *expanded* its powers in the 1970s, during a time of high U.S.-Soviet tensions. Defenders of a strong role for Congress reject the ‘special circumstances’ argument. “The idea that the executive needs ever more power because of the challenges of counter-terrorism doesn’t pass the smell test,” Rep. Connolly insists.(29)

Research on this question, supplemented by interviews with leading policymakers, offer details that reveal how profoundly the policymaking environment has been altered.(30)

First, there are ever fewer centrists elected to Congress from either major party, and those that remain find few electoral incentives for taking tough votes on international policy. Consequently, there are fewer Members prepared to place institutional prerogatives over partisan politics. In the late 1980s, there were a dozen liberal Republicans to ‘the left’ of conservative Democrats, often from southern states, and vice versa. In the last Congress, the most conservative senator in the Democratic caucus, Joe Manchin of West Virginia, was still ranked as more liberal than the most moderate Republican, Susan Collins of Maine.(31) Those who challenge party orthodoxy, or who reach across the political aisle to support a bipartisan compromise—or to defend the institutional prerogatives of Congress—are at greater risk of being defeated. As a consequence, Members of both parties have adopted a classic ‘blame avoidance’ strategy to dodge difficult votes while reserving the ability to blame the President for foreign initiatives gone awry.(32) In fact, several powerful Senate Foreign Relations Committee chairmen have lost their re-election bids. The list includes William Fulbright of Arkansas, Frank

Church of Idaho and Charles Percy of Illinois. Many incumbents now fear primary election challenges more than general elections. Primary voters defeated relative moderates such as Senate Foreign Relations Committee Chairman Richard Lugar (R-IN) in 2010, while Trump critic Bob Corker, a popular Tennessee Republican retired unexpectedly in 2019. The much-noted ‘sorting out’ of parties has significantly increased party-line voting while dis-incentivizing would-be champions of the institution of Congress.⁽³³⁾ This has occurred most notably on domestic issues such as health care—not a single Republican voted for Obamacare, even after Democrats accepted scores of GOP-sponsored amendments. Stimulus spending and tax cuts also became party-line votes in the House. Yet, it also happened on issues like the Iran nuclear pact, where Republicans voted en bloc against an agreement that had been supported by U.S. and Israeli military and intelligence leaders, five United Nations Security Council partners, including key European allies, as well as Russia and China. This party-line voting on security matters and the failure to defend institutional prerogatives “makes it easier for future administrations to just ignore the will of Congress,” Senator Chris Coons (D-DE) observes, “it means there’ll be less and less bipartisanship in defending Congress.”⁽³⁴⁾

In this hyper-polarized legislative environment, bipartisan coalitions to sustain Washington’s international policy initiatives are very difficult to achieve. This harms U.S. national security interests. Former GOP Chairwoman Ros-Lehtinen graphically describes the difficulty of passing even a routine State Department authorization in this environment: “The House Foreign Affairs Committee mark-up on the State Department funding bill suffered from dozens of amendments that were simply about social engineering and political messaging. When you try to bring a bill like that to the floor, with so many divisive social issues, you get a ‘No’ from leadership.”⁽³⁵⁾ Similarly, nonpartisan efforts to defend the institution of Congress have

been weakened. As one former House leader and veteran appropriator, Vic Fazio of California, recently testified, “The job of the minority is now to make sure that the governing majority accomplishes little or nothing.”(36)

A second factor in Capitol Hill’s decline has been the twenty-four-hour news cycle and the rise of social media. Both have made nuanced positioning on breaking foreign developments more difficult. Flip comments by inveterate Twitter users crowd out more thoughtful analysis. Hard line positions are rewarded by voters and locked in early by earned media coverage. The President of the United States boasted by Tweet in 2019 about nominating a poorly qualified, controversial Director of National Intelligence, then counting on the press to ‘vet’ him *after* the presidential announcement.(37) Legislators also spend far less time in Washington working together. Bipartisan CODELS (“congressional delegations”) making fact-finding missions overseas, have been cut back. In the Senate, leaders have doubled the number of committee assignments while reducing the number of substantive bills given consideration. Consequently, recent research has shown, that there is greater policy diversification and less specialization.(38) Legislators are increasingly generalists, fewer are specialists in foreign or defense policy. The development of policymaking expertise, especially in foreign policy, an area deemed of less interest to voters, is punished rather than rewarded. In addition, term limits on committee chairs—a reform initiative from decades past—has further reduced the development of expertise necessary to stand up to a unified executive branch front led by the President.

A third factor is that the marquee foreign policymaking committees, panels that once wielded the power to check presidents, have themselves declined. The Senate Foreign Relations Committee is Exhibit A here. The committee was once a panel led by vigorous challengers to presidential authority. William Fulbright used it to build a national case against the Vietnam War

expanded by his political ally, fellow southern Democrat Lyndon Johnson. Frank Church used the panel to build the case for nuclear arms control and the Panama Canal treaties, while checking CIA excesses. Republican Jesse Helms pressed from his leadership position on the panel to curb U.S. support for international organizations.(39) Such was the high esteem of the panel that Senator Jack Kennedy's father, eager to prepare for the 1960 presidential contest, implored then-Senate Majority Leader LBJ to grant his son a seat on the panel in the 1950s, blocking a more senior political rival, Estes Kefauver.

In the last Congress, the committee was led by a quiet isolationist from Idaho, Jim Risch, who is not held in high regard by foreign policy experts on both sides of the aisle. The Senate panel that once seated Dick Lugar, John Kerry, Chuck Hagel and Barack Obama still attracts White House aspirants. Ted Cruz of Texas, Rand Paul of Kentucky, and Marco Rubio of Florida all joined the panel prior to their own presidential campaigns. But this panel, and its House counterpart, are now deemed by most legislators less desirable than in previous eras. The House committee still attracts some legislators committed to a strong institutional role for Congress. But it also has Members enamored of foreign travel and well-supported by interest groups with a stake in international matters. In the House, where Members face voters every two years and are more tied to parochial districts, getting Members to serve on the Foreign Affairs Committee has been a challenge for party leaders.(40)

The reason why these two key authorizing committees have lost much of their luster and influence is clear: they rarely pass any significant legislation. In fact, few major committees of Congress act *less* on legislation. With no significant treaties coming before the Senate in the last decade, the Foreign Relations panel garners less public and press attention. With no authorization debates, it has legislative power over fewer funds and programs. In the void left by

decades of failing to pass even an annual authorization bill for the State Department, the committees and their public education functions, even their champions and leaders concede, are less relevant.(41) Today the work of the House and Senate foreign affairs committees, which employ several dozen senior staff experts on bilateral relationships and regional security challenges, is often “eviscerated by four appropriations subcommittee clerks, who are not foreign policy experts,” as one veteran legislator laments.(42) It should be noted, this phenomenon obtains on most legislation, not just on national security matters.

The limited power of Congress to shape national security policy has thus been transferred, in large measure, to a small coterie of staff on two subcommittees of the Appropriations Committees. This is a distinction with major consequences. Appropriations subcommittees are far less accessible to press or the public. Appropriations legislation is much more closely held. Committee operations are less transparent. Detailed policy riders now routinely appear in omnibus measures, sometimes as a courtesy to supplicant members from the foreign affairs committees responsible for authorizing related programs. They are backed by few if any foreign policy hearings beyond the once a year set-piece presentations of budget testimony by the Secretaries of State and Defense. They are less accountable. Indeed, appropriations measures are, by Senate rule, not intended to carry a host of policy riders. Yet with constant abuse of continuing resolutions and gargantuan omnibus appropriations acts pushed through to keep the government open, measures are subject to even more deal making with less transparency and accountability.

As a consequence, most foreign assistance policy initiatives from Congress—the 1984 “Boland amendment” barring U.S. assistance to the Nicaraguan *contras*, for instance—are buried in lengthy appropriations measures. Congress has only passed all its individual spending

measures before the start of the fiscal year four times in the last forty years. Because Congress has failed 36 out of 40 times, foreign policy initiatives by Congress are often obscured in an omnibus end-of-the-year measure. (43) There they are often overshadowed by major domestic issues riding the same legislative vehicle.

Authorizers fail to follow ‘regular order.’ Too often foreign policymakers have not received public testimony, developed a hearing record, held accessible public committee mark-ups, addressed floor amendments and conference committee proposals. This failure limits transparency and accountability. “If the authorizers did their job,” one veteran Appropriations Committee staffer concedes, “we appropriators would have much less influence.”(44)

The decline of the authorizing committees and the increasing practice of having party leaders draft key bills for prompt floor action reduces the value of committee expertise. The failure of authorizers to legislate also creates a power vacuum. As in other areas of government, where Congress permits a power vacuum to form, it is an invitation for executive overreach via executive orders and unilateral action.

“Where is the incentive for Congress to step up?” former GOP Assistant Secretary of State Bergner asks. “Congress is quite comfortable with the role it has constructed for itself: passing the real work to the executive branch and retaining the role of kibitzer-in-chief. The coin of the realm is no longer legislative craftsmanship, but rather public notoriety.”(45) Members concerned about possible primary challenges and anxious to raise campaign funds are drawn towards media coverage and away from unglamorous committee proceedings.

V. The Myth of a Nonpartisan Foreign Policy

One final myth needs to be dissected to clarify the obligations of an accountable Congress. There is a talking point White House officials routinely use to assail activist legislators for, supposedly, introducing seamy electoral considerations into the highbrow realm of security policy. The caricature executive branch champions have used in the past is that the clumsiness of having ‘538 Secretaries of State’ requires deferral to the executive branch.

When Congress *does* attempt to impose some limits on presidential action, invariably the institution is upbraided—even from within—for challenging the White House. “It’s shameful,” House Minority Whip Liz Cheney (R-WY) claimed after the House adopted amendments to the 2020 defense bill designed to check President Trump’s support for Saudi Arabia. “They’re failing to uphold their constitutional duty...When Congress politicizes the National Defense Authorization Act, we are not worthy.” (46) In this manner, some legislators fail to defend their own institutional prerogatives. They reduce accountability, and, in the end, make long-term U.S. national security commitments less sustainable because they do not have the express buy-in of a majority of the 538 elected representatives of American voters.

As former Republican Chairwoman Ros-Lehtinen notes, leadership will protect Members from taking tough votes. And there is irony in the fact that, as one veteran Senate chief of staff notes, Congress repeatedly defers efforts to reform war powers laws. Legislators “wait for a specific newsworthy crisis to create pressure for action—then resist efforts to address constitutional questions in the heat of the moment.”(47) This pattern once again played out in January 2020 when President Trump abruptly ordered the assassination of Iran’s top military leader, sparking calls in Congress to reform war powers laws to constrain him.

The skeptical views of congressional obligations to be accountable for national security policies the legislature funds are based on a myth, the false notion that politics should always

‘stop at the water’s edge.’ Analysis of American history shows that as a rule, they do not. They very rarely have. Foreign policy decisions are fiercely contested by politicians—and have been since the founding of the nation. Different views on relations with Britain and France bitterly divided our national politics from 1776-1826. Domestic challenges to presidential diplomatic initiatives bedeviled Presidents Washington, Adams and Jefferson. The domestic politics of foreign policy positions led to Adams’ defeat. They caused Jefferson to leave office deeply frustrated after imposing a trade embargo on both England and France, ultimately leading to the disastrous War of 1812.

Domestic politics similarly prevented President Woodrow Wilson from gaining ratification of the League of Nations treaty after World War I. They prevented FDR from aiding Britain under Nazi assault for more than two years after Hitler’s Germany invaded neighbors in 1939. When the U.S. was bitterly divided over what proved to be a disastrous war of choice, the 2002 U.S. attack on Iraq, White House advisor Karl Rove encouraged Republicans to “run on the war.”(48)

The rare periods of bipartisan consensus (1942-1945, or in the weeks after the 2001 terrorist attacks on the U.S.) should be studied for their unique characteristics. Such times of national unity and limited policy dissents are the exception, not the norm. This truth was conceded unambiguously by then-Secretary of State Condoleezza Rice, who acknowledged in a *New York Times* opinion piece published in 2007, that politics routinely *start* at the water’s edge and appropriately so. (49) Her argument is compelling; charting a new international course based on specific domestic priorities has been part of many presidential campaigns, dating back to the Adams-Jefferson contest of 1800. As Secretary Rice noted, promises to increase defense

spending and challenge the Soviet Union were central to Ronald Reagan's election as President in 1980.

Partisan politics most always have been and most always will be part of how Congress handles foreign policy. However, in the past, there have also been congressional leaders—institutionalists from Sam Rayburn to Everett Dirksen, from Sam Ervin to Robert C. Byrd—who have been prepared to defend legislative prerogatives regardless of partisan considerations. Congress, conservatives and liberals used to agree, needs to defend its constitutional powers and institutional rights against executive overreach if it is to remain relevant. Legislators had greater loyalty to the institution during the 1970s reform era. The institution also enjoyed greater public confidence than at present, perhaps as a consequence of Members' commitments to the institution.

Foreign policy inflames passions, to be sure. This is not, however, a new development. Legitimate differences can be prosecuted between parties in the legislative process of coalition building and compromise. To do nothing, most congressional veterans interviewed for this study make clear, is to fail both party and institution over party.

The Founders empowered Congress to contain foreign military deployments, to use their power of annual appropriations, and to wield the exclusive power to initiate hostilities by declaring war. Establishing these powers in a popularly-elected legislature was at the heart of the American Revolution. Therefore, the predictable eruption of partisan politics in Congress' handling of foreign and defense policies is no justification for forfeiting power and ducking accountability. To do so is to reject the wisdom of the Founders, the design of the Constitution. It constitutes a dereliction of duty to be accountable to voters and taxpayers.

VI. Conclusion: Reform Options for 2021 and Beyond

The key to the long-term success of many U.S. foreign policy commitments is sustained voter support. Former GOP Secretary of State and Chair of the Joint Chiefs of Staff Colin Powell has underscored the importance of securing legislative support and holding Members accountable. The Powell Doctrine makes clear the notion that military deployments are ultimately not sustainable without express endorsement of their mission by vote of Congress. (50) Yet Congress often has little choice but to continue funding unpopular military commitments. Members fear appearing ‘weak’ on defense. Despite explicit statutory language to the contrary in Section 5 of the War Powers Resolution, continued military appropriations are often misrepresented as congressional endorsement of combat missions. The most transparent and accountable means of securing such an authorization is through more robust debate in Congress. Elected officials must sell the policy to make it sustainable, especially for record high defense budgets and prolonged wars. This is the premise of recent bipartisan war powers reform efforts. Originally drafted by Senator Kaine and the late Senator John McCain (R-AZ), current congressional proposals, if enacted, would force Members to vote on prolonged military deployments in war zones.(51) The virtue of proposed war powers reforms is that they promote accountability. They are designed to force the people’s representatives in Congress to vote yes or no on war early on, to be accountable to voters.

“The first thing Congress must do to regain its power is to pass more bills.” That is how two former Members, conservative Virginia Republican Bob Goodlatte and progressive Colorado Democrat Dave Skaggs, prescribe solutions.(52) Be accountable, they argue. Be more relevant and reclaim powers granted by the Constitution. “Congress has forfeited its powers,”

former Senator and veteran Foreign Relations Committee legislator Jeff Flake (R-AZ) concedes. “We have given up these powers because of our dysfunction.”(53)

The powers of Congress are spelled out in the Constitution in far more detail—and are more extensive—than those granted to the executive. Some proponents of a ‘strong’ presidency are ideological conservatives, who dismiss Congress as ineffectual. Yet their resort to ‘originalist’ or ‘strict constructionist’ views is intellectually inconsistent.

We are a nation founded by strong skeptics of executive authority. The Continental Congress had only a presiding officer. The nation had no chief executive before 1789, while governed by the Articles of Confederation, which essentially had no executive branch. The Revolutionary War was fought in part to prevent a powerful executive from committing the colonists to war and taxing them for its prosecution without a strong legislative check. Thus, claims the Founders supported a ‘unitary’ executive, one empowered to override legislative powers at will, have no basis in historical fact. The Founders were wary of foreign intrigues. They specified that Congress must not only declare war, but also fund its prosecution with annual appropriations.

Foreign policy would be more sustainable—and U.S. credibility stronger in the international arena—if Congress were on board. Using Congress to educate the public on new initiatives also strengthens any presidential administration’s case. This type of cooperation between branches was key to the success of the post-WW II Marshall Plan, which involved a coordinated campaign engaging Congress to make the case for new unpopular taxpayer aid to Europe after years of American sacrifice. So did the U.S. race to land men on the moon, framing a military-scientific gamble as one way to keep the Cold War from open hostilities.(54) It would seem this education function is especially important in an age of populism, where foreign service

professionals are suspect in some quarters. “Today’s foreign policy elite,” scholar Stephen Walt argues, “ is a dysfunctional caste of privileged insiders who are frequently disdainful of alternative perspectives and insulated both professionally and personally from the consequences of the policies they promote.”(55)

A more engaged Congress is in the national interest. There is a broad and deep record of scholarship affirming that effective lawmaking requires Congress to step up to its constitutional responsibilities. That requires respect for ‘regular order’, for advancing legislation through public hearings in committees of expertise and developing a legislative record. It means use of the budgeting power of the purse. It means passing bills on time, or withholding Member pay, if necessary, until this basic constitutional duty is met. It means holding public hearings before attaching significant policy conditions on appropriations measures. It means using the legislative powers spelled out in the Constitution to provide a healthy check on a runaway executive. In addition, it requires sustained leadership efforts to restore the power and accountability of the authorizing committees, Senate Foreign Relations and House Foreign Affairs.

The much-maligned 115th Congress of 2017-18 managed in a few instances to reassert its authorities on key international issues. These were on issues where core Republican principles were at stake. Republican majorities challenged the Trump White House as early as 2017 on sanctions against Russia (refusing to provide a presidential waiver). Led by GOP legislators such as Senator Lindsey Graham (R-SC), Congress in 2017 (and subsequent years) rejected the White House push for 33% cuts gutting foreign assistance. More recently, conservative GOP Senator Pat Toomey of Pennsylvania has pressed legislation requiring congressional approval before the President imposes tariffs. “The Constitution is very unambiguous,” Toomey notes. “It assigns Congress the responsibility for regulating commerce with other countries and setting tariffs, and

yet we've significantly delegated that to the president.”(56) In the 116th Congress 2019-2020, there was also been bipartisan support in the Senate for efforts to challenge the Trump White House on arms sales and war powers, with legislators such as Rand Paul (R-KY) and Mike Lee (R-UT) supporting the Kaine war powers initiatives, and Ohio Republican Rob Portman pressing for more Capitol Hill engagement on trade.

Even before the House adopted articles of impeachment in December 2019, the House and Senate moved selectively to attempt to legislate curbs on President Trump's national security policies, especially with regard to support for Saudi Arabia and the open-ended Authorization for the Use of Military Force for the post 9/11 'war on terror'. Congress pushed back on Saudi Arabia and human rights; majority votes rejecting White House initiatives were adopted in 2019 on Yemen and arms sales. Both failed to achieve a two-thirds majority necessary to override presidential vetoes, despite conservative Republican Ted Cruz's public warning that the Trump Administration should “follow the damn law!”(57)

Similarly, legislators challenged the declaration of a military 'emergency' on the nation's southern border; “we have to push back against the overuse of fake 'emergencies',” Kaine explains. “The ability of the President to pillage DOD appropriations for non-DoD purposes.”(58) And, of course, it was in President Trump's conduct of *foreign* policy towards Russia and Ukraine that his actions finally led Speaker Nancy Pelosi in late 2019 to push the House to adopt articles of impeachment. In some cases, life-long conservatives active in the Republican Party agreed: “Conservatism is respect for the rule of law,” President Reagan's Solicitor General Charles Fried maintained in November 2019. “Conservatism is a respect for the rule of law. It is a respect for tradition. The people who claim they are conservatives today are demanding loyalty to this completely lawless, ignorant and foul-mouthed president.”(59) The

essentially party line vote in the Senate spared President Trump conviction, but he remains the only White House leader ever impeached for malfeasance on fundamentally international security issues.

Taken together, these initiatives indicate the beginnings of a renewed push by Congress to regain national security policymaking powers essential if legislators are to be effective and accountable in charting our future course. Future leaders of a re-assertive Congress will face clear challenges. President Trump succeeded in disrupting the status quo and challenging international norms. Legislators must now demonstrate the capability to create new norms that can advance national interests. Several caucus groups have emerged pressing internal reforms and bipartisan collaboration to defend the prerogatives of Congress. In the national security realm, the agenda for reform is clear. This agenda should include taking at least five specific actions to wield foreign policymaking powers more effectively:

1. Pass annual authorizations and on-time appropriations measures as freestanding bills, withholding Members' pay until completed.
2. Develop veto-proof bipartisan majority for war powers reform by linking their adoption to passage of annual defense spending bills.
3. Check presidential abuses of 'emergency' authority on arms sales and border security.
4. Sunset over-reaching and dated U.S. laws such as the 2001 Authorization for the Use of Military Force against Al-Qaeda.
5. Reassert congressional powers to summon timely testimony and document production to aid oversight by Congress.

In addition, from the first day of freshman orientation, Members and Senators should emphasize institutional obligations and constitutional authorities on a non-partisan basis. Congress has a very low reputation among voters not just because of failure to be accountable on international measures: criticism clearly extends to its hyper-partisan divisions on the nation's domestic agenda as well. Equally important, Congress must assert greater control the vast defense budget, both to ensure each national security mission has public support and to enhance accountability. In an era of an all-volunteer Army, Congress needs to develop a public record of the case for major military commitments. This is the best way to ensure that U.S. troops placed in harm's way know that U.S. voters have their back. As former Secretary Powell insists, building the case for sustained voter support is key to succeeding in securing allied support for U.S. national security commitments.

Taken together such reforms would enhance congressional accountability. They would begin to rebuild voter confidence in the legislative branch.(60) These measures could help bring the 538 elected representatives closer to their voters, while educating more Americans about the stakes of foreign policy decisions. They would thus restore the Founders' vision, while renewing public trust in the accountability of the legislative branch. These actions would align U.S. foreign policy more closely with voter sentiment and, thus, make them more sustainable and capable of advancing U.S. national security interests. They would make our nation stronger.

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Notes

1. The author wishes to thank sponsors of this study, the Center for Effective Lawmaking at the University of Virginia's Batten School, led by Professor Craig Volden, and to acknowledge the invaluable aid of Research Assistant Hannah Gavin, and graduate students in Batten School seminars, including Mr. Conor Boyle.
2. John A. Lawrence, *The Class of '74: Congress after Watergate and the Roots of Partisanship* (Baltimore: John Hopkins University Press, 2018) p. 2.
3. *Ibid.*, p. 155.
4. Julian E. Zelizer, *On Capitol Hill: The Struggle to Reform Congress and Its Consequences, 1948-2000* (Cambridge: Cambridge University Press, 2004), p. 1.
5. Tim Kaine (U.S. Senator) in interview with the author, November 15, 2019.
6. James A. Baker III and Warren Christopher, *National War Powers Commission Report* (Charlottesville, Virginia: Miller Center of Public Affairs, 2009), <http://web1.millercenter.org/reports/warpowers/report.pdf>.
7. Gerry Connolly (U.S. Congressman) in interview with the author, July 11, 2019.
8. The most significant House initiatives to date under Speaker Pelosi include a series of amendments to the DOD authorization bill, which passed the House on July 12, 2019. See Catie Edmondson, "House Lawmakers, Voting along Party Lines, Pass \$733 Billion Defense Bill," *The New York Times*, July 13, 2019, <https://www.nytimes.com/2019/07/12/us/politics/trump-iran-vote.html>.
9. Timothy S. Rieser in interview with the author, July 11, 2019.
10. Details of this bibliographic essay can be found on the Center for Effective Lawmaking website, and are reprised below.
11. Linda Fowler, *Watchdogs on the Hill: The Decline of Congressional Oversight of U.S. Foreign Relations* (Princeton: Princeton University Press, 2015). Professor Fowler details the role committees of Congress played in focusing national challenges to the Vietnam policies of President Johnson and Nixon.
12. For example, the 1968 Democratic Convention gave dissenters a forum to assail Vietnam War spending and the 1976 Republican Convention gave critics of détente, led by Ronald Reagan, a forum to attack President Gerald Ford from the political right.
13. Connolly, interview.
14. John Lawrence in interview with the author, November 8, 2019.
15. See Julian E. Zelizer's definitive study *On Capitol Hill: The Struggle to Reform Congress and Its Consequences, 1948-2000* (Cambridge, 2004).
16. For a contemporary account of the changes wrought by the 1970s reforms, see for example the author's 1989 book *Conflict and Consensus: The Struggle between Congress and President over Foreign Policymaking* (New York: Harper & Row, 1989). Updated analysis is also contained in the author's chapter in Congress in Roger Z. George and Harvey Rishikof's *The National Security Enterprise: Navigating the Labyrinth* (Georgetown University Press, 2010, 1st edition).
17. Named for Senator Gaylord Nelson and Representative Jonathan Bingham, this measure was adopted first as an amendment to a defense bill in 1974, then as a freestanding measure. It was advanced both as a caution against militarizing conflicts and as a means to review sales potentially harmful to U.S. ally Israel. It

has since been used almost exclusively to challenge sales Israel supporters fear may undermine their qualitative edge in the region.

18. Full disclosure: the author was the lead House staffer drafting this measure, serving as Legislative Assistant to Rep. Bingham 1976-1978.
19. Since the lame duck Senate narrowly passed the New Start Treaty with Russia in December 2010, there have been no attempts to engage the Senate in ratification of a major treaty. President Obama chose to submit the Iran nuclear accord with five major nations as an executive agreement, essential to its advancement given that a majority of senators were prepared to oppose its ratification. The acquiescence of the GOP majority (led by Senator Bob Corker R-TN) in a scheme to adopt a bill allowing the Iran accords' entry into force with the support of barely one-third of senators further weakened Capitol Hill's ability to shape foreign policy.
20. Scholars Matthew McCubbins and Thomas Schwartz differentiated all international policy hearings into two types for a major study, helpfully dubbing them with the appellation 'fire alarms' or 'police patrols.' See their original study "Congressional Oversight Overlooked: Police Patrols and Fire Alarms," *American Journal of Political Science* 28, no. 1 (February 1984): 165-179.
21. Fowler's authoritative study of Hill oversight of foreign policy, *loc. cit.*, reaches a similar conclusion, noting that during the height of the Cold War, when nuclear deterrence calculations were most likely to empower the executive branch, Congress was deeply involved in foreign policymaking.
22. Ileana Ros-Lehtinen (U.S. Congresswoman) in interview with the author, July 11, 2019.
23. As quoted in "Barr's Legal Views Come Under Fire From Conservative-Leaning Lawyers," Katie Benner, *New York Times*, November 22, 2019, <https://www.nytimes.com/2019/11/22/us/politics/barr-critics.html>.
24. Republican Ed Royce of California then chaired the House Committee. The House Intelligence Committee did ultimately hold classified hearings about Russian influence on the 2016 U.S. presidential campaign.
25. Kaine, interview.
26. Some hearings are designed to generate headlines, others to build the case for reform. For example, contrast the Iran-Contra hearings in 1987, which diminished the flagging Reagan Administration but, together with the Tower Commission, produced a blueprint for more transparent National Security Council operations with the "Benghazi hearings" in 2015-6, ostensibly about beefing up embassy security, but in reality, were a prolonged GOP attempt to discredit presidential candidate (and former Secretary of State) Hillary Clinton.
27. Then-Rep. Richard Cheney in his dissent to the Iran-Contra committee report articulated the theory of a 'unitary' executive possessing special powers in 1987. Five GOP committee members joined him in this minority view. U.S. Congress, Senate, Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. *Report of the Congressional Committees Investigating the Iran-Contra Affair: with Supplemental, Minority, and Additional Views*, 100th Congress, 1st sess., 1987, S. Rep. 100-216, <https://archive.org/details/reportofcongress87unit/page/n5>.

28. Jeffrey Bergner, “The Congressional Apprentice: How Trump Is Approaching Capitol Hill,” *Foreign Affairs*, September/October 2017, <https://www.foreignaffairs.com/articles/2017-07-31/congressional-apprentice>.
29. Connolly, interview.
30. For a complete list of current and former lawmakers interviewed, see Batten School/Center for Effective Lawmaking website.
31. “Senators,” Voteview, accessed December 1, 2019, <https://voteview.com/congress/senate>.
32. The author is indebted to Professor Craig Volden’s analysis of this phenomenon, which draws from the seminal research of Weaver, R. Kent. 1986. “The Politics of Blame Avoidance.” *Journal of Public Policy* 6(4): 371-398.
33. Bill Bishop. *The Big Sort: Why the Clustering of Like-Minded America is Tearing Us Apart*. Boston: Mariner Books, 2009.
34. As quoted in “Trump’s defiance of oversight presents new challenge to Congress’s ability to rein in the executive branch,” Rachel Bade and Seung Min Kim, *The Washington Post*, October, 7, 2019, https://www.washingtonpost.com/politics/trumps-defiance-of-oversight-presents-new-challenge-to-congresss-ability-to-rein-in-the-executive-branch/2019/10/06/59fb7cc0-e6c3-11e9-a331-2df12d56a80b_story.html.
35. Ros-Lehtinen, interview.
36. Testimony of former Congressman Vic Fazio, U.S. Congress, House of Representatives, Select Committee on the Modernization of Congress. *Former Members Day Hearing: Speaking from Experience, May 1, 2019*, 116th Cong. Retrieved from <https://docs.house.gov/meetings/MH/MH00/20190501/109377/HHRG-116-MH00-Wstate-FazioV-20190501-U1.pdf>.
37. President Trump told reporters, “I like when you vet... You vet for me. When I give a name, I give it out to the press, and you vet. A lot of times you do a very good job. Not always.” See Charlie Savage, Julian E. Barnes and Annie Karni, “Trump Drops Plans to Nominate John Ratcliffe as Director of National Intelligence,” *The New York Times*, August 2, 2019, <https://www.nytimes.com/2019/08/02/us/politics/trump-ratcliffe-dni.html>.
38. Linda Fowler, *loc. cit.*, see especially chapter 3. This study also emphasizes fact that key committees are reluctant to challenge Presidents of their own party.
39. Ralph G. Carter and James M. Scott, “Understanding Congressional Foreign Policy Innovators: Mapping Entrepreneurs and Their Strategies,” *The Social Science Journal*, 47 (2), p. 418-438, 2009.
40. Lawrence, interview.
41. Jeffrey Bergner, *The Vanishing Congress: Reflections on Politics in Washington* (Norfolk, Virginia: Rambling Ridge Press, 2018).
42. Connolly, interview.
43. Only once since 1995 has Congress passed and the President signed into law on time all 12 appropriations measures required to fund government agencies and programs. Under the current budget and tax system that began in 1977, Congress has only passed all appropriations measures in timely fashion on four occasions—in 1977, 1989, 1995, and 1997 See Drew DeSilver, “Congress has long struggled to

- pass spending bills on time,” *Pew Research Center*, January 16, 2018, <https://www.pewresearch.org/fact-tank/2018/01/16/congress-has-long-struggled-to-pass-spending-bills-on-time/>.
44. Staff interview on background, August 2019.
 45. Jeff Bergner in interview with the author, September 5, 2019.
 46. As quoted in Catie Edmondson, “House Passes \$733 Billion Defense Bill Checking Trump’s War Powers,” *The New York Times*, July 12, 2019, <https://www.nytimes.com/2019/07/12/us/politics/trump-iran-vote.html>. Rep. Liz Cheney (R-WY) is the daughter of former Vice President Dick Cheney, noted champion of executive authority.
 47. Senate Chief of Staff in background interview with the author.
 48. William Schneider, “Return of the Scandal Script,” *The Atlantic*, May 1, 2002, <https://www.theatlantic.com/politics/archive/2002/05/return-of-the-scandal-script/377787/>.
 49. Kiron K. Skinner, Serhiy Kudelia, Bruce Bueno de Mesquita, and Condoleezza Rice, “Politician Starts at the Water’s Edge,” *The New York Times*, September 15, 2007, <https://www.nytimes.com/2007/09/15/opinion/15skinner.html>.
 50. Colin L. Powell, “U.S. Forces: Challenges Ahead,” *Foreign Affairs*, Winter 1992/93, <https://www.foreignaffairs.com/articles/1992-12-01/us-forces-challenges-ahead>.
 51. U.S. Congress, Senate, *War Powers Consultation Act of 2014*, S.1939, 113th Cong., introduced in Senate January 16, 2014, <https://www.congress.gov/bill/113th-congress/senate-bill/1939?q=%7B%22search%22%3A%5B%22War+Powers+Consultation+Act+of+2014%22%5D%7D&r=1>.
 52. Bob Goodlatte (U.S. Congressman) and Dave Skaggs (U.S. Congressman), Jefferson Dinner discussion and interviews with the author, Center for Effective Lawmaking, Batten School of Leadership and Public Policy, April 18, 2019.
 53. Jeff Flake (U.S. Senator) in interview with the author, October 17, 2019.
 54. Historian Douglas Brinkley’s *American Moonshot: John F. Kennedy and the Great Space Race* (Harper, 2019) uses transcripts from Kennedy Oval Office discussions with NASA leaders to make clear Kennedy pushed the space race, in part, as an alternative to the escalating nuclear arms race during Cold War.
 55. From Stephen M. Walt’s *The Hell of Good Intentions: America’s Foreign Policy Elite and the Decline of U.S. Primacy*, as quoted in Jacob Heilbrunn, “Rethinking Foreign Policy,” *New York Times Book Review*, p. 16, November 26, 2018.
 56. As quoted in “Lawmakers Make Long-Shot Bid to Check Presidential Tariff Powers,” Lindsay Wise, *Wall Street Journal*, September 15, 2019, <https://www.wsj.com/articles/lawmakers-make-long-shot-bid-to-check-presidential-tariff-powers-11568571897>.
 57. “U.S. Senator for Texas Ted Cruz,” *U.S. Senator for Texas Ted Cruz*, July 10, 2019, https://www.cruz.senate.gov/?p=press_release&id=4577.
 58. Kaine, interview.
 59. *New York Times*, *loc. cit.*, November 22, 2019.
 60. Note that after their 2016 election debacle, Democrats (and ‘establishment’ Republicans) expanded efforts to make key ‘elite’ foreign policy decisions more

transparent and accessible to the average voter. Think tanks gave renewed focus to the challenge of educating voters on the stakes of foreign policy decisions. See for example Salman Ahmed, “U.S. Foreign Policy for the Middle Class: Perspectives from Ohio,” *Carnegie Endowment for International Peace*, 2018. The series will also include studies of Colorado and Nebraska and the impact of U.S. foreign trade policies on state economies.

Annotated Bibliography

Author's note: the literature on executive-legislative branch conflicts in shaping U.S. international policy is quite thin. In preparation for this study, we undertook a comprehensive survey of books, peer-reviewed journal articles, op-eds and think tank studies on congressional reforms designed to restore legislators' foreign policymaking powers. What follows is a brief, subjective summary of the value we found in the texts which most effectively occupy the field.

Books

Bergner, Jeffrey. *The Vanishing Congress: Reflections on Politics in Washington*. Norfolk, Virginia: Rambling Ridge Press, 2018. Bergner's work is primarily a reflection on his time as a Senate Foreign Relations Committee staff director and Assistant Secretary of State. It contains valuable insights on Congress's decreasing effectiveness as evidenced by Congress today passing fewer bills and authorizing less funding it did in the 1970s. Bergner discusses why the decline in bipartisanship, an overly complicated budget process, weakened authorization powers, among other factors have led to Congress's decline. This work contains revealing anecdotes on why Congress uses sanctions as they did against the apartheid regime in South Africa, how Congress overrode President Nixon's veto of the War Powers Act, and other foreign policy case studies of this era.

Crabb Jr., Cecil V., and Pat M. Holt. *Invitation to Struggle: Congress, the President, and Foreign Policy*. Washington D.C.: Congressional Quarterly, Inc., 1984. Crabb and Holt describe the U.S. foreign policy process as an "invitation to struggle" between Congress and the President as set up by the Constitution. They provide examples from the 1950s to the early 1980s that demonstrate how Congress increasingly engaged in the foreign policymaking process. Congress's role in foreign policy has been an ebb and flow of assertiveness and retraction, with a tendency to assert its role more strongly at times it disagrees with the President. This work includes particularly strong case studies on the Panama Canal treaties and the sale of aircraft to Saudi Arabia amidst the Arab-Israeli conflict. The Panama Canal treaties is a useful case study for examining how an event can be used for political advantage as well as how Congress plays a role in the treaty-making process. The authors use the Arab-Israeli conflict/AWACS example from the Reagan Administration to show how pro-Israel support groups do not have a monopoly on U.S. foreign policy decisions.

Fowler, Linda. *Watchdogs on the Hill: The Decline of Congressional Oversight of U.S. Foreign Relations*. Princeton: Princeton University Press, 2015. Fowler's work examines Senate oversight on defense policy between 1947 and 2008, focusing specifically on the Senate Foreign Relations Committee and the Senate Armed Services Committee. She investigates why these committees became less active during this period, what factors explain the decline, and why they became more focused on routine events rather than more significant ones.

Mann, Thomas E., and Norman J. Ornstein. *The Broken Branch: How Congress is Failing America and How to Get It Back on Track*. New York: Oxford, 2006. Mann and Ornstein discuss the diminishing role of Congress in formulating and implementing important policies after the structural and procedural reforms in the 1970s. The work emphasizes the Constitution's designation of Congress as the "first among equals" in relation to three branches of government,

and the Senate's unique role in tempering legislation. They contend that a key cause of this decline in Congress's effectiveness is Members' move away from prioritizing their institutional responsibilities. One of the strongest examples used in the book is on the decision to invade Iraq in 2003 as it demonstrates how Congress's attempted pushback was not taken seriously by the Bush Administration, and the lack of deliberation and policy analysis in Congress meant that the Administration was never held fully accountable.

Muskie, Edmund S., and Kenneth W. Thompson *The President, the Congress, and Foreign Policy*. Lanham, Maryland: University Press of America, 1986. This work examines the role of the executive and legislative branches in conducting foreign policy. It includes the Policy Paper "The President, the Congress, and Foreign Policy" by Kenneth Thompson, which recommends a list of options to enhance the process by which Congress and the White House jointly engage in shaping foreign policy. It details the constitutional responsibilities of each branch and contains strong points about how the Founding Fathers intentionally overlapped the Congress and the President's powers in foreign policy. It goes through the evolution of congressional reforms in 1970s to increase their role in foreign policy-making inspired by the desire to end the Vietnam War. It includes case studies on U.S. foreign policy in Mexico and Central America, Western Europe, the Middle East, China, trade, foreign assistance, and human rights.

Shapiro, Ira. *The Last Great Senate: Courage and Statesmanship in Times of Crisis*. New York: Public Affairs, 2012. Shapiro's work is a reflection on the "Great Senate" of the late 1970s through the 1980s under the leadership of Senators Robert Byrd and Howard Baker. This Senate was characterized by collective action, adherence to constitutional responsibilities, and eagerness to serve the national interest and make a difference. Shapiro argues that a tradition of bipartisanship is one of the primary factors for this group of senators' ability to effectively shape U.S. foreign policy. During this period, Congress confronted the tough issues of its time, like U.S. involvement in the Vietnam War, arms sales to Saudi Arabia, the fight over the Panama Canal, the energy crisis under the Carter's administration, and others. Each chapter includes a case study where Shapiro demonstrates how the Senate asserted itself in the foreign policy process to push back on or support the President.

Warburg, Gerald F. *Conflict and Consensus: The Struggle between Congress and President Over Foreign Policymaking*. New York: Harper & Row, 1989. (review drafted by H. Gavin) Shaped by years working on international issues for senior members of the House Foreign Affairs and Senate Foreign Relations Committees, this work analyzes how Congress in the 1970s utilized procedural mechanisms to insert themselves to a greater degree into foreign policy. The reforms were inspired by Nixon's decisions to deploy troops to Cambodia in 1970 and the bombing of North Vietnam in 1972, but the reforms are not a reaction to one specific policy or event. The Reagan Administration in the 1980s sought to reverse many of the 1970s reforms in Congress. The text discusses how Congress has the ability to assert its role more strongly, but also how the Presidency has formidable resources at its disposal. The work outlines (in 1989) how Congress might reassert its powers using procedures established in such measures as the War Powers Act (1973), Arms Export Control Act (1976), Hughes-Ryan Act (1978), and the Nuclear Nonproliferation Act (1978).

Zelizer, Julian E., *Arsenal of Democracy: The Politics of National Security—From World War II to the War on Terrorism*. Basic, 2010. Zelizer’s companion study focuses on the political history of congressional interventions and initiatives during the Cold War Era. Zelizer notes that successful presidential foreign policy initiatives have most often been marked by successful containment of Capitol Hill pressures. His list includes Kennedy/Cuba, Nixon/China, Reagan/USSR.

Zelizer, Julian E., *On Capitol Hill: The Struggle to Reform Congress and Its Consequences, 1948-2000*. Cambridge, 2004. The definitive academic text by a political historian bridging the world of academic theory with learned history on modern reforms in Congress. As the author notes, “democracy is as much defined by the political process as by the specific policies produced...American political history has been animated by heated struggle over the actual mechanisms of representative democracy” (p. 263). The work is especially strong in its analysis of the difficulty of building and sustaining coalitions. It also argues that 1970s reforms weakened the committee system, while creating stronger leadership tools, yet also empowering junior members.

Journal Articles

Bergner, Jeffrey. “The Congressional Apprentice.” *Foreign Affairs*. September/October 2017. <https://www.foreignaffairs.com/articles/2017-07-31/congressional-apprentice>.

Bergner’s article focuses on the early frustration the Trump administration faced in passing their legislative agenda. Partisanship in Congress along with the Democratic “Resistance” movement and Republicans’ attempt to “moderate” Trump. Bergner states that “there is no stronger force in American politics than a unified Congress, by the design of the Constitution’s framers.” Even with Republican majorities in both chambers when taking office, Trump still struggled to achieve many of his campaign promises by going through Congress. In matters of foreign policy, however, Trump has been able to be more proactive.

Key quotes:

- “Trump is quickly discovering what every other post–World War II president has recognized: he has much wider latitude on foreign and defense policy than on domestic policy.”
- “And Congress has continued to sit idly by as Trump, like Obama did before him, expands the 2001 Authorization for Use of Military Force beyond all recognition as he wages military campaigns in six different countries.”
- “As the face of war is shaped more and more by standoff weapons, drones, and cyberwarfare, it seems less and less likely that Congress will assert its role in authorizing military actions.”

Fowler, Linda. “The Long Decline of Congressional Oversight.” *Foreign Affairs*. November 15, 2018. <https://www.foreignaffairs.com/articles/2018-11-15/long-decline-Congressional-oversight>. Fowler’s short piece is prompted by Democrats’ promise in 2018 to conduct more oversight of the Trump Administration. She discusses how Congress is holding a historically low amount of hearings, which hinders its ability to perform effective oversight. Not only are there fewer hearings, but committees are not spending as much time on major issues, nor are they

receiving as much press coverage as they used to, especially with national security-related committees. The article analyzes key trends but offers a limited number of specific policymaking examples.

Goldgeier, James. & Saunders, Elizabeth N. “The Unconstrained Presidency.” *Foreign Affairs*. September/October 2018. <https://www.foreignaffairs.com/articles/2018-08-13/unconstrained-presidency>. The article traces a brief history of how the President has increasingly acted unilaterally on matters of foreign policy in the absence of significant checks and balances from Congress and U.S. allies. The authors cite declining congressional oversight and expertise as primary reasons for why Congress has allowed the Presidency to act more freely on matters of foreign policy. The article includes examples of policy ‘failures’ in Congress, including the AUMF passed after 9/11 that was so vague that it allowed the U.S. to stay in a 19-year war, as well as the Syria red line case that revealed the failure of Congress to exercise its war powers authorities. The authors are skeptical of Congress reasserting its role in constraining the presidency on matters of foreign policy and trade. They conclude that it could take a threat such as the rise of China to gain political will for the legislative branch to act.

Mann, Thomas E., and Norman J. Ornstein. “When Congress Checks Out.” *Foreign Affairs*. November/December 2006. <https://www.foreignaffairs.com/articles/united-states/2006-11-01/when-congress-checks-out>. The article focuses on the decline in congressional oversight, particularly in foreign and national security policy. The authors use the decline in the number of oversight hearings entering the end of the 20th century as the metric. The “weakening of Congress’ institutional identity” is one of main reasons for decline in oversight. They also state that committees focus more now on budgets and less on policy choices. As a result, investigative journalists have provided in some cases more information than Hill hearings, as they did with the Iraq War. Their proposed solutions include: Constituents need to put pressure on their representatives to conduct oversight, and congressional seats need to be more competitive so that they are responsive to their voter’s concerns; the congressional schedule should be modified; and Congress should reform its appropriations and authorization processes.

Key quotes:

- “Foreign policy has dominated the attention of Americans since 9/11, and especially since the Iraq war began....And yet, Congress has failed to ask how policies in these areas have been carried out, how faithfully laws have been executed, how reasonably taxpayer dollars have been spent, how well the executive branch has stayed within its constitutional bounds, and how vigorously malfeasance or nonfeasance by public agencies and private contractors has been handled.”
- “If Congress falters again, the chances of policy lapses, mismanagement, corruption, and mistakes borne of arrogance or stubbornness happening will be even higher – and too high for Americans to tolerate.”

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