

Cambridge University Press

978-1-107-00686-7 - Congress and the Politics of National Security

Edited by David P. Auerswald and Colton C. Campbell

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PART ONE

Historical and Institutional Challenges

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Congress and National Security

David P. Auerswald and Colton C. Campbell

Over the last decade, a growing number of scholars and practitioners have called for a reexamination of our national security system, with much attention devoted to interagency reform (Davidson 2009, Smith 2009, Project on National Security Reform 2008). The structures and processes set in place more than a half-century ago by the National Security Act of 1947, they argue, are outdated, designed to meet the security challenges of the Cold War era instead of those of the 21st century. This can have potentially sobering outcomes, as the Project on National Security Reform noted in its 2008 study. Accordingly, the U.S. government is unable to “integrate adequately the military and nonmilitary dimensions of a complex war on terror” or to “integrate properly the external and homeland dimensions of post-9/11 national security strategy” (Project on National Security Reform 2008, ii).

Any major reform of the nation’s national security system will require congressional action. Indeed, Congress has a constitutional responsibility to weigh issues of national security concerns. Congress has the authority to raise an army and a navy, to regulate the armed forces, and to declare war. It must authorize new federal policies and determine the scope of agency actions and portfolios. It is Congress that must appropriate the money for the federal government. In addition, Congress may influence military strategy directly by legislating war aims or military regulations, or indirectly by altering the end-strength and weapons systems of the different services. If no major reform can occur without congressional action, the obvious question is whether Congress is willing and/or able to execute such a major national security undertaking.

Having the constitutional authority is a necessary, but not sufficient, condition for congressional influence in national security policy. Congressional

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influence depends on Congress having the ability and the will to become involved in national security debates. The jury is still out on both fronts. Is the “first branch” of government adequately organized to deal with national security issues in an integrated and coordinated manner? And how have developments in Congress over the past few decades, such as heightened partisanship, message politics, party-committee relationships, and bicameral relations, affected topical security issues? These are important questions, as the United States cannot form alliances, agree to strategic arms control accords, procure weapons systems, or create new programs vital to national security matters without the explicit approval of Congress.

What explains the ebb and flow of congressional involvement? Theories of presidential-congressional interaction during military conflicts offer some clues. Scholars usually invoke at least one of three related arguments: that Congress lacks the means of restraining the president, that Congress lacks the will to do so, or some combination of the two. The first school of thought argues that for structural reasons Congress is usually ineffective at challenging the president once the president begins using force abroad. That is, Congress lacks the means to constrain presidents. The president is able to act in foreign conflicts due to his constitutional powers and the accrued prerogatives of his office while Congress must often pass veto-proof legislation to constrain him. The executive branch, speaking with one voice, can articulate unified positions while Congress speaks with a multitude of voices, making agreement on executive constraints unlikely. The executive can respond to international conflicts in a timely manner, but Congress often takes months or longer to respond to a president’s initiatives (Lindsay 1994, Hilsman 1987, Krasner 1978, Dahl 1950). Congress is better suited to indirectly affect presidential behavior by manipulating public opinion, but even that gives Congress relatively little influence during military conflicts due to the rally-around-the-flag phenomenon or the president’s ability to take his case to the people directly (Levy 1989, Kernell 1986).

These executive powers, combined with past failures of congressional policy making and a more complex international world, led Congress to abdicate conflict policy-making authority to the president (Kellerman and Barilleaux 1991). Attempts at congressional resurgence, begun between the mid-1960s and 1970s, have continually failed to redress the balance between Congress and the president (Blechman 1992, Destler 1985, Sundquist 1981). From a structural perspective then, U.S. presidents retain substantial autonomy from legislative control in the realm of conflict decision making.

A second argument is that Congress lacks the will to act during military conflicts (Hinckley 1994, Koh 1990a). Presidents have powerful incentives

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to take charge during military conflicts, incentives that Congress does not share. The president represents a national constituency, giving him an electoral motivation to confront international threats to the nation. Congressional districts have parochial interests that provide disincentives for congressional criticism. Members instead focus their energies on policies that more directly affect their districts (Mayhew 1974). At best, Congress engages in symbolic criticism of the president's performance in military conflicts without making a concerted effort to change national security policy.

A third and related school combines the first two arguments. Congress and the president compete for control over national security policy, but who wins control depends on the characteristics of the issue area under dispute (Rosner 1995). Borrowing from structural arguments, this school claims that Congress has greater direct influence over U.S. foreign policy when it has time to react to international events. Presidents thus have the most control over foreign policy during military crises and other time-sensitive negotiations. Borrowing from the motivations argument, this school of thought also argues that Congress will never realize its potential to act during military conflicts because action forces it either to support the troops in the field or to appear unpatriotic. The crux of this school of thought, as well as the other two arguments it is based on, is thus that Congress "cannot compel [the president] to follow any of the advice that members might care to offer" (Lindsay 1994, 151). Analysts of U.S. foreign policy conclude that the president's foreign policy tools and motivations simply overwhelm the efforts of Congress to control security policy (Schlesinger 1973, Kellerman and Barilleaux 1991).

CONGRESSIONAL WILL

Most foreign policy experts argue that Congress has little direct influence over foreign affairs and national security issues. Lawmakers' preoccupation with domestic issues, especially constituency concerns and business, has traditionally been the cause for selective congressional intervention, often precipitated by crises abroad or by a widely publicized foreign policy debacle (Burgin 1991, Clausen 1973). As a consequence, the typical congressional attention span for national security is episodic and lacks an overall strategy (Crabb 1995).

Congress has at times empowered the president, and at other times set conditions and limits to presidential action (Stevenson 2007, Sundquist 1981). Until recently, Congress had been relatively silent on questions of national security in the post-9/11 world. Through 2006, the continuing post-9/11 threat environment and Republican control of the legislative and executive branches reinforced historical congressional deference to the president on national

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security (Ornstein and Mann 2006, Rudalevige 2006, Fisher 2000). Republican-controlled congresses gave only a cursory examination to the administration's creation of Northern Command and the Department of Homeland Security (DHS), two of the largest changes to U.S. security policy in decades. Similarly, these congresses argued over the distribution of the foreign aid budget rather than the need for a whole-scale change in our nation-building capability. Yet this pattern started to change in the 110th Congress (2007–2009), when Democratic majorities in each chamber became more assertive on Iraq and Afghanistan, military tribunals, detainee policy, extraordinary rendition, and electronic surveillance of American citizens (Friel 2007).

Whether members of Congress choose to become involved in national security matters, especially those involving conflicts, is problematic. If Congress is concerned with reelection, then electoral calculations are crucial to a lawmaker's decision about becoming involved in national security policy making. When members of Congress take positions on security budgets or military procurement, or during foreign policy crises or military conflicts, these actions may help the electorate distinguish between political parties, and partisan identification is a very strong determinant of voting behavior (Campbell et al. 1976). Members may also care about the national interest irrespective of electoral gains. National security in general, and military conflicts in particular, are also important issues for a broad range of constituencies, such as friends or family of the military, military contractors, industries affected by the outcome of international crises, and those concerned with human rights, just to name a few. The involved constituencies may demand a legislator's participation in security debates to help protect their threatened interests. In sum, legislators participate in security policy if some portion of their core reelection constituency is concerned with the policy outcome (Lindsay 1994, Burgin 1991).

Involvement is not without its risks, particularly if the national security policy is placed under the umbrella of a consensus issue. Such instances create electoral disincentives for congressional engagement. To label a military conflict as consistent with Containment or the Monroe Doctrine, for instance, is one way for a president to ensure congressional support. In such instances, a member of Congress who speaks out against consensus goals risks electoral punishment. Being labeled as soft on communism for taking a position contrary to Containment was something most elected officials avoided. That reluctance has often extended to the means used by the president to reach a consensus goal, at least if criticizing the means used could be equated with having dissimilar policy goals. For example, speaking out against military intervention in Iraq or Afghanistan might lead to being labeled soft on

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terrorism. Finally, the individual lawmaker may also share many of the president's goals during the conflict and thus see no need to speak out.

The 1958 U.S. intervention in Lebanon illustrates how presidents use consensus issues to avoid congressional restraints, even when faced with opposition majorities on Capitol Hill. President Eisenhower asked the Democratically controlled Congress for the statutory authority to use U.S. armed forces in the Middle East, should that use become necessary to combat a communist invasion. Congress responded by passing the Middle East Resolution, granting the president limited discretion to use force.¹ Before the president could do so, he was required to certify that the country being helped was facing armed aggression from a communist state, and he could use force only "consistent with the Constitution of the United States." Most important, Congress reserved the right to terminate the president's authority to use force in the Middle East (and thus end any deployment) by passing a concurrent resolution. Congress included these provisions because it was unwilling to give the president a blank check to use force (Fisher 1995, *Congressional Quarterly Almanac* 1957, 573).

Yet Eisenhower faced little congressional resistance when he deployed approximately 15,000 troops to Lebanon in 1958, after the fall of the Iraqi monarchy. While Eisenhower did not share partisan affiliation with a majority in Congress, he threatened the Democratic leadership with publicly calling the deployment an effort to combat communism in the Middle East should the Democrats protest his actions (Memorandum of a Conversation with the President, 221). This explicit, calculated threat to use the anti-communism rallying cry linked the deployment to the Cold War consensus, greatly decreasing the chances of successful congressional action to reverse the deployment. Had Congress acted against President Eisenhower, and had Eisenhower carried out his domestic threat, the Democratic majority would have been seen as sympathizing with the communist movement. Not surprisingly, House Speaker Sam Rayburn (D-TX) publicly supported the president, even going so far as to halt debate on the House floor when the subject of the Lebanon conflict arose (*Congressional Record* 1958, 13978).

Shared partisanship with the president is a second reason for congressional acquiescence during conflicts. The greater the number of presidential partisans in Congress, the less likely Congress will be to act collectively to halt a

¹ PL 85-7 (H. J. Res. 117, enacted March 9, 1957). The legislative history made clear that the law did not "delegate or diminish" the congressional power to declare war, or enlarge the president's power as commander in chief. See *House Report No. 2*, 85th Congress, 1st Session, January 25, 1957, p. 7. For a slightly different interpretation, see also James L. Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings Institution, 1981), p. 116.

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presidential initiative. Just as confronting a president from the opposing party might help a member get reelected, confronting a president of one's own party might decrease one's chances of reelection. First, helping overturn the policies of one's own president cannot but hurt that president's chances for reelection. By extension, losing the presidency hurts the member's chances of riding the president's coattails into office. Second, overturning one's own president weakens the party image in the minds of the voters, either in terms of its unity or its record of accomplishments. Third, challenging one's own president in all likelihood means that party leaders will not help the member of Congress with fund-raising and campaigning. Fourth and related, the insurgent member might face sanctions from his or her party leadership in Congress, ranging from losing a coveted committee assignment to being excluded from deliberations on appropriation bills.

At the end of World War II, for example, Congress was wary of making an open-ended military commitment to the United Nations (UN). Congressional members of the American delegation to the UN Charter negotiations ensured that participation in UN military operations would be in accordance with each member-nation's constitutional processes. The 1945 UN Participation Act codified that sentiment into law, stipulating that the president could not commit substantial U.S. forces to UN missions without expressed congressional consent. Five years later President Harry Truman ignored both the letter and the spirit of the law when deploying U.S. forces to the Korean peninsula.² Truman disregarded the *ex-ante* constraint because he faced little chance of domestic penalties from a Congress controlled by his own party.³

Finally, the duration of a military conflict or national security concern may also affect levels of congressional opposition. Congressional inaction during short-term crises, for instance, holds few electoral risks or rewards. Should

² The Senate responded by passing (69–21) in 1951 a non-binding Senate resolution (S. Res. 99) asking that future troop commitments to bilateral or multilateral treaty partners be subjected to a congressional vote before being undertaken (section 6). Consideration of this legislation became known as the Great Debate of 1951. For a legislative history, see *Congressional Quarterly Almanac*, 1951, vol. VII, pp. 220–232. See also *Senate Report 175*, 82nd Congress, 1st Session, pp. 2–3; Fisher, pp. 97–101. President Truman's disdain for the resolution is apparent in "The President's News Conference of January 11, 1951," *Public Papers of the President, Harry S. Truman*, 1951 (Washington, DC: Government Printing Office, 1965), pp. 18–22.

³ Most Democratic congressional leaders spoke in favor of the president's actions. See *Foreign Relations of the United States*, 1950, vol. VII, pp. 200–202; *Congressional Record*, 81st Congress, 2nd Session (June 1950), pp. 9154–9160, 9268–9269, 9319–9329, 9537–9540. Indeed, these same congressional leaders advised Truman against requesting a congressional vote on the intervention, warning that Republican members would use that opportunity to criticize the administration. See Dean Acheson, *The Korean War* (New York: W. W. Norton, 1971), pp. 32–33; and *Foreign Relations of the United States*, 1950, vol. VII, pp. 286–291.

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the crisis end badly, Congress can always blame the president and avoid the blame themselves. Success, on the other hand, rarely reflects on Congress. Instead, either the military or the president receives all the praise. Inactivity during longer crises poses more significant electoral risks. Congress may suffer an electoral backlash for taking no action should the crisis result in defeat. Taking action during long-term initiatives is far less risky, in that Congress can justify its actions in terms of reining in a reckless president or avoiding another Vietnam.

CONGRESSIONAL ABILITY

Congress is often dubbed powerless to directly affect presidential power in the areas associated with national security. What is clear, pursuant to the Constitution, is that the underlying relationship between Congress and the executive in national security issues is one of shared agenda control. Each branch has the power to affect U.S. policy. While contemporary presidents generally direct this agenda, control occasionally shifts toward Congress, as it did in the inter-war period, in the absence of consensus over American grand strategy, and given that absence, during divided government or prolonged military conflicts.

One reason is that today's legislative branch is armed with resources to actively engage in national security matters. The proliferation of congressional support staff and news media have facilitated congressional activism and provided individual members an incentive to be involved in major national security legislation. That is a dramatic change from 50 years ago. In the 1950s, national security decisions essentially were made by a handful of powerful committee chairmen. In the late 1960s and early 1970s, in reaction to Vietnam and Watergate and the growth and complexity of the federal government, Congress increased the number of congressional oversight panels and their associated staffs, as well as created various legislative branch research entities. These resources gave members of Congress the means to become assertive on security issues. At the same time, the proliferation of media outlets and the explosion of interest groups gave members of Congress an incentive to speak out. Today's members are adept at harnessing television coverage and interacting with interest groups to get their points across. In short, individual members now have both the means and an incentive to challenge the president's security priorities. Indeed, virtually every member of Congress can now become involved to some degree in national security debates.

It is unclear, however, whether these trends can overcome structural biases toward congressional inaction. Consider that there are inevitably differences

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between the majority and minority parties on major security issues, to say nothing of the often-heated negotiations between the two congressional chambers. Within each chamber, there are jurisdictional disputes between the authorizing and appropriating committees, and between different authorizing committees. Moreover, a large number of committees are involved in complex issues like national and homeland security, requiring consensus from each committee before legislation can be sent to the president. And initiatives challenging presidential priorities often must be passed with veto-proof majorities, which raises the bar to effective action even higher.

So while members' constituency interests, policy preferences and ideological dispositions as well as public opinion influence congressional will to engage in national security matters, Congress's institutional structures and processes frequently bias that body toward legislative inaction. The hyper-partisanship that characterizes the current climate on Capitol Hill, for instance, has made congressional parties much more active in agenda formation, elevated inter-party tensions (Forgette 2004), and impacted the working relationship in Congress (*Congressional Record* 2005, 10547). Additionally, some question whether Congress's proclivity toward tradition, embodied in many of its anticipated rules and procedures, hinders the legislative process. Is an institution designed in the 18th-century adequately prepared to adapt to the realities of 21st-century government?

Partisan Divides

These two factors – Congress's willingness and ability to influence national security policy – intersect when we consider partisan divides in each chamber. There is an oft-quoted adage when discussing national security that "politics stops at the water's edge." That is, members of Congress and other elected officials are apt to set aside their partisan differences in the interest of common defense. Yet the politics of national security are no more immune to the increasing partisan atmosphere in Washington than any other area of public policy (Zelizer 2010, Wirls 2008). Some members, particularly those departing the institution and reflecting on their congressional careers, readily comment about the steady march by both parties toward ever more partisan and personal attacks. Partisanship has worn away the comity that normally encourages the flow of legislation, as negotiating with those on the opposite side of a debate is "vilified by the hard-liners on both sides of the aisle" (Collins 2010, B4). Moreover, such partisanship has "infused the rhetoric surrounding national security discussions" and obstructed Congress's critical role of oversight (*Congressional Record*, April 29, 2010, E705).