

Congress as a World Power

Thomas M. Franck and Edward Weisband

The Hill is as important as Foggy Bottom in the conduct of our international affairs. The impending battles in Congress over such important foreign relations questions as the new multilateral trade agreements, a strategic arms limitation treaty, the human rights covenants, and military and economic aid for Egypt and Israel demonstrate this.

This is a recent development. Since the ending of the Vietnam war, more than a president has been deposed: An entire system of power has been overturned. The presidency itself, not just Richard Nixon, has been the subject of a revolution that radically redistributed the power of government.

In this revolution the principal losers were the president, his cabinet, the White House corps of managers, and those senior officers of the Congress—party, committee, and subcommittee leaders—who had become too closely identified with the advancement of presidential designs. Chief among the power gainers were the congressional rank and file. Part of the booty redistributed during the revolution was control over U.S. foreign policy, long a presidential perquisite.

With the revolution came those questions characteristic of radical breaks with an established order: Can the revolutionaries get organized or will they themselves be devoured, victims of disordered revolutionary energy? Can they protect the national interest from enemies who may seek to take advantage of the upheaval? Can Congress “deliver” foreign policy in a timely and prudent fashion?

National security in the dangerous post-1939 world of hot and cold wars had been supported by a zealous, patriotic rallying behind the presidential colors. Roose-

velt’s transfer of fifty destroyers to wartime Britain while America was supposedly still neutral, and Truman’s decision to defend South Korea, were instances of high presidential solo-flying that were not seriously challenged by a docile Congress. “Politics stops at the water’s edge,” Congress dutifully intoned—which really meant that democracy’s writ may not run in the places where foreign policy is made. It meant that offshore the open partisan debate that characterizes public and congressional scrutiny of domestic policy must give way to uncritical concurrence. The Adamsian concept of a “government of laws, not men” was turned on its head whenever national security was at stake.

But once the icon of presidential omniscience had been cracked at Watergate and smashed on the rooftop of our Saigon embassy, what could the revolutionaries offer to fill its niche? How would the congressional rank and file safeguard the national interest? Would 535 Members of Congress, all seeking a meaningful role, paralyze the national will? Would “open” decisionmaking give advantage to our adversaries and offense to our friends?

There is some irony in the timing of these questions. For thirty years—from 1944 to 1974—the United States was, beyond question, the leading world power: undefeated in war, unrivaled in weaponry and technology, locomotive of an emerging world economy. During that period the U.S. might have chosen, quite consciously, to pay some costs in foreign policy efficiency and effectiveness to gain the benefits of democratic control over our international relations. But it did not. Instead, the democratization of U.S. foreign policy occurred precisely as America’s secure position of leadership began to erode, with U.S. armies defeated in Asia, weaponry matched or outstripped by the Soviets, and the dollar in disarray.

The skeptic may well ask: If we could not afford the luxury of democratic foreign policy making in our halcyon days, how can we afford it now? And skeptics might also ask: Is this not something we have seen before? Are

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we not witnessing, not a genuine revolution, but another short-lived swing of the pendulum?

The pendulum-swings theory has considerable credibility. Witness the statements of Senator J. William Fulbright, who said, in 1961: "I wonder whether the time has not arrived, or indeed already has passed, when we must give the Executive a measure of power in the conduct of world affairs that we have hitherto jealously withheld....It is my contention that for the existing requirements of American foreign policy we have hobbled the President by too niggardly a grant of power."

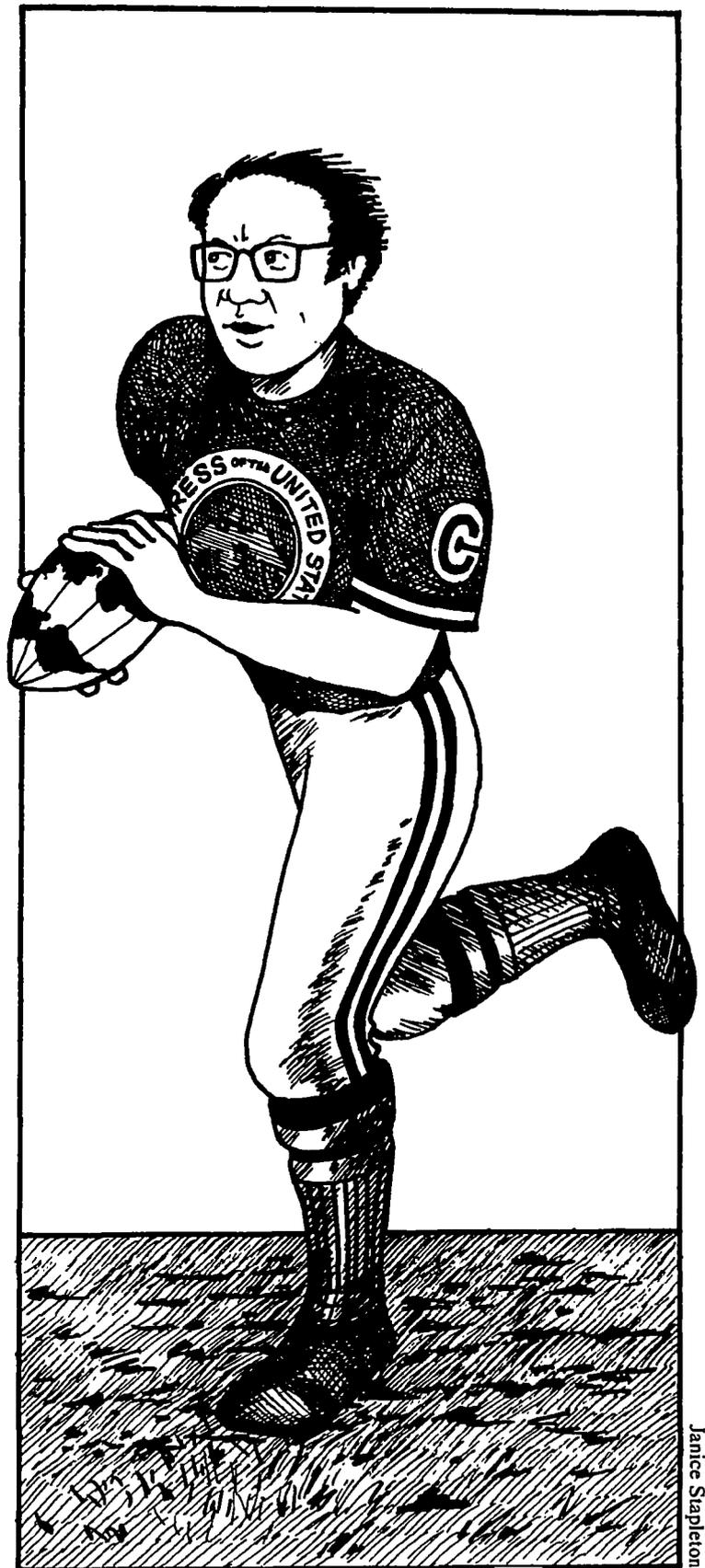
But by 1974 Fulbright was railing against "the cult of the strong presidency" and "the growth of Presidential dictatorship in foreign affairs." He had concluded that "no single man or institution can ever be counted upon as a reliable or predictable repository of wisdom or benevolence; that the possession of great power can impair a man's judgment and cloud his perception of realities; and that our only protection against the misuse of power is the institutionalized interaction of a diversity of politically independent opinion....I believe that the Presidency has become a dangerously powerful office, more urgently in need of reform than any other institution in American government....Whatever may be said against Congress—that it is slow, obstreperous, inefficient or behind the times—there is one thing to be said for it: It poses no threat to the liberties of the American people."

President Carter, on the other hand, began by praising the congressional clipping of presidential wings. On several occasions after the election Carter and Secretary of State Cyrus Vance—whether in answering the telephoned question of a little girl in Alabama or in testifying solemnly before congressional committees—reiterated their approval of the new congressional restraints on presidential initiatives that were imposed by such vehicles as the War Powers Act and Section 36B of the Arms Export Control Law. More recently, however, President Carter has complained bitterly that these restraints "impede our ability to respond to rapidly changing world conditions. Reasonable flexibility is essential to effective government."

The remarks of Fulbright I and Fulbright II, as those of Carter I and Carter II, do illustrate a tendency toward recurrent swings of the pendulum of political fashion: from a do-everything to a do-nothing concept of the presidency, and back again.

The current trend toward congressional assertiveness in foreign policy may be the fourth such swing in American history. There are those—not least of all in the White House—who believe there has been no revolution and that the pendulum will soon swing back once again to the president's side.

The first period of *congressional* predominance came immediately after the aggressive administration of Andrew Jackson. Beginning with Martin Van Buren's presidency in 1837, and encompassing the terms of Harrison, Tyler, Taylor, Fillmore, Pierce, and, finally, Buchanan in 1861, this swing lasted roughly twenty-eight years.



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A second swing began after the end of the wartime Lincoln administration, extending from Grant through the Whig period (the administrations of Hayes, Garfield, Arthur, and Benjamin Harrison) to the end of the Cleveland presidency in 1897. It too lasted approximately twenty-eight years.

The third swing to Congress began with Wilson's second term and lasted through the administrations of Presidents Harding, Coolidge, and Hoover. This time the pendulum held its position for a mere eighteen years.

The fourth swing, if it is that, began in 1973.

There are three generalizations that can be made about these recurrent swings:

- War tends to end a swing to Congress; the end of a war tends to trigger a swing back.
- Each swing contains within itself the excesses that generate the counterforce for the next swing.
- The swings may be of increasingly shorter duration.

The pendulum theory—one of its champions is Arthur Schlesinger—has been criticized by some scholars who see, among other things, countervailing movement within each tendency. But whatever its merits as a guide through history, the pendulum theory may prove an unreliable interpreter of the present and future. There is persuasive evidence that the present period of congressional ascendancy is not just a swing of the pendulum; that what we are experiencing is a revolution that will not be unmade. That evidence may be briefly summarized:

First, Congress has increasingly legislated procedures that are on-going rather than one-shot policy confrontations. These mandatory procedures, now found in dozens of laws, are not designed primarily to reverse particular policies made by the president but to require congressional participation in, or review of, the Executive decisionmaking process itself. The fact that the Senate can stop SALT dead in its tracks and that Congress can veto the new trade agreement means the Executive must negotiate with key legislators even as it haggles with other governments. Before promising weapons and economic aid or launching a covert operation, not only must the Executive consult, but it must keep the Congress fully informed. This "new oversight" has transformed the game in Washington by adding to the Congress' access to information and power.

Second, Congress has acquired its own policy capability. It has hired itself a staff of foreign relations specialists that is almost a counter-State Department; it has given itself a Congressional Budget Office to balance the president's Office of Management and Budget, a Congressional Reference Service and General Accounting Office (GAO) to match the president's National Security Council and State Department Policy Planning staff. The GAO even maintains embryo counterembassies overseas. These are infrastructural changes that offer far greater stability in foreign policy making than the highly personalized battles, such as between a President Wilson and a Senator Lodge, that precipitated earlier shifts in the balance of power.

Third, in the past five years Congress has, by institutional changes, vastly democratized itself. It is now far harder for the Executive, or anyone else, to co-opt it. Congress has transformed the selection of committee and subcommittee chairmen, opened up committee assignments, relaxed committee power. Members are harder to discipline or restrain. Closed rules are harder to get, discharges easier, "germaneness" less rigidly enforced. A turnover in membership has created an influx of younger, better-educated members less amenable to centralized leadership. The Executive can no longer keep Congress on a short leash by co-opting a few Arthur Vandenberges. On the contrary, the president is now dealing with 535 members, most of them reasonably autonomous, mostly emancipated from idiosyncratic feudal committee satraps, many willing to listen to reason but not to commands. Henry Kissinger got some of his worst advice from Senator Mansfield and later complained, "You can no longer count on the leadership to assess, let alone influence, the mood of Congress."

Fourth, and related to the above, foreign policy has become a hot political item. The new members of Congress, whether on or off the relevant committees, want to be in on the action. Foreign policy gets press coverage. It interests the voters. It has become the subject of a welter of congressional lobbies. It is inextricably related to domestic pocketbook issues. In past years, before this was the case, most members simply could not be bothered. Now they bother. The tendency to ride international issues for their palpable appeal to voter lobbies is reinforced by the new House practice of taking recorded votes on amendments, making it even harder for members to duck controversial issues.

Fifth, the Executive has made its own structural accommodations based on the reluctant assumption of a stable, continuing congressional partnership. Liaison with Congress has been strengthened in the departments and the White House. The State Department has begun to encourage its many bureaus to cultivate their own contacts on the Hill, something the Kissinger State Department, with its fear of delegation and of disloyalty in the ranks, sternly forbade. An Old Boy Foreign Service-staffers' network is being strung between the Hill and Foggy Bottom. Congress-watching and Congress-consulting are becoming systematized. State now has almost as many specialists in dealing with Congress as in dealing with any foreign country. Even where not required by law, as in the SALT negotiations, members of Congress are being added as advisors to negotiating delegations. The sharing of intelligence has been routinized. Temporary service on the Hill is being recognized as a respectable and profitable step on the career ladder of State Department Foreign Service Officers.

There is a *sixth* and most important reason for believing that we are witnessing more than just another swing of a pendulum. Since Congress became actively involved in foreign policy making there has been a reassessment of the costs and benefits of congressional activism. This indicates that the costs are not as high as had been feared and that there are some unanticipated benefits as well. Open congressional participation and public ventilation of the issues brought human rights concerns to

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the fore, imposed restraints on arms sales and nuclear exports, and on balance, it may even be argued, improved the text of the Panama Canal Treaties by clarifying in the “leadership amendment” several unresolved issues that might have caused future friction.

Even in the White House and State Department, Congress’ reassertion of its constitutional role has been understood increasingly in terms of foreign policy *benefits*. Much of this has to do with legitimation. When Congress challenges the president, it focuses his attention on the task of convincing the public, of “bringing the country along.” With disastrous consequences, American foreign policy has long been considered too complex an issue to take to the people. The mere fact that Congress could not be taken for granted—in connection with the Panama agreements, SALT, Middle East policy, trade with the Soviet Union, human rights—has forced the White House repeatedly to make its case in public. In most instances Congress and the public eventually came to agree with the administration. In some cases the administration compromised. Not infrequently, Congress was right—as when it insisted on stripping some of the most sophisticated electronic gear from the supersecret AWACS planes we were selling the shah of Iran.

The effect has been subtle but important, exceeding specific policy results. When Congress plays a role, whatever is decided bears a larger imprint than is made by the presidential seal. As one State Department official put it: “Thank God we had to get congressional approval for the 1978 arms package for the Middle East. That way we didn’t just send planes and missiles, we sent a clear message from the American people.”

That official was talking about what political scientists call, inelegantly but accurately, “legitimation”—making policy correspond to the wishes of the majority. Only Congress can confer it, and legitimacy is the only viable alternative to the national foreign policy consensus shattered by the Vietnam war. But this can be achieved only through wide participation, painstaking consultation, and hard-fought compromise; whereas the old consensus too often was played out as a game of follow-the-leader.

There are costs, of course: the circus-like aspects of congressional debates like the one on Panama; idiosyn-

cratic subcommittee chairmen and self-aggrandizing staffers; the incomprehensible requirements for Executive reports to Congress; and dense jungles of legislation with impenetrable tangles of standards, roamed by monstrous subordinate clauses. There are also high-handed denials of transfer authority for appropriated funds and counterproductive denials of foreign aid to countries that have offended a few legislators. These are the serious, rough edges of a political process that is by no means perfect—except, to paraphrase Winston Churchill, when compared to the alternatives.

But the new postrevolutionary rules of the game are not immutable. Initially, the White House and State Department in the Nixon-Ford administration opposed all the rules by which Congress had insinuated itself into the foreign policy process. By the time Jimmy Carter became president a tentative tactical decision had been made to learn to play by them and to try to win. In the process of winning, the administration began to work some subtle modifications in the rules themselves.

But such victories should not obscure the revolutionary new realities of congressional power that have democratized and legitimized U.S. foreign policy. The administration would not be acting prudently or in the national interest if—as it seemed to be doing during its hysterical reaction to the invasion of Katanga from Angola last year—it sought to restore the old order of presidential omnipotence. Neither should it count on an historically determined destiny to swing the pendulum back in its favor.

What might conceivably generate another swing of the pendulum is Congress’ inability to use its power. Failure to create its own effective decisionmaking system can destroy Congress’ partnership with the Executive. So could the unwillingness of individual members to devote the necessary time and attention to their new foreign policy responsibilities.

The Legislature has yet to build a convincing delivery system or to win its battle of the attention span. At present, too many pressing problems divert members of Congress from consistent and constructive involvement in the making of foreign policy. If the public perceives Congress as unable or unwilling to act effectively in partnership with the Executive to safeguard the national interest, power will run off Capitol Hill.

It was as recently as 1975 that the prestigious Murphy Commission on the Organization of the Government for the Conduct of Foreign Policy published a study that found “Congress does not have the information, and some congressmen do not have the understanding, sophistication, and interest to support independent judgment. Inevitably, then, Congress is compelled to accept the grand design, the general direction, the mood of presidential foreign policy. Congress could strike out on its own only with an acute awareness of its uncertainties and inadequacies, and the risks to the national interest and its own institutional standing.”

Yet strike out on its own it has, defying its legions of detractors; and, despite a few wild swings, Congress has not struck out. **WV**