

How Dominant is the President in Foreign Policy Decision Making?

Written by Mareike Oldemeinen

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By creating a political system where power would be divided between a legislature, an executive and a judiciary, the framers of the United States Constitution not only ensured that there would be a system of checks and balances, but also created an “invitation to struggle over the making of US foreign policy” (Barrett 1990: 91). It is precisely this tug of war over which side holds the ultimate decision making authority in foreign policy that has characterised not only the ongoing debate between the presidency, Congress and other governmental institutions with responsibilities in the realm of foreign policy, but also the research of scholars focusing on U.S. foreign policy. The conclusions that scholars and academics have drawn with regard to “the endless struggle between the executive and the legislature over the conduct of foreign policy” (Mervin 1993: 115) can generally be divided into three categories.

The first group of scholars takes a more balanced view with regards to the distribution of power between the executive and the legislature. Jerel A. Rosati for example argues that over the course of U.S. history, power has shifted back and forth between the two branches and times that are nowadays viewed as periods of striking presidential dominance in U.S. foreign policy making are “certainly not the norm in the history of U.S. foreign policy” (Rosati 2003: 82). Another very prominent standpoint argued in much of the literature points to a presidential dominance in foreign policy decision making. Academics like John G. Tower and David Mitchell argue that for reasons of “practical necessity” (Tower 1981: 231) and bureaucratic efficiency, foreign policy decision making is better located in the office of the president. Congress, according to Mitchell, is – given its organisational structure – better suited to deal effectively with domestic, rather than foreign policy (Mitchell 2005: 189). A similar, yet more radical argument marks the third group – that of Arthur M. Schlesinger Jr. Acknowledging that a presidential primacy exists in the decision making of U.S. foreign policy, Schlesinger goes on to argue that this “primacy, so indispensable to the political order, has turned into presidential supremacy”, a state of affairs that, according to him, is a cause for concern (Schlesinger 1973: viii). He warned in 1973 that what we have witnessed is the constitutional presidency that has transformed into an imperial presidency and will soon – if nothing was done to stop it – turn into a revolutionary presidency (Schlesinger 1973: viii). This categorisation by no means claims to be all encompassing and, just as everywhere else, the boundaries are not clear-cut and can often be blurred. However, for the purpose of analysis in this essay, this simplification will prove helpful.

In order to now be able to assess these arguments and make an informed judgement with regards to the question of the president’s role in foreign policy decision making, it is important to define what is meant here when the term “foreign policy” is used. As Ralph G. Carter rightly points out, “too often attention is focused on the so-called “high politics” of foreign policy such as military-security issues, arms sales, military aid [and] crisis decision-making” (Carter 1986: 332). However, the “low politics” of foreign policy such as trade and tariff agreements, foreign economic policy, and humanitarian assistance are of increasing importance in this interconnected and globalised world and hence must not be overlooked. Due to the space limitations of this essay, however, the focus in this essay shall be on what has been termed “high politics” of foreign policy. For further reading on foreign policy making in the area of “low politics” and especially the emerging issue of foreign economic policy see Dolan and Rosati (2006).

Bearing in mind this focus, the essay will go on to argue that – whilst there is an abundance of institutions and agencies within the U.S. government that (have the potential to) influence U.S. foreign policy – when focusing on the

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actual foreign policy *decision* making, the president is, for the most part, the dominant actor. Obviously, he does not act in a vacuum and is subject to certain constraints. But due to several factors such as precedent, clever interpretation and invocation of the president's role as set out in the Constitution, and sometimes a lack of congressional will to effectively constrain him in his actions, the president effectively becomes the dominant authority in U.S. foreign policy decision making. In order to prove this point, this essay is divided into several sections. First, the roles of the executive – the president – and the legislature – Congress – as set out in the U.S. Constitution will be examined, as well as the roles of other institutions and actors that deal with foreign policy making. Having thus set the ground, we will then turn to look at foreign policy making during the history of the United States, with a particular focus on the twentieth century and the present day. This will enable the reader to appreciate the ambiguities inherent in the Constitution with regards to who holds the ultimate authority in foreign policy decision making. Examining the history of U.S. foreign policy making will also serve to highlight the precedents that suggest a presidential primacy in the making of U.S. foreign policy. In the final section the attempts made by Congress to reassert its authority over the presidency will be looked at in more detail and the reasons as to how and why these efforts have not been of lasting significance will be analysed.

Article 2, Section 2 of the United States Constitution says that “The President shall be Commander in Chief of the Army and Navy of the United States [...]. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, [...]; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court” (U.S. Constitution Art. 2, Sec. 2). Conferring upon the president the title of the highest civilian power over the military as Commander in Chief has been at the root of many quarrels between Congress and the president over the question of who holds final decision making authority when it comes to military affairs such as going to war. As will be shown in more detail below, many presidents have used their function as Commander in Chief of the military to justify their unilateral actions of committing the U.S. military forces abroad. Since the constitution grants Congress the power of the purse, the right “to regulate commerce with foreign nations” and “to raise and support armies”, and most importantly the right to *declare* war, it becomes obvious why such a unilateral decision by the president to commit military forces abroad would be a cause for dispute between the legislature and the executive (U.S. Constitution Art. 2, Sec. 1; emphasis added).

As this brief outline of the constitutional powers of Congress and the president shows, “nowhere in the Constitution is there unambiguous guidance as to which branch of government has the final authority to conduct external relations” (Tower 1981: 231). It seems like, true to their intent, the framers of the constitution tried to create a system of checks and balances and thus established what Lincoln later called the ‘no one man doctrine’, the idea that no one individual should be in the position to lead the country into war (cited in Schlesinger 1973: 43). David M. Barrett goes so far as to argue that according to the framers of the constitution “there would be no American foreign policy embodied by the President” (Barrett 1990: 67). Others, however, like John Tower argue that there is a strong implication that the larger share of power and the ultimate decision making authority should rest with the president for reasons of “practical necessity and as an essential concomitant of nationality” (Tower 1981: 231). Hence, given the ambiguous language and the very different interpretations, a focus solely on the constitution as a source determining the role of the president in foreign policy decision making does not provide us with a satisfying answer to our question.

Before the focus of analysis will turn to the history of U.S. foreign policy making and precedents set by presidents and Congress, though, it is necessary to briefly look at other institutions and actors that play a role in U.S. foreign policy making. As outlined by Rosati, the president “relies on the National Security Council, National Economic Council, State Department, Defense Department, the intelligence community, and other bureaucratic agencies to assist him in formulating an implementing U.S. foreign policy decisions” (Rosati 2003: 67). The State Department has traditionally been the one institution within the government most associated with foreign policy making. The influence that its head, the Secretary of State, *actually* has on the foreign policy making process, however, seems to be determined by the president. In recent presidencies – that of George W. Bush and Barack Obama – we have witnessed a very close relationship between the president and his Secretary of State and it seems like both presidents actively involved their respective Secretaries of State into the foreign policy making process.

However, an example of a Secretary of State whose influence on the president and U.S. foreign policy making was

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extremely circumscribed is that of William P. Rogers under Richard Nixon. This was mainly because Nixon chose to handle the “high politics” of foreign policy with his National Security Adviser – and later Rogers’ successor as Secretary of State – Henry Kissinger. The office of the National Security Adviser (NSA) was created in 1947 as part of the newly established National Security Council (NSC), which “was set up to coordinate all aspects of national security” (Dobson and Marsh 2006: 12). David Barrett argued that with the creation of the NSC and the NSA, there was a significant shift of power from State Department to this newly established institution which was “geographically and bureaucratically closer to the President” (Barrett 1990: 71). As the examples of George W. Bush and Barack Obama have shown, this is not necessarily always the case, however, the fact that “it [the NSC] has grown in stature over the years and drawn power away from the State and Defense Departments” (Dobson and Marsh 2006: 12) cannot be denied.

This introduces another institution that forms part of the foreign policy bureaucracy – the Department of Defense (DOD). The Secretary of Defense, as the head of the DOD, is the primary adviser to the President on issues of national security and defense (DOD Website: *About*). He provides information and advice to the president, however the ultimate decision making authority rests, once again, with the president. And just as pointed out by Dobson and Marsh above, the influence that the Secretary of Defense has on the president in particular and on foreign policy making in general has also suffered as a result of an increased reliance by presidents on the National Security Adviser. A final but nevertheless important part of the foreign policy bureaucracy is formed by the intelligence agencies. Their role is of particular significance since they control to a large extent the information that is available to the president concerning issues of national security. This does not directly impact upon the president’s authority as the ultimate foreign policy decision maker as such, however it does affect and sometimes constrain his ability to make fully informed decisions.

Having thus outlined the constitutional and institutional basis of the debate, the discussion can now turn to look at the reality of U.S. foreign policy decision making. Examining U.S. foreign policy making back in the 19th century, Woodrow Wilson (then professor of political science) argued that it was a time characterised by “congressional government” (quoted in Barrett 1990: 67). David Barrett goes on to explain that “for most of the nineteenth century it worked out that way. Presidents played a key role in foreign policy, to be sure, but were mostly deferential to the will of Congress” (Barrett 1990: 67). However, this more or less harmonious relationship between the presidency and Congress with regards to U.S. foreign policy decision making was not bound to last. With the turn of the century also came a shift in power from the legislature to the executive. David Barrett explains that “in an era when the United States became involved in the Spanish-American War and the First World War, a new view of Presidential power was ascendant” (Barrett 1990: 68). Despite the brief resurgence of something resembling a balance of power between the presidency and Congress in the interwar years and during World War II, “events and decisions after the Second World War transformed the Presidency’s role to one of long-term dominance in foreign affairs” (Barrett 1990: 69).

The onset of the Cold War brought the issue of national security to the forefront of U.S. foreign and domestic policy and caused everyone to “rally round the flag” (Rosati 2003: 316) in an attempt to contain communism. This perceived state of a “permanent time of crisis” (Rosati 2003: 67) led to high congressional compliance and presidential supremacy in foreign policy decision making during the two post-war decades (Carter 1986: 334). That same time period also saw the rise of what are now called ‘Presidential Wars’, i.e. situations where the president has committed U.S. military forces abroad without a formal declaration of war from Congress and sometimes even without consulting Congress at all. President Harry Truman’s decision to send troops to Korea in the 1950s, as well as the case of the Vietnam War are just a few such examples. Jerel Rosati here rightly points out that “although only Congress had the constitutional right to declare war, these were presidential initiatives and presidential wars” (Rosati 2003: 68).

This initial period and rise of Presidential Wars post-World War II lasted up until about the early 1970s and, according to David M. Abshire, can be explained by five factors: First of all, he argues, what the world witnessed after the end of the Second World War was a proliferation of international crises and, hence, international commitments. This new and more complex and fast-paced environment, he claims, necessitated the concentration of decision-making power and hence made it more difficult for Congress to respond effectively. Secondly, and tied to that, is

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another 'side effect' of globalisation, one that Abshire labelled "the private economic state". By that he meant that states now operate, regulate and stimulate all stages of economic life. The third factor that he claims contributed to the rise in presidential power in the mid-twentieth century is the institutionalisation of the presidency in the decades following World War II. The president's power and responsibility was expanded, since he was granted new administrative and personnel authority. The establishment of the National Security Council in 1947 and its subsequent relocation to the executive office of the president in 1949 (Barrett 1990: 71) would be a case in point. Fourthly, and once again linked to that is what Abshire called 'congressional expansion', he argues that in the 1950s and 1960s, Congress was unable to expand its own power without expanding that of the executive, too. Finally, given the onset of the Cold War and the need for a coherent and effective strategy of containment, David Abshire argues that it was expected that strong presidents would act as leaders of Congress and have their own legislative agenda and the forces to implement that (Abshire 1994: 33 – 34).

Even though this list of reasons underlying the accumulation of presidential power during the twentieth century does cover quite an extensive range, a few additional causes that were mentioned briefly in the beginning of this essay can be added. For one, there is the ambiguity of the Constitution with regards to the exact authority and responsibilities of the President as Commander in Chief of the army and navy. Many presidents, not only in the mid-twentieth century but also quite recently have claimed that their role as Commander in Chief authorised them to commit troops abroad. Richard Nixon, for example, argued that this role permitted him to send U.S. troops to invade Cambodia in 1970 in order to protect the U.S. military fighting the war in Vietnam from a possible North Vietnamese attack, using Cambodia as a base.

However, the increase in the president's power and authority over foreign policy decision-making was not solely due to the factors outlined by Abshire or because presidents were overstretching their authority as Commander in Chief, but some powers were actually actively delegated to the office of the president by Congress. Congressional abdication of power to the presidency actually goes back further than our focus here on the Second World War would suggest. In 1921, Congress passed the Budget Act which granted the president the authority to determine national priorities by setting and submitting the annual federal budget to Congress (Trimble 1989: 752). In addition, there was the famous Curtiss-Wright Decision of 1936, which "has given impressive and enormously influential support to the executive branch in its constant struggles with the legislature over the conduct of foreign policy" (Mervin 1993: 141) and "affirmed the President's use of broad powers" (Dobson and Marsh 2006: 8). Another instance where Congress conferred much authority onto the president was the Gulf of Tonkin Resolution. This Act, effectively, gave President Johnson a 'carte blanche' to use all force he deemed necessary to fight the Vietnam War (Dobson and Marsh 2006: 104). By doing this, Congress actually surrendered its duty to check the use of force by the Commander in Chief, the executive, and thus, as with the Curtiss-Wright decision, set a precedent for future presidential use of force. All in all, to put it in the words of Arthur Schlesinger, it can be argued that "it was as much a matter of congressional abdication as of presidential usurpation" (Schlesinger 1973: ix).

However, as previously suggested, the increase in presidential power and primacy in foreign policy decision-making in the mid-twentieth century did not go on forever. The disaster of the war in Vietnam in addition to the many instances of Presidential Wars and abuses of presidential power even before Vietnam were cause for many to claim that "the pivotal institution of the American government, the Presidency, has got out of control and badly needs new definition and restraint" (Schlesinger 1973: x). It was sentiments like this, paired with the horror of the Vietnam War and congressional compliance at an all time low of 53% (compared to 72% in the two post-World War II decades) that in the early 1970s led Congress to make a serious effort to regain control over its constitutional responsibilities and to reassert itself (Carter 1986: 334). The following paragraphs will now deal with these attempts and analyse their initial intent as well as their actual implications and consequences for U.S. foreign policy decision-making in more detail. Relevant legislation that will be examined includes the Case Amendment, the Cooper-Church Amendment and the Case-Church Amendment, and, most importantly, the War Powers Act (WPA) of 1973. Given the space limitations in this paper, the first three will only be covered briefly, whereas the War Powers Act will be more closely examined due to its significance.

As stated in the beginning, the Constitution demands that even though the president is responsible for the negotiation of treaties, he still needs to obtain the Senate's approval for their final ratification. The failure of Woodrow Wilson to

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get the Senate to approve the Treaty of Versailles after World War I is one example where the Senate has effectively used this power to constrain the President. Thus, in an effort to avoid similar scenarios, presidents have increasingly turned towards using the term 'executive agreements' for treaty-like arrangements or understandings between executives and heads of state. Calling it an 'executive agreement' rather than a 'treaty' does not trigger the Senate's responsibility of oversight as outlined in the constitution and hence offers the president an opportunity to, effectively, conclude a treaty-like agreement without the danger of it being defeated by the Senate. Over time, however, this practice was beginning to get out of hand and presidents were making one executive agreement after the other, often without informing Congress at all. As a result, Congress in 1972 adopted the Case-Amendment which "requires the president to report the text of agreements with foreign powers to Congress" (Mervin 1993: 118). Although a good idea in theory, David Mervin argues that the "Case Amendment has been less than fully observed in practice" and hence has proven to be ineffective (Mervin 1993: 118). A greater effort by Congress to use its constitutional powers to constrain the president came in the form of the Cooper-Church Amendment of 1971 and the subsequent Case-Church Amendment of 1973.

The Cooper-Church Amendment was passed in January 1971 and marks an instance where Congress used one of its most powerful weapons to constrain the president – its power of the purse. Following the invasion of Cambodia in 1970, which happened without explicit congressional authorisation, this amendment "prohibited [the use of] any appropriated funds to introduce ground troops into Cambodia" (CRS Report to Congress 2007: 2). The Case-Church Amendment went even further, stating that "no funds heretofore or hereafter appropriated may be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia unless specifically authorized hereafter by the Congress. [...] no funds heretofore or hereafter appropriated may be obligated or expended for the purpose of providing assistance of any kind, directly or indirectly, to or on behalf of North Vietnam unless specifically authorized hereafter by the Congress" (CRS Report to Congress 2007: CRS 34). With the Senate's vote "to cut off all funds for combat activities in Laos and Cambodia", direct U.S. participation in the war was ended (Abshire 1979: 55). The subsequent rejection by Congress of President Ford's appeal for financial aid for Vietnam in 1975 seemed to only reinforce this mood of congressional reassertion.

The most prominent piece of legislation during that time of congressional reassertion, however, remains the War Powers Act (WPA) of 1973. According to Jerel A. Rosati, "the War Powers Act attempted to redress the historical growth of presidential war-making power in three ways: by requiring 'presidential consultation' before troops are committed abroad; 'presidential reporting' after troops are committed; and 'congressional action' if American troops abroad become involved in a 'situation of hostilities'" (Rosati 2003: 314). The WPA was enacted right after the disaster of Vietnam; however it was also in response to and supposed to address the general increase in Presidential Wars and presidential usurpation of powers traditionally held by Congress, the powers concerning the "high politics" of foreign policy (Briggs 1994). The provisions outlined in the resolution require that the president reports to Congress within 48 hours of the deployment of U.S. military forces abroad. Congress then has to decide on whether it authorises the deployment of troops and, thus, will provide the necessary funding, or whether it withholds its approval, in which case the president is required to withdraw the troops within sixty days – ninety at the very most (War Powers Resolution: §1543; §1544). It was not only the content of the WPA, however, that greatly contributed to this "new mood of congressional assertiveness in foreign policy" (Mervin 1993: 140), but also the fact that "passage of this act occurred despite the president's veto" (Briggs 1994: 127). However, as hopeful as these attempts by Congress to regain control over foreign policy decision-making may have been in their early days, it soon became evident that their impact would not necessarily be of lasting significance.

Successive presidents since the 1970s have not only doubted the constitutionality of the War Powers Act, but many of them have also simply refused to accept it as binding legislation. Furthermore, David Mervin states that "Presidents Nixon, Ford, Carter and Reagan have all believed that the War Powers Act is [...] incompatible with the ability of a strong president to carry on his duties as required" (Mervin 1993: 139). Thus, most presidents have sought to avoid its application wherever they can and if this was not possible, as the case of Reagan in Lebanon in the 1980s has shown, the President reluctantly complied with the WPA's provisions, but only whilst continuing to deny its legitimacy (Rosati 2003: 317). Hence, the War Powers Act – in theory – enables Congress to play a much bigger role in foreign policy decision-making and to serve as a more effective checking mechanism of the executive,

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reality tells a different story. This lack of efficiency can be explained by several factors. The first has to do with the necessity for some form of centralised decision-making process when it comes to foreign policy. The second argument draws on the idea of what Rosati has called “rallying around the flag” when it comes to military action abroad (Rosati 2003: 316) and the difficulty for Congress to withdraw funding from those brave men and women risking their lives to defend our country. And the final explanation for the ineffectiveness of the WPA touches on the language that is used to outline under what conditions it takes effect and the ability of presidents to work around this.

David Mervin argues that, when it comes to the “high politics”, American foreign policy is better conducted by the president than by Congress. This view rests partly on the assumption that Congress is – due to its sheer size and the nature of its legislative procedures – ill-suited to make swift, ad-hoc decisions in foreign policy and that, hence, a small and centralised foreign policy decision-making in the executive is more efficient (Mervin 1993: 129). When examining the “high politics” of foreign policy nowadays and the sheer pace of events that governments need to adjust to, it becomes apparent that formulation of a clear, coherent strategy in response is bound to be very difficult in a Congress that represents a vast array of differing backgrounds, opinions and agendas. The second reason as to why the War Powers Act’s application is so limited is tied to the popular view “of a nearly omnipotent president” that is held by many Americans (Rosati 2003: 66). The president, during the two World Wars and even more so during the Cold War was seen as “the leader of the free world” (Barrett 1990: 91 – 92) and one legacy of this popular image is that whenever U.S. military troops are committed abroad, not only the American public but also politicians tend to “rally round the flag” (Rosati 2003: 316). Often, once troops have been committed, presidents “have got the country into such scrapes that Congress and the nation have had little choice but to go along” (Mervin 1993: 119). And even if the situation was not yet ‘in scrapes’, “it is dishonourable to deprive men risking their lives for their country of financial support” (Mervin 1993: 122). A final source that creates difficulty with regard to the WPA’s enforceability stems from the language used in the text. As with the use of ‘executive agreements’ instead of ‘treaties’ outlined above, presidents have also found a way to work around using the term ‘involvement in hostilities’ with regards to the War Powers Act and hence limit the WPA’s applicability. Rather than labelling the commitment of U.S. troops abroad ‘involvement in a situation of hostilities’, presidents have resorted to sending military personnel on ‘peacekeeping’ or ‘humanitarian’ missions as ‘advisers’ (Rosati 2003: 316). Hence, presidents can go through with their plans of committing U.S. military abroad without having to consult Congress or comply with the provisions of the War Powers Act. All these factors outlined above in sum lead to a lack of congressional will and room for manoeuvre when it comes to invoking the War Powers Act and effectively constraining the president’s power in foreign policy decision-making.

All in all it has been shown that “whatever the Constitution says and notwithstanding the case for a significant, congressional role the supremacy of the executive in the formulation of foreign policy is inevitable” (Mervin 1993: 140). History has shown that presidents did not always have the upper hand in foreign policy decision-making and there is certainly no passage in the U.S. Constitution that grants the president superior power in this realm. However, the reality since the mid-twentieth century has shown that due to several interwoven factors “American presidents since the Truman era have had a decidedly upper hand in guiding that policy [foreign policy]” (Barrett 1990: 91). This does not imply that Congress has no role to play whatsoever when it comes to foreign policy making, or to say that other government agencies such as the National Security Council or the State Department are irrelevant. Their impact – as outlined above – is vital, but more specialised and is drawn upon at an earlier stage, during the time of information gathering and policy formulation.

Congress, according to Mervin, “has the scope to make difficulties at the margin, to create embarrassments, to cause delays and occasionally to thwart the President altogether” (Mervin 1993: 140). Examples of this include Woodrow Wilson’s defeat on the Treaty of Versailles, Nixon’s Watergate-Affair or the Cooper-Church and Case-Church Amendments. When it comes down to the actual *decision*-making or ad-hoc responses, however, the president has the ultimate authority. As has been pointed out, even during the Cold War – the era during which “presidential power in the making of foreign policy reached its height” (Rosati 2003: 81) – Congress tried to reassert itself after the disaster of the Vietnam War. Several resolutions, most notably the War Powers Act of 1973, were designed to “redress the imbalance” (Rosati 2003: 314) but – due to reasons explained above – were not of lasting significance and hence left the president as “the dominant force in foreign policy” (Trimble 1989: 751).

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