
The Constitution and U.S. Foreign Policy: The President, the Congress, and the People

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There is a constitutional, institutional, and political struggle among the President, the Congress, and the people over the conduct of foreign policy. In recent decades, the President has gained some advantage as witnessed in part by past unilateral actions in Korea, Vietnam, and Iraq. Although the President may shape short-term foreign policy, including decisions of war, in the long run, the people will ultimately determine the nation's foreign policy.

The United States became the dominant world power after World War II and during the Cold War, but it is no longer the only actor shaping the international system: Al Qaeda and Islamic extremists have proven that they can cause great discomfort and dislocation. These forces have contributed to the militarization of U.S. foreign policy best typified by the Global War on Terror.

This article will address the hypothesis that America's constitutional and institutional discord is exacerbated by the adversarial political system wherein political parties strive for power and influence. Human rights are the essence of the American value system as reflected in the Declaration of Independence (1776), the Preamble to the Constitution (1789), and the

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Bill of Rights (1791). The Constitution is but a stopping point in a long evolution that extends back to the Mayflower Compact (1620), the Magna Carta (1215), and even the Justinian Code (534). That the full exposition of the Constitution is roughly 1,700 pages long¹ reflects its complexity and ambiguity.

EVOLVING CONSTITUTIONAL AUTHORITY

The current debate over Iraq presents an interesting triad in the realm of foreign policy, with the President, the Congress, and the people all vying for power and influence. According to the Constitution, the Congress has the “power to legislate, provide for the common defense, to declare war, to raise and support armies, to provide and maintain a Navy . . . and to make all laws which are necessary and proper to execute the foregoing powers.”² On the other hand, “The executive power shall be vested in a President . . . [and he] shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states . . . [and he] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur.”³ Edward S. Corwin has argued, “the Constitution, considered only for its affirmative grants of powers capable of affecting the issue(s), is an invitation to struggle [between the President, the Congress, and the people] for the privilege of directing American foreign policy.”⁴ With this struggle in mind, it is instructive to review a few of the most relevant legal precedents in Supreme Court decisions and Congressional resolutions.

There are three types of resolutions. First, a simple resolution is a statement of fact or opinion by one of either the Senate or the House of Representatives and is binding only on that House of Congress; it is frequently used as an internal procedure for housekeeping, administrative, or legislative purposes. Second, a concurrent resolution is a simple resolution that passes both Houses (also normally used for housekeeping, administrative, or legislative purposes) and is binding on both Houses. However, a precedent has been set to use this for legislative or executive purposes as in the War Powers Resolution. Third, a joint resolution is a concurrent resolution that goes on to the President to be signed into public law or vetoed; it is usually used as a means of expeditious legislation to bypass the normal legislative process, as in the annexation in Texas in 1845.

In 1936, *U.S. v. Curtiss-Wright Export Corporation*⁵ was a test case of the 1935 Neutrality Act, which was passed in part because of the Chaco War between Paraguay and Bolivia. The Curtiss-Wright Export Corporation

was trying to sell 15 Browning automatic machine guns to Bolivia in contravention of the Neutrality Act. The President upheld the embargo, and the Supreme Court declared that the President was the “sole organ” in the realm of foreign policy, which was reaffirmed the following year in *U.S. v. Belmont*.⁶

The *Belmont* case arose from the Roosevelt-Litvinov Agreement of 1933, whereby the United States recognized the Soviet Union in exchange for which the Soviet Union assigned all czarist assets in the United States to the U.S. government. The issue was whether the President exceeded his constitutional authority in making a binding international agreement without the advice and consent of the Senate. The Supreme Court ruled that the President acted within his constitutional powers to make treaties and to send and receive ambassadors (recognition) within the implied powers of the President as the embodiment of the legal sovereignty of the United States under international law. Under this implied power, whatever the President says or does in the realm of foreign policy is binding upon the United States or else it is not fully sovereign. The constitutional validity of the Litvinov Assignment as an

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executive agreement was upheld in the *Belmont* case and again in *U.S. v. Pink* in 1940, when the Supreme Court ruled that an executive agreement had equal dignity and authority with a treaty under Article VI paragraph 2 of the Constitution: “. . . all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land.”⁷ The executive agreement subsequently became a major instrument of U.S. foreign policy, such as in the famous Destroyer-Bases Deal between Franklin Roosevelt and Winston Churchill on September 3, 1940, whereby the United States gave Great Britain 50 aging World War I-era destroyers in exchange for the right to occupy 10 British bases in the Western Hemisphere, including those in Iceland and Greenland.

WARS COMPLICATE THE BALANCE

After World War II, the United States negotiated the North Atlantic Treaty Organization (NATO) with 14 other countries. This was a “most entangling” alliance in contradiction to a long-standing tradition of neutrality

dating back to George Washington, who warned against such alliances in his 1796 Farewell Address.

Article 5 of the NATO treaty states in part that the parties agree that an armed attack against one or more parties in Europe or North America shall be considered as an attack against them all.⁸ The referral of the NATO treaty to the Senate set off a historical debate about whether it compromised

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the traditional neutrality of the United States, as well as Congress' constitutional power to declare war. The treaty eventually received the advice and consent of the Senate on July 26, 1949, but some lingering doubts remained. To resolve some of these issues, several constitutional amendments were proposed to limit the power of the President to make executive and other international agreements subject to Senate and/or House approval. The last version of this proposal was put forth by Senator John

W. Bricker of Ohio, but it failed to receive the necessary two-thirds majority of the Senate, falling short by one vote: 60 to 31.⁹

The debate did not resolve all the questions surrounding executive and other international agreements, so on June 25, 1969, in the midst of the Vietnam War, the Senate passed a simple resolution proposed by Senator J. William Fulbright, known as the National Commitments Resolution. This resolution tried to restrict and restrain the President from making any further commitment without a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitments. Fulbright's National Commitments Resolution did not satisfy all the critics of presidential initiative to make executive agreements, however, so on August 22, 1972, Senator Clifford Case resubmitted an earlier version of the Ferguson-Knowland Bill,¹⁰ which passed both Houses of Congress and became known as the Case Act.¹¹ This act required that all international agreements other than treaties be submitted to both Houses of Congress within 60 days of their signing. The act was further confirmed in U.S. Department of State *Circular 175* in May 1972, which outlined the process and substance of executive and other international agreements. It is interesting to note that the Case Act and *Circular 175* were passed in the latter days of the Vietnam War. In spite of all this discussion and action in regard to executive and then international agreements, the Vietnam War

was settled by a series of executive agreements signed by Secretary of State William Rogers on behalf of the United States.¹²

The Korean Conflict

During the Korean War, President Harry S. Truman utilized the United Nations Charter Article 1 “to maintain international peace and security,” and United Nations Security Council Resolutions S/1501 and S/1511 to justify U.S. intervention; Resolution S/1511 “Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.”¹³ Since the United States had proposed the resolution, and since the Soviet Union was boycotting the UN for not seating the People’s Republic of China, the resolution passed unanimously. (Truman was clearly trying to forestall another Manchurian Incident like the one 20 years earlier that had undermined the League of Nations and the Kellogg-Briand Pact of 1928 outlawing war as an instrument of national policy.)¹⁴

At the onset of the Korean War, 81 percent of the American people were in favor of the intervention, but after several reversals and 36,700 casualties, 77 percent eventually came to oppose it.¹⁵ After the firing of General Douglas MacArthur in April 1951, public opinion solidified against the war, and the United States had to withdraw. Finally, after protracted negotiations that lasted about two years, President Dwight D. Eisenhower concluded an armistice on July 27, 1953. This UN armistice, neither war nor peace, has remained in effect for 55 years—a legacy of presidential intervention based upon UN Security Council resolutions and the constitutional authority of the President as commander in chief of the armed forces.

The Vietnam Conflict

The American phase of the conflict in Southeast Asia began on the night of August 3–4, 1964, when two destroyers, the *Maddox* and the *C. Turner Joy* were allegedly attacked in the Gulf of Tonkin by North Vietnamese torpedo boats, an accusation that later proved to be false. Using the Gulf of Tonkin incident as a pretext, President Lyndon Johnson ordered the bombing of North Vietnam. The legal basis for this action was the Southeast Asia Resolution (also known as the Gulf of Tonkin Resolution), the essence of which was “that the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary

measures to repel any armed attack against the forces of the United States and to prevent further aggression.”¹⁶

This resolution set in motion the escalation of hostilities that led to the Viet Cong attack on the American outpost at Pleiku in February 1965. In response, President Johnson ordered Operation Rolling Thunder and on April 7, 1965, he announced a full-scale military escalation in Vietnam on the basis of the Gulf of Tonkin Resolution.

THE WAR POWERS RESOLUTION

In the course of the Vietnam Conflict (“war” is no longer declared) the struggle between Congress and the President returned to where it left off in the 1930s concerning the Neutrality Acts of 1935, 1936, 1937, and 1939. Congress initially attempted to cut off the funding for Vietnam; when that failed the desired effect, Congress passed the War Powers Resolution of 1973, which was re-passed by a two-thirds majority over President Nixon’s veto to become law (PL93-148). The War Powers Resolution states in part that:

“It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States, and to insure the *collective* judgment of both the Congress and the President will apply to the introduction of the United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the *continued* use of such forces in hostilities or in such situations.”¹⁷ (Emphasis added.)

In the most controversial part of the War Powers Resolution, Section 5 (c) states: “Notwithstanding subsection (b), at any time that the United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by *concurrent resolution*.”¹⁸ (Emphasis added.)

The second controversial part of the War Powers Resolution is Section 8 (d) (1 & 2): “Nothing in this joint resolution . . . is intended to alter the constitutional authority of the congress or of the President, or the provisions of existing treaties [e.g., NATO] . . .”¹⁹—although that is exactly what it did.

The President is now restricted in his freedom of action as the embodiment of state sovereignty (the sole organ) and as commander in chief of the armed forces. Congress has aggrandized unto itself the power to order the President by concurrent resolution to remove armed forces from hostilities. This places Congress in a superior legal position in relation to

the President and violates the principle of co-equal branches of government and the separation of powers. In 1983, the Supreme Court held, in *INS v. Chadha*,²⁰ that Congress could not
 stop the deportation of a nonresident because that was an executive function not permissible under the principle of the separation of powers between the President and Congress, whereby the Congress legislates and the President executes. It was then interpreted by some that this decision applied, in whole or in part, to the War Powers Resolution. If that interpretation were upheld, it would vitiate any attempt by Congress to invade the powers of the President.

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NOW TO IRAQ

In the early years of the 21st century, Iraq became a major issue of U.S. foreign policy and in the deliberations of the UN Security Council. After the United States and its allies drove the Iraqi Republican National Guard out of Kuwait during the Persian Gulf War of 1991, President George H.W. Bush (in concert with his advisors) opted not to totally defeat the Iraqi army and march on to Baghdad to remove Saddam Hussein. They believed, in part, that a completely defeated Iraq would be a greater liability than a contained one that left Saddam Hussein in power. The concern was that a totally defeated Iraq would create a political vacuum that could draw in all the surrounding states seeking power, territory, oil, and regional influence. Further complicating this scenario was a concern about international terrorism, specifically Islamic extremism. Additionally, there was some concern that Saddam Hussein harbored weapons of mass destruction (WMD). As a consequence, the United States decided to utilize the UN system for weapons inspection and to ground the Iraqi air force through the imposition of “no-fly zones,” which would help to protect the Kurds in the north and the Shiites in the south.

An intervening event in national and international politics was the Al Qaeda terrorist attacks against the United States on September 11, 2001, at the World Trade Center in New York and the Pentagon in Washington, DC. These were catalytic factors that changed both the substance and processes of U.S. foreign policy. Not since the War of 1812 had the United States been attacked on its mainland—and at the centers of world capitalism

and American military power. The more immediate consequences were the creation of the Department of Homeland Security, the declaration of the Global War on Terror, and a counterattack on Al Qaeda and the Taliban in Afghanistan. After the Taliban were defeated, the long-term effect was to transfer attention to Iraq as a possible source of terrorism in the Middle East and a major base of operations for Al Qaeda.

The on-site inspections in Iraq, along with aerial surveillance, did not reveal any WMDs. Nonetheless, the United States pushed 14 resolutions through the UN Security Council; the last one, UNSC 1441, which passed 15-0 on November 8, 2002, declared that there would be “serious consequences” if Iraq did not come clean on WMDs. Saddam Hussein eventually complied with this demand of the UN Security Council for further information by submitting a 1,200-page report to the UN Secretary-General. This report did not satisfy the United States, however, which argued that it was too general and did not sufficiently address the issue of WMD.

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In the midst of all this military and political activity, Congress passed a joint resolution on October 16, 2002, which “authorized [the President] to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to: 1) Defend the national security of the United States against the continuing threat posed by Iraq; and 2) Enforce all relevant United Nations Security Council

Resolutions regarding Iraq.” It is interesting to note that section 5 (c) (2) states: “Nothing in this resolution supersedes any requirement of the War Powers Resolution.”²¹ The significance of this is that Congress seems to be developing a legal structure that *de facto* is amending the Constitution in a manner and fashion that is of dubious constitutionality.

The public concern over Iraq was the dominant feature of the congressional elections in November 2006. The Democrats gained a substantial majority (233 to 202) in the House and a slim majority (51 to 49) in the Senate. These results emboldened the Democrats to propose several resolutions in both Houses of Congress condemning President George W. Bush’s proposal of January 10, 2007, to increase U.S. combat forces on the ground by 21,500 troops. The main Democratic resolution, which was voted in the House on February 16, 2007, passed by a vote of 246 to 182,

with 17 Republicans voting with the Democrats.²² The main features of this Resolution Against (the) Iraq Build-up stated that Congress and the American people will continue to support Armed Forces in Iraq and that Congress disapproves of the President's plan to deploy more than 20,000 combat troops in Iraq.²³

On the following Saturday, the Senate held a cloture vote on whether to debate the resolution on Iraq. This vote failed by 56 to 34,²⁴ because a cloture vote requires a majority of 60 to proceed with debate on the resolution similar to that passed by the House. An important point to mention here is that the House resolution was a simple nonbinding resolution that expressed the opinion of only the House; if the Senate had passed this simple resolution it would have become a simple nonbinding concurrent resolution. This then might have been converted into a House Joint Resolution requiring the signature of the President. However, the President would surely have vetoed such a resolution, and Congress did not have the necessary two-thirds majority to override a veto.

However, the Democrats' strategy to ram a simple or concurrent resolution through the Senate failed on the cloture vote, and the Republicans offered a counter resolution to fund the surge and related costs proposed by the President. This move essentially checkmated the Democrats' strategy because they had threatened to restrict or restrain funding the surge as a means of forcing the withdrawal of the armed forces. At the conclusion of the cloture vote, the Senate adjourned for the February recess, and little to nothing could be done during this period. But Senator Joseph Biden, Chairman of the Senate Foreign Relations Committee, floated the idea that Congress might repeal the resolution of October 2002 authorizing the use of force in Iraq.²⁵ However, such a step would require the signature of the President, who would certainly veto instead. If this drastic step were taken, it would be reminiscent of the repeal of the Gulf of Tonkin Resolution on Vietnam by means of an amendment to a military appropriations bill.²⁶

PUBLIC OPINION

The trump card in this struggle between the President and Congress over foreign policy is public opinion. The United States was founded upon the basic principle of popular sovereignty: "... that all men are created

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equal . . . and that governments derive their just powers from the consent of the governed.”²⁷ Or, that all power, legitimacy, and authority flow upward from the people and not downward from a king or divine sovereign. However, there is a contradiction between popular sovereignty and state sovereignty, which creates some tension and ambiguity over who has the ultimate power in the American political system. It would seem that in the court of final resort, that which is right, good, and just is determined by a majority of the people.²⁸

In the context of the current debate over Iraq, it is often asserted that with the outcome of the 2006 U.S. midterm election, a majority of the American people spoke out against the intervention in Iraq. This position has consistently been reaffirmed in various public opinion polls since then. The remaining questions are how, when, and on what basis will the United States leave Iraq, and as Hamlet said, “Aye, there’s the rub.”²⁹ There is no consensus between the President and the Congress or between Republicans and Democrats. The ramifications of withdrawal are almost too complex to comprehend.

On January 10, 2007, President Bush announced a military buildup in Iraq of about 20,000 more combat troops, commonly referred to as “the surge,” to be deployed around Baghdad to quell the sectarian violence. In return, the Iraqis were to take greater control of their armed forces, commit to oil revenue sharing and job creation plans, and work toward key political reforms. The Senate Foreign Relations Committee responded to President Bush’s initiative with a simple nonbinding resolution denouncing the surge by a vote of 12 to 9. These actions further exacerbated the conflict between the President and Congress.

The President implemented the surge throughout the spring without specific funding from Congress. In February, the Iraqi cabinet passed a draft law on sharing oil revenues with the various regions on the basis of population. Later in February, the Bush administration announced a significant policy shift in that it would participate in discussions with representatives of Syria and Iran regarding Iraq. This shift was in line with the recommendations of the *9/11 Commission Report*.³⁰ In May 2007, the President vetoed a \$124 billion appropriation for the wars in Iraq and Afghanistan because the legislation would require further “benchmarks” and a timetable for the withdrawal of U.S. forces from Iraq.³¹

Congress returned from its February recess and was still confronted by the Iraq crisis. With the fourth anniversary of the Iraq War looming, the House of Representatives mobilized under the leadership of Speaker Nancy Pelosi and fashioned a bill that provided \$100 billion in funding for Iraq

and Afghanistan and another \$24 billion in domestic spending in order to buy some Democratic votes,³² as well as a withdrawal timetable that set September 1, 2008 as the goal by which most of the U.S. combat forces were to be withdrawn. The vote on March 23 was extremely close with 218 in favor, a bare majority, and 212 opposed.³³ By joining the funding issue with the withdrawal issue, it placed the administration in an awkward position. On the one hand they urgently needed the funding for the two wars by April 15,³⁴ while on the other hand they did not want to set a date for withdrawal. The following week the Senate passed a similar bill, on March 29, by the narrow vote of 51 in favor and 47 opposed; however, the withdrawal date was reset at March 31, 2008, with the withdrawal to begin 120 days after passage of the bill.³⁵

In the meantime, the President stated on several occasions that he would veto any bill with a timetable for withdrawal. This set the stage for a constitutional confrontation of the highest magnitude. Aside from the political and military considerations about withdrawal, this confrontation would seem to be an unconstitutional assertion of authority by Congress in violation of the separation of powers.³⁶ If Congress stripped out the withdrawal deadlines in both the House and Senate bills, it was possible that the President would sign the money bill, even with the \$24 billion in domestic spending. However, that may be the political price that the President would have to pay in order to get the basic funding for Iraq and Afghanistan. (An interesting aspect about this struggle between the President and Congress over Iraq policy is that it is exactly what Edward S. Corwin warned about in 1957.)

When Congress returned from its Easter recess, it would have to work out a compromise bill in a conference committee between the House and Senate versions of the Iraq bills. The compromise would then have to pass in both Houses of Congress and receive the signature of the President before it became law. At this point in time, it was highly probable that the President would veto any compromise bill that contained a timetable for withdrawal. It was also possible that such a compromise bill might remove the pork barrel appropriation of \$24 billion, which might lose some positive votes in each House. If the President did not sign the compromise bill, Senate Majority Leader Harry Reid threatened to completely unfund any military appropriations for Iraq and Afghanistan. That would really "put the fat in the fire." However, it did seem probable that Congress would pass some appropriation for "funding the troops," based upon previous statements and the political risks involved. It would seem that Reid's threat was just a bluff.

On April 25, 2007, the House passed a war and domestic appropriations bill of \$124 billion that required the President to begin withdrawing American forces from Iraq by October 1, 2007; the vote was 218 in favor to 203 against, largely along party lines. The following day, the Senate passed the same bill by a vote of 51 in favor to 46 against, again largely along party lines.³⁷ Neither vote was large enough to override the President's promised veto, and these votes placed the Democrats in an awkward position: they did not quite know how to proceed. If they passed a "clean bill" without a date certain for withdrawal, they would alienate the anti-war activists on the left end of the political spectrum. If they passed a bill without the \$24 billion in domestic spending, they stood to lose a significant number of votes on the right. Even if Congress passed the full \$124 billion appropriations without the withdrawal, and the President signed it into law, the Democrats would have lost some credibility, although they would have made a political statement.

As promised, President Bush promptly vetoed the Iraq funding/withdrawal bill on Tuesday, May 1, 2007. Both Pelosi and Reid pledged to move forward with their withdrawal plan. "The veto added new punctuation to a major war powers clash between Democrats in Congress—buoyed [by] what they regarded as a mandate in last November's elections and seeking to force an end to the fighting in Iraq—and the President working to defy what he regards as an incursion on his authority as commander in chief."³⁸

The House tried to override the President's veto on Wednesday afternoon but fell well short of the two-thirds requirement by 62 votes.

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Congress and the President searched for common ground, but both Pelosi and Reid seemed determined to stand their ground, presenting an impasse. However, Steny Hoyer (House Majority Leader) and Mitch McConnell (Senate Minority Leader) thought that there would be a compromise funding bill on the President's desk by Memorial Day—and there was. And so, the Iraq

debate rages on; when and how it would end continues to be highly problematical. However, it is clear that the Iraq debate has been a major constitutional confrontation between the Congress and the President over the conduct of foreign policy.

THE SURGE

The arrival of the final contingents of the 30,000 surge forces in mid-June 2007 roughly coincided with the highest civilian and military casualties in the conflict, as Al Qaeda and Sunni insurgents tried to demonstrate that these additional forces were not going to provide any added security or stability. However, it gradually became apparent that the opposite was the reality on the ground. U.S. Commanding General David H. Petraeus' strategy was to embed U.S. and Iraqi troops in the cleared areas to provide direct security and then try to work with some of the Sunni tribes to counter Al Qaeda.

This new tactical alliance between Coalition forces and Sunni tribes in Anbar Province might have been a mixed blessing, because the Sunni Awakening Movement and citizens' councils may become the nucleus of an anti-Shiite movement directed against the Shiite-dominated government or the Shiite militias.³⁹ However, Major General Rick Lynch, commander of the U.S. forces south of Baghdad, cautioned that the Sunni Arabs who fought Al Qaeda must be rewarded and recognized as legitimate members of Iraqi society, or else the hard-fought security gains of the last six months could be lost. He stated that roughly 26,000 members of the Sunni tribal groups in the area that he controls have given the U.S. and Iraqi forces a clear advantage against extremist-held pockets. The United States funds the groups known as Awakening Councils, Concerned Local Citizens, *et alia*, but members of those groups also expect to be rewarded for their efforts with jobs.⁴⁰

These opportunistic alliances with the Sunni tribes were a significant tactical victory that Bush stressed as partial justification for the surge. In addition to this tactical gain was a surprise announcement by Moqtada-al-Sadr that the Mahdi Army would suspend military operations for six months, which was later extended for another six months.⁴¹ While this announcement by Moqtada al-Sadr may have been a tactical move to re-group and re-arm his forces, it provided some relief to Coalition and Iraqi forces, as well as gave the Iraqi government further time to try to resolve some of the political problems. This unexpected development greatly helped to reduce the sectarian violence between Shiites and Sunnis, because next to Al Qaeda and the Sunni insurgency, the Shiite militias were perceived as the greatest threat to Iraq's stability and unity. The net effect of these internal developments was that U.S. and Iraqi casualties began to decline, which may be partially explained by the surge in that it gave the Iraqi people and government a greater sense of support and continuity. It may also have

been that the Iraqi people were fed up with the violence and wanted some relief, and that they may also have wanted to be on the “winning side,” which seemed to be the case.

The estimated U.S. casualties in Iraq after the start of the surge in May 2007 fell from 125 to 40 per month in December of that year.⁴² The estimated Iraqi civilian casualties dropped from nearly 3,000 in May 2007 to 471 by November.⁴³ These were the lowest figures since March 2006 and the bombing of the Shiite shrine in Samarra, largely considered to be the catalyst for the major sectarian fighting. However, even with these positive military trends, there has been relatively little social and political progress. This lack of progress was rather disappointing, because the main purpose of the military surge was to give the Iraqis some time and space to make the political compromises necessary to move toward political stability.

By the end of 2007, the constitutional crisis between the President and the Congress had eased somewhat, largely due to the President's intransigence to allow Congress to invade the executive powers of the President as chief executive and commander in chief of the armed forces. The President's main weapons were the veto and the support of the Republicans in the House and the Senate to prevent a Congressional override. Senator Mitch McConnell said that there were some 35 efforts by the Speaker of the House and the Majority Leader of the Senate to force the President to change course and get out of Iraq.⁴⁴

The main reason for the President's success was likely General Petraeus' counterinsurgency strategy to protect the Iraqi people and turn them against Al Qaeda and the insurgents.⁴⁵ Given the significant reduction in violent attacks and the defection of large numbers of Sunni insurgents to the Sunni Awakening Movement, Anbar Province and 75 percent of Mesopotamia were cleared of major Al Qaeda presence.⁴⁶ Many experts note, however, that there is always the risk that the Sunni Awakening Councils may turn against their U.S. allies and the Shiite government. General Petraeus cautioned against too much optimism, because the sectarian tensions remain high and the governmental institutions remain weak and fragile.⁴⁷

Meanwhile, the constitutional confrontation over Iraq seems to have been overtaken not only by developments in Iraq but also by political developments in the United States. First was the presidential primary campaign where public concern over Iraq seemed to be dropping partially due to the success of the surge and partially due to intervening domestic issues such as the state of the economy, inflation and the rising costs of gasoline, heating oil, and energy, not to mention the general concern over the collapse of the subprime mortgage market, the loss of liquidity in the banking

industry, and widespread housing foreclosures. As a result, these and other issues, including the assassination of Benazir Bhutto and the turmoil in Pakistan, seemed to have overtaken the concern about Iraq.

PUBLIC OPINION REVISITED

Public opinion is the main and decisive dimension of the Constitution's triad of the President, the Congress, and the people. When French aristocrat and philosopher Alexis de Tocqueville visited the United States in the early 1830s, he observed that, "Among the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of conditions. I readily discovered what a prodigious influence this basic fact exerts on the workings of society. It imparts a certain direction to the public spirit and a certain shape to the laws, establishes new maxims for the governing, and fosters distinctive habits in the governed. . . . The people reign over the American Political world as God reigns over the universe. They are the cause and end of all things; everything proceeds from them, and to them everything returns."⁴⁸

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The general public had been steadily opposed to the Iraq War as witnessed in part by the Congressional elections of November 2006. In early December 2007, CNN conducted an opinion poll with 1002 respondents, 69 percent of whom opposed the war and 31 percent (still) supported it.⁴⁹ These figures were approximately the same throughout the period from March 2003 to December 2007, signifying that unless there is substantial progress in Iraq, the United States will have to withdraw, as was the case in Vietnam. A president cannot sustain a foreign policy much less a war policy without the broad support of the American people. The question then again becomes when, how, and on what terms will the United States withdraw?

The answer to that question will depend upon who wins the presidential election in November 2008, how the Iraq War is going on the ground, and other developments in the Middle East. There are also some other variables such as Islamic extremism, terrorism, oil, Iran, Israel, and Pakistan that will make it difficult if not impossible to fully disengage from Iraq. Therefore, it is safe to assume that withdrawal from Iraq cannot be

viewed as a separate problem removed from domestic and international politics. As a result the constitutional and institutional struggle between the President and Congress over the conduct of foreign policy will continue on as Edward S. Corwin predicted in 1957.⁵⁰ ■

ENDNOTES

- 1 Edward S. Corwin, *The Constitution of the United States of America: Analysis and Interpretation* (Washington, DC: United States Government Printing Office, 1953).
- 2 United States Constitution, Art I, § 8.
- 3 *Ibid.*, Article II, § 2.
- 4 Edward S. Corwin, *The President: Office and Powers, 1787–1957* (New York: New York University Press, 1957), Fourth Revised Edition, 171. See as well Edward S. Corwin, *Presidential Powers and the Constitution* (Ithaca, NY: Cornell University Press, 1976).
- 5 *U.S. v. Curtiss-Wright Export Corporation*, 299 U.S. 804 (1936).
- 6 *U.S. v. Belmont*, 301 U.S. 324 (1937).
- 7 *U.S. v. Pink*, 315 U.S. 203 (1940).
- 8 U.S. Department of State *Bulletin*, Vol. XX (1949), 339–342.
- 9 David L. Larson, “Executive Agreements: Expediency vs. Legitimacy,” *Social Science* 56 (2) (Fall 1981).
- 10 U.S. Senate, 1971, Ferguson-Knowland Bill.
- 11 U.S. Congress, 1971, The Case Act.
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