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Congress's failed potential: The Gulf of Tonkin Resolution and the War Powers Act

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CONGRESS’S FAILED POTENTIAL: THE GULF OF TONKIN RESOLUTION AND THE WAR POWERS ACT

by

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Bachelor of Science
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ABSTRACT

CONGRESS'S FAILED POTENTIAL: THE GULF OF TONKIN RESOLUTION AND THE WAR POWERS ACT

by

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This paper examines congressional surrender through the passage of the Gulf of Tonkin Resolution and how Congress attempted to regain its co-equal powers of war through the end of the Vietnam War by restricting funds to Southeast Asia and by the passage of the War Powers Act. The thesis also explores the intentions of the Founder's on separating the "sword" from the "purse" into two separate branches, and how the escalation of the Cold War led the U.S. into Vietnam. Finally, the paper concluded that the passage of the War Powers Act was unnecessary and unconstitutional because it granted power to the executive not delegated in the Constitution. It also concluded that the debate over the war powers of Congress and the President are still alive today because of past precedents and judicial decisions.
# TABLE OF CONTENTS

**ABSTRACT** ................................................................................................................. iii

**ACKNOWLEDGEMENTS** .............................................................................................. vi

**CHAPTER I INTRODUCTION** .................................................................................. 1
  Purpose .................................................................................................................. 2

**CHAPTER II CONSTITUTIONAL INTENT** ............................................................. 5
  Powers of the Executive ....................................................................................... 7
  Powers of Congress .............................................................................................. 8
  "Make" for "Declare" ........................................................................................... 10
  Federalist Papers ................................................................................................. 13

**CHAPTER III COMMUNISM AND FEAR** ............................................................ 18
  United Nations ...................................................................................................... 20
  Winston Churchill ................................................................................................ 21
  Truman Doctrine ................................................................................................... 24
  Korean War, NSC 68 ............................................................................................ 28
  Involvement in Vietnam ....................................................................................... 31

**CHAPTER IV GULF OF TONKIN AND RESOLUTION** ....................................... 39
  August 2, 1964 incident ....................................................................................... 40
  August 4, 1964 incident ....................................................................................... 42
  Investigating August 4 incident .......................................................................... 44
  August 4, 1964 congressional meeting ............................................................. 46
  President Johnson's address ............................................................................. 48
  August 6, 1964 hearings ..................................................................................... 49
  Gulf of Tonkin Resolution .................................................................................... 52

**CHAPTER V JOHNSON’S JUSTIFICATIONS FOR THE RESOLUTION** ............... 55
  Barbary Pirates .................................................................................................... 55
  Truman and the Korean War ............................................................................... 58
  Formosa and Middle East Resolutions .............................................................. 60
  Judicial Rulings .................................................................................................... 62

**CHAPTER VI FAILING GRADE** ............................................................................. 68
  Senator Fulbright’s escalation of dissent ........................................................... 70
  Fulbright’s lecture series ..................................................................................... 74
  Senator Wayne Morse (D-OR) ........................................................................... 77

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<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam Hearings and Impact</td>
<td>79</td>
</tr>
<tr>
<td>Congressional dissent</td>
<td>84</td>
</tr>
<tr>
<td>Secretary Robert McNamara 1968 testimony</td>
<td>90</td>
</tr>
<tr>
<td>CHAPTER VII SMALL GAINS, HUGES LOSSES</td>
<td>94</td>
</tr>
<tr>
<td>Symington Committee</td>
<td>94</td>
</tr>
<tr>
<td>Cooper/Church Amendment I/II</td>
<td>95</td>
</tr>
<tr>
<td>Repeal of the Gulf of Tonkin Resolution</td>
<td>96</td>
</tr>
<tr>
<td>War Powers Act creation</td>
<td>99</td>
</tr>
<tr>
<td>War Powers Act</td>
<td>102</td>
</tr>
<tr>
<td>Fallout from the Act</td>
<td>106</td>
</tr>
<tr>
<td>Pro-Congress and Pro-Executive</td>
<td>108</td>
</tr>
<tr>
<td>CHAPTER VIII SUMMARY AND CONCLUSIONS</td>
<td>111</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>118</td>
</tr>
<tr>
<td>VITA</td>
<td>127</td>
</tr>
</tbody>
</table>
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INTRODUCTION

There are no hard and fast rules in time of war. The only guidance we have are those principles encased in the Constitution. The same held true for the Vietnam War; nevertheless the executive superseded relevant stipulated statutes in Article II to wage the war and Congress failed to live up to its mandated responsibilities to oversee the function of the war. The Gulf of Tonkin incident and resolution provided a platform for the United States to intervene in Vietnam, but the way the United States entered the war was at best questionable. The United States Navy, under orders from the White House, provoked the alleged attacks of early August 1964.

For Lyndon B. Johnson, the Gulf of Tonkin incident was his opportunity to prove that he was a strong cold warrior in the fight against communism and that he would not be the first president to lose a war. Without adequate debate, and without knowing all of the facts to make an informed decision, the United States Congress overwhelmingly passed a resolution giving Johnson carte blanche over involvement in Vietnam. For most of the war, Congress left the tough decisions to the President. Perhaps the country was in an age that required quick decision making, and the need for secrecy. Both Lyndon Johnson and Richard Nixon
relied on secrecy to continue their efforts in Vietnam and to prevent congressional dissent.

As this thesis will explain, congressional hawks prevailed over their dove counterparts. This was evident through continuous congressional appropriations supporting the executive’s approach to the war. There were only a handful of senators debating the origins of the war, and it was not until 1971 that Congress repealed the Gulf of Tonkin Resolution, finally living up to its constitutional obligation to debate the issues. Two years later, a beleaguered Congress passed the War Powers Resolution, declaring that the President could initiate military actions, but had to secure the approval of Congress to continue hostilities. The drafters of the war powers resolution saw the legislation as a way to regain Congress’ influence over war powers and foreign relations, but subsequent events have demonstrated that their efforts were largely futile.

The Founders never intended for the executive to reign over foreign affairs the way presidents have since the Second World War. They devised specific guidelines and provisions within the Constitution that envisioned a cooperative approach to foreign relations. As James Madison stated in Federalist fifty-one, “It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part.”

Nevertheless, founders like Alexander Hamilton expressed the need for a strong executive, and perhaps the United States has reached an era

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in Post World War II where a strong executive is needed, but the Constitution has not been amended to reflect that change.

Amending the Constitution was not the avenue presidents took to justify their actions in foreign affairs. Since World War II, the world has entered a new phase of technological progression and international commitments. Precedents and international organizations have frequently superseded the constitutional policy that gave Congress the sole authority to declare war (so say the executive branch), and new world organizations and treaties have contributed to the mix, by promoting the lack of oversight by Congress. Harry S. Truman used the ratification of the United Nations as justification for committing troops in Korea. He believed that since Congress had approved the treaty, the President had the power to commit troops on their behalf without seeking further authorization from the U.S. Congress.

Our foreign policy after World War II focused on the threat of Soviet-Chinese domination. Presidents have not only seized power through congressional inaction, but also by judicial decisions. Since the Prize Cases following the Civil War, the judiciary has given the executive enormous latitude to conduct foreign affairs outside the scope of congressional authority. But it was not what the Supreme Court said that resonated the loudest. *Baker v. Carr* reemphasized the political question doctrine in *Marbury v. Madison*, which has had a lasting impact on the questions the Court would hear. It left politics to the politicians saying that there are some things best left for the people to decide and not the courts, and since war is politicized, the courts have generally refrained from making
judgements in this area. Instead, presidents since 1950 have relied on precedent and treaties to justify their actions.

In 1966 Congress began investigating the administration’s policies regarding Vietnam and debate followed, but Congress was slow to react. Troop escalation continued until Johnson left office and funding was not cut off until the summer of 1973. “During the seven-year span from July 1966 through July 1973, Congress recorded one hundred and thirteen votes on proposals related to the war. But its first limitation on U.S. military activities in Southeast Asia was not imposed until 1969—a restriction on American troop deployments in Cambodia and Laos—and it directed its full opposition to a continued commitment in the region only in August 1973, when it voted to stop all bombing throughout Indochina.”

The result of congressional resurgence concluded with the War Powers Resolution. Its unintended effects resulted in further disturbing the equilibrium of checks and balances in favor of the executive. It was the final step in pronouncing that Congress was inept in its oversight of war. In essence, Congress gave the President enough time to succeed or fail by granting him a ninety day window to use military force. The United States Cold War policy and Vietnam conflict significantly increased the executive’s powers over war because of congressional and judicial acquiescence.

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CHAPTER II

CONSTITUTIONAL INTENT

What were the Founders intentions regarding the separate branches of government? The answer depends on who is discussing the issue. There are certainly different philosophies about the intentions of the delegates to the constitutional convention of 1787. Nevertheless, we have written proof of the powers delegated to each branch by the convention. Those delegated powers made it quite clear who the founders wanted to control the entrances and exits to foreign wars. Congress was empowered to declare war, but the framers did not envision Congress authorizing war through a resolution. Hence, the authors of the Gulf of Tonkin resolution overstepped boundaries specifically designed to control presidential actions and monitor the progression of war. As Paul Eidelberg has argued, "if only for its own sake, democracy requires restraints."^3

The classic debate over constitutional intentions has spilled over to this century. During the constitutional revival of the 1980s, (a look back at original intent) Edwin Meese III, Attorney General under President Ronald Reagan, tried to recapture the intent of the Founding Fathers. He emphasized that "this was a written document; something has been written down, and the language they

chose meant something.\textsuperscript{4} Meese maintained that “we know how the Founding Fathers lived, and much of what they read, thought, and believed. Arguments were written down so that their ideas and conclusions could be widely circulated, read, and understood.”\textsuperscript{5} Meese also acknowledged that the Constitution was not meant for one age; it was perpetual and not bound to the time in which it was written.

Where the language of the Constitution was specific, it must be obeyed. Where there is demonstrable consensus among the framers and ratifiers as to principle stated or implied by the Constitution, it should be followed as well. Where there is ambiguity as to the precise meaning or reach of a constitutional provision, it should be interpreted and applied in a manner so as to at least not contradict the text of the Constitution itself.\textsuperscript{6}

At the same time, Meese conceded that the Constitution leaves us with exceedingly few conclusions. “Because the document posits so few conclusions, it leaves to the more political branches the matter of adopting and vivifying its principles in each generation.”\textsuperscript{7}

William Brennan, former Supreme Court Justice, repudiated Meese’s conclusion about the importance of a written document: “Like every text worth reading, it is not crystalline. The phrasing is broad and the limitations of its provisions are not clearly marked.”\textsuperscript{8} He responded that this was not a perfect

\begin{itemize}
  \item \textsuperscript{5}Ibid., 14.
  \item \textsuperscript{6}Ibid., 17.
  \item \textsuperscript{7}Ibid., 19.
\end{itemize}
document, and that the founders' intentions are rather meaningless. "Our distance of two centuries cannot but work as a prism refracting all we perceive." It was "far from clear whose intention is relevant; the drafters, congressional disputants, or ratifiers." Original intent meant little for former Justice Brennan. He deemed the document transcendent. "The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs." The greatness of the Constitution was its flexibility and ambiguity. "To remain faithful to the context of the Constitution, therefore, an approach to interpreting the text must account for the existence of these substantive value choices, and must accept the ambiguity inherent in the effort to apply them to certain modern circumstances."

The executive and the legislature each have distinctive duties concerning war and foreign affairs. The President's powers are listed under Article II of the United States Constitution. Section I of Article II provides the president the power to preserve, protect, and defend the Constitution of the United States. In Section II, the president functions as the Commander in Chief of the Army and Navy and of militia of several states when called into actual service of the United States. Finally, the executive has the capability to make treaties with the advice

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5 ibid., 25.
10 ibid., 27.
11 ibid., 27.
and consent of two-thirds of the Senate, and the executive nominates and receives ambassadors.\textsuperscript{12}

Congress' delegated power to control war and access over foreign affairs is more extensive than that of the executive. The legislature's specific powers in this area are listed in Article I, Section 8. Congress has the power to regulate commerce with foreign nations and regulate land and naval forces of the United States. It also has the power to provide and maintain a navy and suppress insurrections and repel invasions. In addition, Congress is empowered to provide for organizing, arming, and disciplining the militia, and governing any portion of the militia employed in the service of the United States. One of the most expandable and yet limited clauses in Section 8 of Article I is the "necessary and proper" clause. Under this clause, virtually anything could become necessary or proper in the defense of the United States. That is why it is limited in scope. Finally, the most important portions of Article I regarding war powers are the eleventh and twelfth clauses. They state that Congress has the power to declare war, grant letters of marque and reprisal, and make rules regarding the capture of soldiers or property during war. Congress also raises and supports armies, but no appropriation of money to that use may be enacted for a term of longer than two years.\textsuperscript{13}

The Founders assigned these powers and chose the specific language purposefully. Why did they use such explicit language? "At the time of the


\textsuperscript{13}Ibid., 6-8.
Constitution, the war-making power in all other countries was vested in the executive. Having recently separated from the hold of Great Britain, the United States reacted against contemporary practices and transferred “all executive power... to the Continental Congress.” The alleged tyranny of the King of England was obvious to the people of the former colonies.

In constructing a government during and after the Revolution, the United States first developed the Articles of Confederation. That particular system of government denied an executive from possessing any genuine authority. The Articles of Confederation placed power in a Congress still dominated by the states. There was hardly any mention of an executive or executive power. In this system Congress had the power to send and receive ambassadors and it could solely negotiate treaties with other countries. The Articles, like the Constitution, placed the responsibilities for war under Congress. It held the power to declare war. Congress also had the authority to fund and raise armies and provide for the common defense. Article nine of the Articles of Confederation explicitly stated that Congress had the “sole and express right and power of determining on peace and war.” The executive had no power to direct, fund, use or create anything in war or foreign relations without the direct supervision of the Congress. “The articles did not provide for an independent

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executive; nor did they provide for a unitary executive. In fact, under the Articles, Congress appointed a commander in chief of the navy with the consent of the at least nine states. That the executive was not the commander in chief of the armed forces under this system had a momentous impact on the future U.S. Constitution.

The Articles of Confederation had its flaws, but not all of its features were scrapped when the founders of our current Constitution decided to do away with the Articles. Our constitutional framers foresaw an elective body as the government of the future. The constitutional convention of 1787 specifically separated the powers of war and funding to avoid future calamities: they believed the power of the "sword" and "purse" should "never be in the same hands." In fact the capacity to wage war was not a primary focus of the summer convention, and "on August 17, 1787, with little debate the Framers substituted make for declare." The sought to separate the functions of initiating and controlling war, and by substituting "declare" for "make" the founders believed they gave the President enough room to wage war if the country were invaded.

Nobody questioned presidential authority to repel a sudden attack or fight a defensive war. That was why the Founders changed the wording used in the Constitution to express their desires for the President to successfully fight off

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17Eidelberg, The Philosophy of the American Constitution 167.

18Adler, Great Books of the Western World, 8.

19Stern and Halperin, The U.S. Constitution and the Power to Go to War 13-14.

invasions. They exchanged the word “make” to “declare” war in Section 8 of Article I, so that the president would not be hampered in his pursuits to defend the nation in case of foreign invasion. When the framers did “substitute declare for make, the new wording was not intended to shift from the legislature to the Executive this general power to engage the country in war. At most, the sole reason for the substitution was to confirm the Executive’s power to repel sudden attacks.”

War scared the Founders. They knew all too well that the power to commence, fight, and fund war could cast a country into disarray. Therefore, they installed checks and balances preferably to prevent the initiation of an all out war by a single man or a small party. James Wilson stated that a system of checks and balances “will not hurry us into war, it is a calculated guard against it. It will not be in the power of a single man, or a single body of men.” The Framers of the Constitution believed that collective decision-making and separation of powers were the constitutional devices for preventing careless wars. James Madison justified his position by saying that “those who are to conduct war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded.” It was too dangerous to allow single individuals to have complete control over war. Still, the debate over who has what power continues. “Issues have arisen as to where some

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23. Ibid., 13.
power lies, and these have been claims by one branch to authority admittedly possessed also by another."²⁴

In spite of the debate, the Constitution squarely placed unique powers with each branch in order to preserve order. "The Framers were quite deliberate about placing with Congress the fundamental power to deploy armed forces."²⁵ Congress was to be the mechanism for controlling war. James Madison, a primary drafter of the Constitution, asserted that the "vital power to declare war was vested in Congress and the power of the President was to be strictly construed. Doubt as to the exact location of any power in this field was to be resolved in favor of the legislature."²⁶ Regardless of the complications or questionable decisions, the scales were supposed to be tipped in favor of the legislative branch. As Robert Diamond stated, "Congress has the general powers that taken together, enable it to reach virtually everywhere it will in foreign affairs."²⁷ The reason Congress's power was to reach everywhere, was that it was more of a representative government body. More diversity would generate better ideas.

Although Congress was to control declaring and funding war, the framers also recognized that a strong executive was important to the function of foreign affairs and war making. They made the President the commander in chief for a number

²⁵Stern and Halperin, The U.S. Constitution and the Power to Go to War, 11.
²⁶Diamond, Powers of Congress, 52.
²⁷Ibid., 53.
of reasons. According to Alexander Hamilton, the "direction of the war most peculiarly demands those qualities which distinguish the exercise of power by a single head." But the commander in chief's authority has also been debated. Supreme Court Justice Robert Jackson explained in *Youngstown Co. v. Sawyer* in 1952 that the "commander in chief clause implied something more than an empty title. But just what authority goes with the name has plagued presidential advisors who would not waive or narrow it by nonassertion yet cannot say where it begins or ends."

Having clarified the stated powers of the elected branches of government, it is necessary to examine the intention of the authors of the Constitution. The *Federalist Papers* written by John Jay, Alexander Hamilton and James Madison were the earliest and still the best indicators of what the Framers had projected for the future and what they thought the Constitution lacked. Considering that they attended and participated in the convention, their writings afford insight into the thinking behind the creation of the Constitution. In *Federalist* twenty-six, Hamilton examined the 1688 English Revolution and concluded that it was "unlawful to have a standing army within the kingdom in the time of peace, unless with the consent of Parliament." He also stated that "when they referred the exercise of that power to the judgement of the legislature, they had arrived at the

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28 Stern and Halperin, *The U.S. Constitution and the Power to Go to War*, 14. Part of *Federalist Papers* 74, signifying the power of war and the appropriateness of a single person commanding military action.

29 Louis Fisher, *Constitutional Conflicts Between Congress and the President* (Lawrence, Kansas: University Press of Kansas, 1997), 257.

ultimate point of precaution which was reconcilable with the safety of the community.\textsuperscript{31} Collective decision-making was a precaution against hasty and reckless behavior, or so the Convention thought.

Alexander Hamilton further expounded on his thesis of a robust executive in Federalist sixty-nine and seventy. In sixty-nine, Hamilton differentiated the King of England from the American version of a president. He said that the King of Great Britain was the sole and absolute representative of the nation in all foreign transactions. "He can of his own accords make treaties of peace, commerce, alliance, and every other description."\textsuperscript{32} Hamilton added that there was "no comparison between the intended power of the President and the actual power of the British sovereign." The King "can perform alone what the other can do only with the concurrence of a branch of the legislature." Plus, the "President would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince."\textsuperscript{33}

After writing that eloquent passage about the differences between the King of England and the American President, Hamilton contradicted himself in Federalist seventy. In seventy, he proclaimed that the "energy in the executive is essential to the protection of the community against foreign attacks, and a feeble executive implies a feeble execution of the government."\textsuperscript{34} In other words, Hamilton believed that the executive needed to be largely free from restraint to be an

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{31}Ibid., 72.
\item \textsuperscript{32}Ibid., 194.
\item \textsuperscript{33}Ibid., 195, 197.
\item \textsuperscript{34}Ibid., 198.
\end{itemize}
\end{footnotesize}
effective leader. He explained, “decision, activity, secrecy, dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.” Hamilton appeared to describe secrecy as a quality of the executive. That certain acts require the decision and secrecy of one man over the majority contradicted a checked and balanced government.

In light of more than 200 years of change, has the Constitution adapted to meet the needs of a new world? No doubt we are in an age that demands fast response and deliberate action in foreign affairs. Contemporary analysts deem that, “the twentieth century and a standing army have shifted much of the war power to the President.” Modern emergencies and a fast paced society have transferred many of the important aspects of foreign affairs to the office of the executive, and “the war-making power of the President constantly erodes the war-declaring power of congress.” “The President shares no greater power than when the nation is facing a crisis, a time when he becomes the expected figure of power and leadership without partisan restraint and is able to strengthen his power image as a commander in chief in times of war.” Why is that? Several authors have written that congressional acquiescence is the central

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35 Ibid., 199.

36 Stern and Halperin, The U.S. Constitution and the Power to Go to War, 11.

37 Ibid., 11.

cause of the erosion of checks and balances and the rise of presidential war powers. Since the adoption of the Constitution, presidents have made it custom to overcome legislative restraint. Therefore, "practice and acquiescence for a number of years can be instrumental in fixing the meaning of the Constitution."\(^{39}\)

Since legislative restraint on war and foreign affairs has largely disappeared, presidents have seized the foreign policy initiative. As author Louis Henkin explained, "when the President acts and Congress is silent, there is often a justifiable presumption that Congress has acquiesced in, even approved, what the President has done; if so, the action is supported by the constitutional powers of both branches."\(^{40}\) The executive grasps power based on the silence of the legislature, and virtually makes custom constitutional. "So strong is the influence of custom that it seems almost to amend the Constitution."\(^{41}\)

Nevertheless, custom does not change the Constitution and a resolution in place of a declaration was not what the Founders had intended. It was unconstitutional to go to war on a false pretense and a resolution does not meet the criteria of a declaration. Congress's power to declare and fund war supercedes the power of the President's directive to wage war. In fact, the President does not exercise the power of commander-in-chief until actually called into service by the Congress. The Supreme Court expressed in *Powell v. McCormack*, that just "because an unconstitutional action has been taken before


\(^{40}\)Henkin, *Foreign Affairs and the Constitution*, 105.

surely does not render that same action any less unconstitutional at a later
date.\textsuperscript{42} The existence of prior presidential actions does not mean they are constitutional.

\footnote{\textsuperscript{42}Ibid., 18-19.}
CHAPTER III

COMMUNISM AND FEAR

The Second World War transformed the international arena. Confronted by the challenge of the Soviet Union, the United States could no longer remain isolated. Unlike the Soviet Union, the United States escaped the war virtually unscathed. Its infrastructure was undamaged and thrived throughout the war. "The United States emerged from World War II as a superpower and acquired the advantages and responsibilities of world leadership." During this new phase of the Cold War, Congress was generally content letting the President handle and initiate American policy abroad. Dissenters were seen as unpatriotic, and detractors were far from overbearing.

The 1940s was a pivotal time in the post-war foreign policy. President Harry S. Truman’s rhetoric on communism and containment ruled foreign policy until the 1990s. These hard-line policies were responsible for the Cuban-Missile Crisis and our ever steadily rise in Vietnam in the late 1950s and 1960s. The United States would only negotiate with communist governments from a position of power. "American officials, notably Dean Acheson, spoke of a future desire to negotiate from strength. The phrase did not imply negotiation at all, in the sense

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of compromise and accommodation, but rather dictating terms to the other side.\footnote{Fredrik Logevall, “A Critique of Containment,” \textit{Diplomatic History}, 28 (September 2004): 482.}

This fear of negotiation left Washington with little room to maneuver. Instead, the United States actively sought out communist aggression. For the people of the United States “anticommunism resonated with the fears felt by many Americans, and it helped them make sense of a complex and unfamiliar world-and of the rapid changes under way in their own country as well.”\footnote{Ibid., 493.} All the same, the policy of containment “allowed no role for diplomacy until the climatic final scene in which the men in the white hats accepted the conversion of the men in the black hats.”\footnote{Henry Kissinger, \textit{Diplomacy}, (New York, 1994), 471.}

Most of the policies and rhetoric concerning communism emerged within ten years after the end World War II, and most of those policies were set under President Harry Truman (1945-1953). The historian Henry Berger wrote in 1967 that “for the past twenty years American foreign policy has been conducted essentially along ideological and practical lines established by the Truman Doctrine in 1947.”\footnote{Henry W. Berger, “A Conservative Critique of Containment: Senator Taft on the Early Cold War Program,” in \textit{To Advise and Consent: The United States Congress and Foreign Policy in the Twentieth Century}, ed. Joel H Silbey. (Brooklyn: Carlson Publishing, 1991), 226.} His administration helped to shape the United States’ security policy concerning the Soviet Union for the next forty-five years, and U.S. policy involved clashes throughout the world between capitalism and
communism. “These two different social/economic/political/legal systems fought a long series of ideological battles, accompanied by periodic shooting wars between surrogate states.”

Truman, who assumed power after Franklin Roosevelt’s death in April 1945, had a rougher persona that symbolized the distrust many Americans held toward the Soviet Union. In his Four Point message to Congress, “Truman had accepted FDR’s view of the modern presidency as a powerful leadership office.” He led the country in foreign affairs by organizing a strong coalition of conservatives and liberals to back his initiatives. “Seldom did Truman have trouble piloting his foreign programs through either a Democratic or Republican Congress. Congress was generally compliant and the American people were yea-sayers.” Truman chartered his own policy and courted others to follow. “I make American foreign policy,” the blunt Missourian stated.

Truman oversaw the creation of the United Nations. It was similar to Woodrow Wilson’s idea of the League of Nations, but with actual enforcement instead of relying on international public opinion; and more importantly, participation by the United States made the organization seem viable. The United Nations (UN) charter was signed on June 26, 1945, in San Francisco.

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California. Within its preamble the UN outlined several aims. It sought to “save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to promote social progress and better standards of life in larger freedom.” To those ends the UN was committed to “unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save the common interest.”

The UN was organized into six organs: ranging from the general assembly and the security council to the International Court of Justice. In the general assembly, each member nation had a representative. The security council was different. The charter members of the United Nations: Great Britain, the Soviet Union and the United States were all permanent members. France became the fourth permanent member of the council and the Soviets were insistent that on a non-western country to fill the final seat. The final permanent occupant of the security council eventually became The People’s Republic of China. The remainder of the council were composed of ten countries that were selected from the general assembly for a period not to exceed two years.

This idealized new world order did not stop the harsh rhetoric between the East and West (capitalism versus communism). Former British Prime Minister Winston Churchill gave a speech at Westminster College in central Missouri on March 5, 1946 titled the “The Sinews of Peace.” The speech “contained an

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53 Ibid., 2, 132.
allusion that an iron curtain was descending on Europe—an image that was to remain powerful throughout the Cold War." He stated that "from Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the Continent." Churchill also "warned that the safety of the world required a new unity in Europe, from which no nation should be permanently outcast."" Even Churchill was uncertain of the Soviet’s intentions. "Nobody knows what Soviet Russia and its Communist international organization intends to do in the immediate future, or what are the limits, if any, to their expansive and proselytizing tendencies." Still, he was smart enough to be cautious, to warn of the communists’ potential danger to the rest of the free world, and to advise that free democracies band together if peace were to prevail. Churchill asserted that "if the Western Democracies stand together in strict adherence to the principles of the United Nations Charter, their influence for furthering those principles will be immense and no one is likely to molest them." Churchill’s speech in Fulton, Missouri has often been called the "opening shot in the Cold War." In standing together to fight communism, the United States provided monetary support to nations struggling to rebuild after the war. America assisted the

54 Watson, U.S. National Security, 133.
56 Ibid.
57 Ibid.
58 Ibid.
struggling countries to fight off insurgent communist uprisings and the "United States-Soviet tensions came to a head in Greece in 1947." Following World War II, Britain could no longer afford to assist Greece and Turkey in their efforts to remain non-communist. Britain appealed to the United States to provide aid to these countries. "Great Britain notified the United States on February 21, 1947 that it could no longer support Greece." The telegram to Washington also stated that "assistance is imperative if Greece is to survive as a free nation."

The call for aid to Greece and Turkey came against the background of an emerging containment policy. George F. Kennan, the United States' charge d' affaires in Moscow, sent a telegram to Washington on February 22, 1946, describing the situation in the post war Soviet Union. In the letter Kennan warned of the Soviet anti-capitalist worldview and possible expansionism. The telegram, together with Kennan's article on containment titled "Mr. X," published in July of 1947 have been seen by historians as the basis for United States policy. In the article in Foreign Affairs, Mr. X illustrated how the Soviets and the United States differed and how the United States had to contain Communist aggression. He believed that "Soviet pressure against the free institutions of the Western world is something that can be contained by vigilant application."

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61 Ibid., 288.
62 Ibid., 289.
64 Ibid., 153. Also in Foreign Affairs (Volume 25, Issue 4).
Kennan's letter helped to form the basis of what became "containment," because he expressed the concerns of policymakers in Washington that the Soviets were looking for confrontation. Kennan was convinced that the "Russians look forward to a duel of infinite duration, and that the United States must continue to regard the Soviet Union as a rival, not a partner, in the political arena."\(^65\)

In this spirit, President Truman appeared before a joint-session of Congress on March 12, 1947, and outlined his plan to assist free democracies. Truman stated in his declaration to Congress that the "Greek state is today threatened by the terrorist activities of several thousand armed men, led by Communists, who defy the government's authority at a number of points."\(^66\) The president recognized that "no other nation is willing and able to provide the necessary support for a democratic Greek government. The situation is an urgent one requiring immediate action, and the United Nations and its related organizations are not in a position to extend help of the kind that is required."\(^67\)

Greece was not the only country in need of assistance. Truman declared that "the future of Turkey as an independent and economically sound state is clearly no less important to the freedom-loving peoples of the world than the future of Greece."\(^68\) Truman outlined the United States' policy objectives toward the spread of communism. He argued that "one of the primary objectives of the foreign policy of the United States is the creation of conditions in which we and

\(^{65}\) Ibid., 153, 156.

\(^{66}\) Truman, "Truman Doctrine," Historic Documents on the Presidency, 290.

\(^{67}\) Ibid., 290.

\(^{68}\) Ibid., 290.
other nations will be able to work out a way of life free from coercion, and “to ensure the peaceful development of nations, free from coercion, the United States has taken a leading part in establishing the United Nations.” To free the people of the world from tyranny became Truman’s doctrine, and thus the United States could not “fail to aid Greece and Turkey in this fateful hour.”

Truman solicited Congress to give $400 million in aid to Turkey and Greece. “The Republican dominated Congress approved Truman’s $400 million in aid to Greece and Turkey by a 3 to 1 margin. The assistance to Greece and Turkey was the first manifestation of the Truman Doctrine and of the containment theory.” The speech was a key victory for Truman, and it passed the Senate 67-23. “Once Truman had enunciated his doctrine before a joint session of Congress, many of its members hesitated to deny him his program.” Truman also made a pledge to Congress concerning support to Greece and Turkey. “If further funds or further authority should be needed for the purposes indicated in this message, I shall not hesitate to bring the situation before the Congress. On this subject the Executive and Legislative branches of the government must work together.”

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69Ibid., 291.
70Ibid., 291.
71Ibid., 292-293.
72Ibid., 288.
73Patterson, “Presidential Foreign Policy, Public Opinion, and Congress: The Truman Years,” 238.
Not everyone in Congress supported Truman's plans for assistance. Some feared deficits; others worried about being the world's policemen. Nevertheless, Truman used the fears of many to achieve his own means. "The president exploited the frightening world events to garner support for his foreign policy." He also "exploited cold war tensions through an often alarmist, hyperbolic, anticommunist rhetoric, which he thought necessary, to insure favorable legislative votes to disarm his critics, and to nudge parsimonious congressmen to appropriate funds. Ultimately, the Truman administration found public opinion and the Congress to be permissive, not restrictive."^75

The United States also moved in 1947 to provide more support for failing economies across Europe, and thereby curb the spread of communist aggression. The Marshall Plan was announced by the new Secretary of State George C. Marshall following graduation ceremonies at Harvard University on June 5, 1947. The plan called for a "massive reconstruction project" to help prop up Western Europe and "stifle Soviet expansion." Marshall explained that "it is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace."^76 The Marshall Plan was signed into law on April 4, 1948.

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75Patterson, "Presidential Foreign Policy, Public Opinion, and Congress: The Truman Years," 227-28.


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The end of the war also brought with it real fears; not just rhetoric. Even though the Soviets were burdened with casualties and devastation, it still emerged as a global power and the center of the communist world. “The collapse of Germany and Japan, and the severe weakening of Britain and France, had created power vacuums that the two remaining major powers (the United States and the Soviet Union) rushed to fill.”

Looming over the emerging East-West conflict was a frightening new weapon. The United States had successfully produced the first atom bombs, and used them against Japan to end the war in the Pacific—first in Nagasaki on August 6, 1945 and then in Hiroshima on August 9, 1945. Yet the United States’ dominance in the atomic field would not last. “By 1949, the Soviets had developed the atomic bomb,” and the atomic age and the nuclear arms race had officially begun.

That same year the United States formed an organization to check Soviet expansion. It was the Northern Alliance Treaty Organization (NATO). The NATO members agreed that an “armed attack against one or more of them in Europe or North America shall be considered an attack against them all.” Since the Russians had carved out a large buffer zone in Eastern Europe, the West moved to create an organization to protect Western Europe and Canada from a possible communist invasion. NATO’s preamble asserted that its members were “determined to safeguard the freedom, common heritage and civilization of their

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peoples, founded on the principles of democracy, individual liberty and the rule of law. They seek to promote stability and well-being in the North Atlantic area."80 That concept would be applied to other regions of the world as well.

This world's polarization between East and West deepened further in 1950. Communist North Korea invaded South Korea seeking to unify the peninsula under one communist government. Truman saw this assault as a violation of his Truman Doctrine, and under the flag of the United Nations, the United States sent troops into Korea during June 1950 to secure the South's anticommunist independence. Truman never sought a declaration of war. Korea "was truly a presidential war but Congress voted funds time and time again to continue the war."81 Over the next three years, the United Nations, spearheaded by the United States, battled North Korea and eventually Communist China for control. The Korean War personified the Cold War: the major powers fighting indirectly—never head to head over different spots on the globe.

Before the Korean War began, President Truman had directed the Secretaries of State and Defense "to undertake a recommendation of our objectives in peace and war and of the effect of these objectives on our strategic plans, in light of the probable fission bomb capability and possible thermonuclear bomb capability of the Soviet Union."82 In response, the State Department formulated NSC 68, which outlined a comprehensive strategy for national security. The

80 Ibid., preamble on the North Atlantic Treaty Organization's charter.
81 Patterson, "Presidential Foreign Policy, Public Opinion, and Congress: The Truman Years," 242.

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memorandum recommended that the United States must “confront the Soviet Union with convincing evidence of the determination and ability of the free world to frustrate the Kremlin design of a world dominated by its will.” The memorandum emphasized to “the government, the American people, and all the free peoples, that the Cold War is in fact a real war in which the survival of the free world is at stake.”

Senators Robert Taft (Ohio) and J. William Fulbright (Arkansas) voiced concerns over the country’s foreign policy in late 1940s, but the crowd muffled their voices. “Votes in the Senate on key postwar programs reveal that the Truman administration commanded the results. The Brettonwoods agreements (World Bank & the International Monetary Fund) passed 61-16, the United Nations Charter 89-2, assistance to Greece and Turkey 67-23 and NATO passed 82-13.”

Truman’s successor, Dwight D. Eisenhower also accentuated the danger of allowing the spread of communism to infiltrate countries across the globe. In a press conference on April 7, 1954, Eisenhower cautioned that the “collapse of one government under threat of Communist oppression would lead to the collapse of neighboring states and a further progression of collapse around the world.” In this press conference, Eisenhower talked about the importance of Indochina. Since Mao Zedong and the Chinese Communists had taken control

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83 Ibid.

84 Patterson, “Presidential Foreign Policy, Public Opinion, and Congress: The Truman Years,” 241.

of China in 1949, some 450 million Asians had been lost to the Communist dictatorship, and "we simply cannot afford greater losses."\textsuperscript{86} Eisenhower's press conference came on the heels of John Foster Dulles "massive retaliation" speech to the Council on Foreign Affairs, in which he boldly confirmed that the "United States would respond with massive force at places and with means of its own choosing if provoked by Soviet aggression."\textsuperscript{87} The 1950s brought its own challenges, but in large part the Eisenhower administration continued and strengthened the policies in foreign affairs set forth by Truman.

Despite Dulles' rhetoric, Eisenhower's "New Look" defensive strategy reinforced Truman's "containment" policies and more likely than not strengthened them with his and Dulles denunciation of Soviet expansion. "His administration did little to alter the basic approach to foreign affairs of the Truman administration. The United States continued a policy of containment of communism and confrontation with the Soviet Union."\textsuperscript{88} In addition to carrying over Truman's policies, "Ike gave Congress a secretary of state so militant in his rhetoric that it would be appeased."\textsuperscript{89}

As Eisenhower's speech had suggested, Southeast Asia became increasingly important to U.S. policy during the 1950s. The concerns about Europe falling into communist hands were lessened by the United Nations, NATO and by the

\textsuperscript{86}Ibid., 381-390.

\textsuperscript{87}Watson, \textit{U.S. National Security}, 163.


\textsuperscript{89}Ibid., 234.
hopes that the Marshall Plan would revitalize Western Europe. By contrast, many feared that Southeast Asia was ripe for communist revolutions. The French had attempted unsuccessfully to reassert their colonial control over Vietnam after World War II. A communist uprising had occurred in the northern section of Vietnam, led by Soviet trained Ho Chi Minh. Ho had persistently tried to obtain international support for recognition, but failed in his attempts. “After Ho Chi Minh seized Hanoi, but before the French were to return, he expected allied support to prevent the restoration of French colonial rule in Indochina…, but none of the leaders replied to his appeals and none stepped forward to prevent the return of the French.”

To the contrary, the United States aided the French by recognizing their anticommunist puppet ruler Bao Dai, and by "paying for the French war effort in Indochina." The United States paid the French via the Marshall Plan. Between 1950-54, the United States had provided France more than $2.6 billion in military aid. Nevertheless, Ho and the Vietminh in 1954 defeated the French at the decisive battle of Dien Bien Phu. On May 8 the French garrison surrendered to the Vietminh after a brutal beating. The Eisenhower administration drew up a plan for intervention, but it received little support in Washington so it was never initiated. Congress was suspect of the possibility of getting involved, and

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91Schulzinger, U.S. Diplomacy Since 1900, 236.


93Schulzinger, U.S. Diplomacy Since 1900, 237.
Eisenhower was “sensitive to Truman’s fate in Korea, and was unwilling to act without backing from Congress.” Congress was unusually stubborn.

“Congressmen insisted that there must be no more Koreas, with the United States furnishing ninety percent of the manpower.” Then again, this was not a denial for the president to use force. Instead, it was a concern about not letting this evolve into a catastrophe and giving the executive enough room to hang himself. In the end, the United States’ “distrust of France” dictated not going “to war in support of colonialism.”

With the French defeat, the first Indochina War ended with the Geneva Peace Accords of 1954. They stipulated that Ho and the Vietminh gain control of Vietnam, north of the nineteenth parallel and that the country was to be split in two and elections were to be held within two years to reunite the country. By the summer of 1955, it had become clear that elections were not going to take place when the President of South Vietnam Ngo Dinh Diem called off the election “arguing the South never signed the Geneva agreement.” John Foster Dulles was relieved, since he “did not believe Diem could defeat Ho Chi Minh in a free election anyway.”

The United States did not intervene at Dien Bien Phu in 1954, but Eisenhower and Dulles continued to believe that the security of Southeast Asia was at stake in Vietnam. Following the French departure, the United States developed the

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⁹⁴Herring, America’s Longest War, 40.
⁹⁵Ibid., 41.
⁹⁶Schulzinger, U.S. Diplomacy Since 1900, 238.
Southeast Asia Treaty Organization (SEATO) in 1955. Its membership included Australia, France, Great Britain, New Zealand, Pakistan, the Philippines, Thailand, and the United States; Vietnam and Cambodia were protocol states. They were not official members but were protected under the treaty organization. Its purpose, similar to that of NATO, was to “oppose further communist gains in Southeast Asia.”\(^{97}\) SEATO also served to sanction the United States presence in Vietnam. That would later become an issue of legality and discussion.

After the creation of SEATO and the withdrawal of the French, the United States was left to fill the void in South Vietnam. “In early 1956, the United States assumed from France full responsibility for training the two hundred-fifty thousand poorly organized, trained and equipped South Vietnamese Army.”\(^{98}\) The United States had been supplying the South Vietnamese government with foreign aid since the late 1940s, and that was not going to end with the French defeat. Vietnam became a primary focus for some politicians. Senator John F. Kennedy (D-Mass.) proclaimed in 1956 “Vietnam represents the cornerstone of the free world in Southeast Asia.”\(^{99}\)

The United States' financial obligations to Diem's government expanded after the Geneva Peace Accords and further entrenched the United States in Southeast Asia. From “1955 to 1961, the United States poured more than $1 billion in economic and military assistance in South Vietnam”, but “over 78


\(^{96}\)Herring, America's Longest War, 70.

\(^{99}\)Ibid., 52.
percent of that assistance went for military purposes." The United State's patronage "enabled the South Vietnamese to survive the first few critical years after independence," but the "massive infusion of American aid....fostered dependency rather than laying the foundation for independence." By the time John F. Kennedy took office in 1961, the United States had spent billions of dollars attempting to secure South Vietnam's sovereignty. The young President quickly established himself as a strong cold warrior. According to historian Gabriel Kolko, Kennedy was able to "merge the domino and credibility theories into a unified conception." The domino theory, articulated by President Eisenhower in 1954, declared that if one country fell to communism then other countries would collapse like dominos, and the credibility theory acknowledged that the United States had to promote its global image as a defender of freedom and that it would defend its ideals. This stance won Kennedy the presidency, but it also showed that he was more unlikely to permit Vietnam to fall to communism than either Truman or Eisenhower. He routinely committed $42 million to support an expansion of the South Vietnamese Army, because according to the President, "Vietnam was vital to America's global interests."

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100 Ibid., 69, 74.
101 Ibid., 74-75.
103 Herring, *America's Longest War*, 91.
104 Ibid., 92-93.
Kennedy began to divert the United State's resources toward escalated involvement in Vietnam. By Spring 1961, the administration increased military advisors by 100 and ultimately dispatched over 400 new Special Force troops to Vietnam to train the South Vietnamese Army. The Kennedy administration also instituted “Project Beefup.” The project was to double the military assistance to South Vietnam and add over 300 new military aircraft. In addition to increased military expenditures, the number of military advisors jumped from 3,205 in December 1961 to over 9,000 by the end of 1962.\(^{105}\)

The administration's view on the future of the South Vietnamese government began to waiver early in 1963. Roger Hilsman, advisor to the President, and Kenneth O'Donnell, a White House staffer, were sent to Vietnam on a fact finding mission. In their report, the two administration officials concluded that the “United States and South Vietnam were probably winning but quickly added that the war would probably last longer than we would like and cost more in terms of both lives and money than we had anticipated.”\(^{106}\) This report would further the claim made by O'Donnell and Hilsman that in the summer of 1963, Kennedy “recognized the futility of American involvement” in Vietnam and he “was prepared to liquidate it as soon as he was reelected.”\(^{107}\)

By summer, Washington had grown tired of Ngo Dinh Diem and his brother Ngo Dinh Nhu. The administration enacted a policy of “selective pressures.”

\(^{105}\)Ibid., 94, 103-104.

\(^{106}\)Ibid., 111.

\(^{107}\)Ibid., 113.
whereby Washington cut off aid to South Vietnam in hopes of changing Diem's regime and revamping and stabilizing the South's government. What Kennedy began to realize was that for the South to succeed, the regime needed to change. On August 29, Kennedy signed off on the coup to get rid of the Ngo's. The first attempt to remove Diem was not initiated because of mixed singles from Washington, but the South's generals were successful on November 1, 1963. The army removed Diem and Nhu from power, and they were murdered on November 2 in the back of an armored personnel carrier. According to historian George Herring, "with the coup, the United States assumed direct responsibility for the South Vietnamese government."

Kennedy was not able to see if the South Vietnamese government might succeed where the Diem's failed. Three weeks following Diem's demise, President Kennedy was assassinated during a motorcade ride in downtown Dallas. Lyndon Baines Johnson was inaugurated as the new President aboard Air Force One following Kennedy's death. Johnson was now responsible for the U.S. involvement in Southeast Asia. As Herring concluded "Kennedy bequeathed to his successor a problem eminently more dangerous than the one he had inherited."

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108 Ibid., 123.
110 Herring, America's Longest War, 129.
111 Ibid., 129.
One of Johnson's first major initiatives was to approve a plan that would “progressively escalate pressure....to inflict increasing punishment upon North Vietnam.” OPLAN-34A was approved by the President on January 16, 1964, and it consisted of three phases, each more punitive, and was directed by the military. The operations consisted of “intelligence over flights, the dropping of propaganda leaflets, and commando raids by South Vietnamese forces.” OPLAN-34A also “utilized South Vietnamese or hired personnel that was supported by U.S. training and logistical efforts,” during its “June-July operations.” The operations plan also employed the Desoto patrols which led to the infamous Gulf of Tonkin incidents and resolution. According to historian Gabriel Kolko, the “Desoto patrols ran electronic intelligence missions in the Tonkin Gulf as close as four miles” of North Vietnam. These OPLAN-34A operations helped to create an atmosphere in which the United States’ aggressive policies increasingly agitated the North Vietnamese. President Johnson had inherited an increasingly hostile situation. He proceeded to escalate U.S. involvement in Vietnam and executive dominance in Washington.

The policies defined under Truman and Eisenhower were agreed to by a willing if not sometimes reluctant Congress. The executive had taken control and initiated policy and Congress had consented out of fear of communism and lack of a viable set of counter arguments or policies. “The administration of Harry

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112 Logevall, *Choosing War*, 93.
113 Ibid., 94, 110.
115 Ibid., 123.
Truman set the broad outlines and developed the rationale for the policies, and forged the consensus to support them. Eisenhower broadened the consensus and extended the policies, and the Kennedy-Johnson administrations pressed them to their fullest implementation. In other words, in the Cold War years of debate over the fundamentals of foreign policy was not really a legitimate activity.\(^{116}\)

Senator Fulbright commented that "it was no light matter to vote against the president's request and thereby reveal to the world disunity and weakness which has often been characteristic of our system."\(^{117}\) The executive initiated and Congress followed along, giving the president so much authority in foreign policy that to reclaim it would have caused a strong backlash. Moreover, congressmen "had come to believe—or at least had publicly proclaimed—that the president ought to control American foreign policy."\(^{118}\) These beliefs, practices, and precedents went far toward explaining the Congress's response to the Gulf of Tonkin incident and resolution that followed.


\(^{118}\) Ibid., 275.
The Gulf of Tonkin was a pivotal incident for the United States and Vietnam. The early days of August 1964 climaxed events that had been set in motion for ten years since Dien Bien Phu and almost twenty years since the beginning of the Cold War. These actions propelled an already weak Congress to sign legislation giving all necessary powers to the president in hopes that it could stop an all out war. What it really did was to escalate the war the longest in United States history.

As acknowledged in the United States Constitution, the president does have the power to repel invasions and attacks on the United States people and property, but the circumstances that surrounded these attacks are alarming. It still cannot be proven that the C. Turner Joy and the Maddox were actually ever attacked on August 4, propelling the United States into a war-like mentality. It was clear that the administration was intent on defeating the Communists at all costs. In a letter sent to Ambassador Henry Cabot Lodge on December 12, 1963, Secretary of Defense Robert McNamara stated that the president wanted plans and recommendations as follows: “Covert operations by the South
Vietnamese forces, utilizing such supports of United States forces as is necessary, against North Vietnam. Plans for such operations should include varying levels of pressure all designed to make clear to the North Vietnamese that the United States will not accept a Communist victory in South Vietnam and that we will escalate the conflict to whatever level is required to ensure their defeat."¹¹⁹ The administration was determined not to let the South fall under the Communist rule.

The Johnson administration was so bent on holding firm in Vietnam that it was not always truthful in its approach to Congress. President Lyndon Johnson and his cabinet (left-overs from the Kennedy administration), deliberately misled or withheld critical information from the Congress. The legislature, minus a few dissenting members, granted the President authority that would rival that of a monarch. The reading of the Tonkin Resolution reasserted the President’s control over foreign affairs and delivered a crushing blow from which Congress has yet to recover. Johnson’s message to the people on August 6, 1964, illustrated his administration’s idea that Congress was ill-equipped to decisively handle foreign matters in a way that the executive could. Nevertheless, the information about the battles on August 4, 1964, are scattered at best with results that possibly never happened. The Gulf of Tonkin incident provided a gateway for full involvement by the United States in Vietnam.

There are several versions of what transpired in early August 1964 in the Gulf of Tonkin off the coast of North Vietnam. On August 2 the U.S.S. Maddox, an

American destroyer, was running De Soto patrols (the destroyer ran zig-zag patterns off the coast of North Vietnam in an attempt to intercept radio communications, but the Pentagon claimed the Maddox was running routine patrols in international waters), when it was, “intercepted by three North Vietnamese patrol boats…which had mistaken the Maddox for a South Vietnamese escort vessel.”\textsuperscript{120} It was a Sunday and the Maddox was on “holiday routine,”\textsuperscript{121} and its crew was caught off guard.

The three patrol boats approached the destroyer twenty-eight miles off the coast at mid-afternoon on August 2. There was conflicting evidence that the Maddox might have only been sixteen-eighteen miles from the North Vietnamese coast. “The Maddox's logs indicate that the torpedo boats appeared on the radar, coming out from Han Me, at about 1430.”\textsuperscript{122} The North Vietnamese PT boats fired upon the Maddox, “infllicting minor damage.”\textsuperscript{123} As soon as word came that the destroyer was under attack, the U.S.S. Ticonderoga launched four F-8E aircraft to provide air cover and support for the vessel. The North Vietnamese PT boats were repelled, and one PT boat limped away severely damaged by the Maddox and the F-8E aircraft.\textsuperscript{124} The only damage to the


\textsuperscript{121}Moise, Tonkin Gulf and the Escalation of the Vietnam War, 73.

\textsuperscript{122}Ibid., 75.

\textsuperscript{123}Logevall, Choosing War, 197.

\textsuperscript{124}The Pentagon Papers, III, 184.
destroyer was one hole made by a bullet from a 14.5 mm machine gun. There was no dispute about this attack; it did happen.

The first incident infuriated Johnson. He decided to withhold any retaliation, but vowed “if they decide to do it again, they’ll get another sting.” The U.S.S. Maddox was ordered to resume its “normal” patrols in the gulf the following day. The President met with American foreign language newspaper publishers and editors and announced he had ordered the Navy to double its destroyer force off North Vietnam and to provide sufficient air cover to destroy any attacking force. The Maddox was to be accompanied by the C. Turner Joy. Paul H. Nitze, Secretary of the Navy, praised the Maddox for “holding off and damaging the North Vietnamese torpedo boats that attacked her in the area yesterday.” Returning the patrols to the same region might not have deliberately provoked a North Vietnamese attack, but “it did not go out of its way to avoid one either.”

At 1940 hours, on August 4, Task Group 72.1 (Maddox and C. Turner Joy) radioed back to the Seventh Fleet that they were under imminent attack. At the time of the supposed attack, the weather was poor; it varied from a drizzle to thunderstorms in a very dark night, which caused the radar/sonar to malfunction. The Task Group intercepted communications that the North Vietnamese were under direct orders to attack the patrol. After learning of the communications, the 

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126Herring, *America’s Longest War*, 142.
129Herring, *America’s Longest War*, 142.
U.S.S. Ticonderoga launched F-8's and A-4D's to provide air cover for the two destroyers.\textsuperscript{130} At 2035, the destroyers had reported "radar sightings." At 2134 the ships thought that they had pin-pointed new surface contacts that the task group deemed hostile. "It was well known that certain types of weather have the ability to generate radar images."\textsuperscript{131} At 2140, the Maddox opened fire and at 2142 the aircraft from the Ticonderoga began their assault on the targets, but just before the aircraft began its onslaught one of the PT boats reportedly launched a torpedo. A seaman on the C. Turner Joy claimed to see the torpedo three-hundred feet off the port beam. The alleged battle lasted approximately an hour, and the destroyers reported that two enemy boats were sunk and reported no casualties or damage to the U.S. vessels.\textsuperscript{132}

President Johnson might have had a great cause to use force to prevent future hostilities if the attacks were truly unprovoked, but the North Vietnamese felt the belligerent intrusions by the United States justified their defensive tactics. This was not the first time the United States had entered North Vietnamese territory. First, the De Soto patrols consisted of the Maddox doing "Zig Zag" patterns off the coast of North Vietnam. Prior to its arrival in the Gulf, the Maddox picked up eavesdropping technology in order to listen to enemy communications. Second, OPLAN-34 had provoked the relations between the

\textsuperscript{130} The Pentagon Papers, III, 184.

\textsuperscript{131} Moise, Tonkin Gulf and the Escalation of the Vietnam War, 107.

\textsuperscript{132} Ibid., 184-85.
United States and North Vietnam. Johnson endorsed the plan on January 16, 1964. "The plan was used to escalate pressure...to inflict increasing punishment upon North Vietnam" with the objective of convincing Hanoi to "desist from its aggressive policies." While the Maddox was operating in the gulf, the South Vietnamese were conducting raids on islands off shore and under the direction of the United States. That was OPLAN-34. The raids and naval patrols worked in conjunction, and without the authorization and knowledge of Congress. The United States State Department denied involvement in any attacks against the North Vietnamese, and Robert J. McCloskey, the State Department spokesman, said the "incident was serious, adding that anytime anywhere that an American ship is attacked for 'unprovoked' reasons, that in our view is a serious incident." The question would persist whether this was an unprovoked attack.

The second assault on August 4 was highly suspect. There was no direct evidence to support such an attack ever occurred. As previously mentioned, the Maddox and the C. Turner Joy were bombarded by a heavy storm in the pitch black of night that in all likelihood crippled their radar instruments. The captain of the Maddox was unsure of an attack and declared that "evidence of an attack was less than conclusive." Historian Fredrik Logevall commented on the attack saying that "physical evidence for a second incident is exceedingly slight, whereas the evidence that it did not occur is very strong." In the official

133 Logevall, Choosing War, 93.
135 Herring, America's Longest War, 142.
136 Logevall, Choosing War, 198.
records, there was no substantial evidence or documentation that proved the second barrage ever actually took place, and thus circumstantial evidence is plentiful. After the early August attacks in the Gulf, "experimentation revealed during high-speed maneuvers that the destroyer's own propeller and or rudder produced the sort of noise spokes that had been interpreted as torpedoes." This new information facilitated an increase in the belief that the attacks of August 4, never transpired.

What probably did occur was the Maddox and the C. Turner Joy were shooting at ghosts in the dark. One of the pilots of the jets from the Ticonderoga, James B. Stockdale, reported that he did not witness anything. "He did not see any boats, wakes, ricochet of boats, boat impacts, or torpedo wakes." Two other pilots, Commander George Edmondson and his wingman, Lieutenant Jere Barton, were flying two A-1 Skyraiders. They filed reports on August 7 as a reply to a JSC message regarding what they observed on August 4. They reported "no visual sightings of any vessels or wakes other than Turner Joy and Maddox. Wakes from Turner Joy and Maddox were visible for 2-3000 yards." The pilots also "fired ordinance in areas where skunks reported and in areas where directed by controllers." Despite the inconsistency of the reports, the White House

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moved to initiate retaliatory strikes against the North Vietnamese. Robert McNamara, Johnson’s Secretary of Defense, directed the chairman of the Joint Chiefs of Staff Earle Wheeler to make “damn sure the attacks had taken place.”

On August 4 President Johnson had breakfast with sixteen leading members of Congress to discuss the incident and the assistance the President would need to retaliate against the aggressors. The meeting lasted for eighty-nine minutes. During the session, Johnson advised the congressional leaders that he was going to ask for a resolution and Congress’s support for his policies concerning military force in Vietnam. Johnson did not disclose anything relating to OPLAN-34 or the De Soto patrols. It would seem that he intentionally misled the congressional leaders to give the appearance that North Vietnam alone had committed these hostile attacks. All the same, the congressional leaders failed to ask if there were any provocations for the attacks. Perhaps the congressmen simply did not wish to know.

At some point in the meeting, Johnson and the congressional members discussed how, if the United States failed to act, it would impact the nation’s prestige around the globe. Johnson commented on the option of not retaliating against the North by stating that “we can tuck out tails and run.” They all understood that the United States needed to send a message to the world that

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141 Pentagon Papers, III, 184-85.
142 Ibid., 186.
143 Moise, Tonkin Gulf and the Escalation of the Vietnam War, 212.
the people and its government stood behind their president and it would give him the power to maintain the United States’ influence. Secretary of State Dean Rusk said to the President “we need to make it as clear as we can that we are not going to run out of Southeast Asia, but that we have no national ambitions not either in a war to the north. They made that choice themselves.”

Senator Bourke B. Hickenlooper (R-IA), observed that “there should be no doubt as to whether the President should have the right to order the Armed Forces into action. My feeling is it is up to the President to prepare the kind and type of resolution he believes would be proper. It is up to Congress to say whether they will pass it or not. I have no doubt in my mind that concrete action would be taken.”

In the end, the congressional response was only “how Congress could show its agreement and concern in the crisis.”

President Johnson did make some obligatory remarks about the need for congressional support. “I wanted to get congressional concurrence. I think it would be very damaging to ask for it and not get it.”

But the President was well aware of the power he possessed, and the perception people had of the executive. “I don’t think any resolution is necessary, but I think it is a lot better to have it in the light of what we did in Korea.”

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145 Ibid., 69.

146 Pentagon Papers, III, 186.


148 Ibid., 71.
the presidency in this meeting, and the only thing the leaders of Congress did was to show their support—to "rally around the flag." The Speaker of the House said "I think Congress has a responsibility and should show a united front to the world."\textsuperscript{149} So what was their responsibility: to follow and obey? Even Senator William Fulbright (D-AR), who became one of the most outspoken critics of the war and the Gulf of Tonkin incidents, said "I will support you."\textsuperscript{150}

At the close of the meeting the congressional leaders bonded together to support President Johnson's resolution. Congressman George B. Aiken (R-VT), admitted that "by the time you send it up there won't be anything for us to do but support you."\textsuperscript{151} The resolution marked the beginning of congressional surrender of its constitutional obligation to the nation to retain control over the declaration of war in Vietnam, but it also increased the strength of the President. "The President rushed forward with plans for a dramatic telecast, plans for gathering congressional leaders, and plans for securing passage of a blank check for war (prepared in advance of the crisis)."\textsuperscript{152} The resolution expanded presidential war powers and make it virtually impossible to restore previous congressional checks on the executive--as if it had not already been eroded by nineteen years of Cold War policy.

\textsuperscript{149} Ibid., 71.

\textsuperscript{150} Ibid., 72. This was an interesting connotation since Fulbright was instrumental in helping to investigate the Tonkin incidents and shed light on the entry into Vietnam and the legitimacy of the war and the resolution in which he helped pass.

\textsuperscript{151} Ibid., 72.

\textsuperscript{152} Windchy, \textit{Tonkin Gulf}, 299.
On the evening of August 4, 1964, President Johnson addressed the people of the United States and declared that the North Vietnamese had aggressively attacked the Maddox and C. Turner Joy in international waters. He told the people that he was sending a resolution to Congress regarding the authorization to defend the United States against aggression and to prevent further attacks in Southeast Asia. The next day, August 5, Johnson dispatched a message to Congress urging them to pass a resolution "to support freedom and in protecting peace in Southeast Asia."\(^\text{153}\)

Johnson claimed that the United States policies in Southeast Asia had remained consistent since 1954. The American mission was to secure peace in the region. Johnson concluded his message to Congress by affirming his intention to maintain the principles of the Southeast Asia Treaty Organization (SEATO), and in doing so, the president sought "no wider war." He merely wanted to "bring about the end of communist subversion and aggression in the area."\(^\text{154}\)

On August 6, Secretary of Defense Robert McNamara, Secretary of State Dean Rusk, and Joint Chiefs of Staff Chairman General Wheeler met in an Executive Session before the Senate Joint Foreign Relations and Armed Services Committee to discuss the events of August 2 and 4. In the closed meeting, Wheeler, Rusk, and McNamara denied that OPLAN-34 and the De Soto


\(^{154}\)Ibid., 364-66.
patrols had anything to do with the attacks. They also denied U.S. Naval involvement in the South Vietnamese attacks on the North. When they briefed the senators on the incident on August 6, they gave the senators a simple picture, of unprovoked attack against United States ships on the high seas.\textsuperscript{155} The administration was not forthcoming in its knowledge of the events that almost certainly provoked the Tonkin incidents. Senator William Fulbright later stated “in short, the all-important briefings of August 6 were a mockery of the legislative process. The senate committees did not even find out the Maddox was on an intelligence patrol.”\textsuperscript{156} Administration official claimed they knew of no attacks in which the United States Navy had acted in or plotted against North Vietnam by the South. The administration reiterated that the Maddox was on a “routine patrol and the attacks were deliberate and unprovoked.”\textsuperscript{157}

The White House had practiced a policy of deception. As historian Eugene G. Windchy asserts, “had the facts become known, senators would not have handled the Tonkin Gulf resolution so carelessly.”\textsuperscript{158} Johnson’s administration needed a way to show the President as a hard-liner toward communism. After all, the presidential election was only three months away and he was being challenged by Republican Barry Goldwater, an acknowledged hawk on foreign

\begin{itemize}
\item \textsuperscript{155}Moise, \textit{Tonkin Gulf and the Escalation of the Vietnam War}, 86.
\item \textsuperscript{156}Windchy, \textit{Tonkin Gulf}, 299.
\item \textsuperscript{157}Logevall, \textit{Choosing War}, 203.
\item \textsuperscript{158}Windchy, \textit{Tonkin Gulf}, 300.
\end{itemize}
policy. Political pressure demanded that he prove to the nation that he could be a decisive leader.  

All the same, the congressional leaders’ promises to the President during their conference on August 4, make the passage of the Gulf of Tonkin Resolution was a certainty. It took three days for a resolution to pass through Congress. SJ Resolution 189 was pushed through the Senate by the Chairman of the Senate Foreign Relations Committee, J. William Fulbright. The measure passed unanimously (416-0) in the House, with only forty minutes of debate. In the Senate, there was only minimal opposition to the resolution, and the measure passed by an overwhelming margin of 88-2. Senator Wayne Morse of Oregon put up the biggest fight, but with no results. According to Stanley Karnow, Morse carried little weight in the Senate and Senator Jacob Javits (R-NY) referred to Morse’s attitude that “you can’t get into the fight with the president at a time when the flags are waving.” Morse’s main protest was that this “pending resolution tinkers with and impairs the great, procedural rights of the American people written in Article I, section 8 of the Constitution—that the power and right to declare war is vested in the Congress and not the President of the United States.” Senator Ernest Gruening of Alaska was the other dissenting voice.

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159 Moise, Tonkin Gulf and the Escalation of the Vietnam War, 211.
162 Congressional Record, 110 (6-7 August 1964): 18444. Summary of the debate on the Gulf of Tonkin Resolution, Briefing book of Secretary Dean Rusk’s appearance before the Senate Committee on Foreign Relations, Lyndon Baines Johnson Library, courtesy of the Virtual Vietnam Archive at Texas Tech University.
who voted against the resolution because it presented an "unlimited authorization for war anywhere in Southeast Asia." On August 10, 1964 President Johnson signed the resolution into law.

The resolution was unnerving. It provided for the President to maintain peace in Southeast Asia without a time limit, but it also authorized the "president to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." It stated that such actions were "vital to the national interest." Finally, the resolution asserted that it would "expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions." 

The resolution assured the president that he could wage war at his discretion and for as long as he desired. He was given a "blank check" to do what he thought was necessary to secure freedom in Southeast Asia. Johnson referred to the resolution "like grandma's nightshirt...it covered everything." He also commented that with his new power and popularity he "didn't just screw Ho Chi Minh, I cut his pecker off." Johnson was granted this power in part because he promised that this would be a "limited and fitting response so that involvement seemed minimal." According to author Linda McFarland, "hawks like Stuart Symington (D-MO) never doubted, at this point, the legitimacy of the action taken."

163 Ibid., 18444.
165 Logevall, Choosing War, 205.
166 McFarland, Cold War Strategist, 125.
The events of August 4 can leave a bitter taste in the mouth. On one hand, it would appear that the administration wanted there to be an attack and so portrayed it as one. If Johnson and his advisors could sustain the legitimacy of the attack, then the administration could justify a larger intrusion into the war. At this time, they believed winning the war was within reach. “It appeared to certain strategists that the war could yet be won if only a bigger effort were made, drawing directly on the limitless potential of American might.”

On the other hand, given the technology of the time, it could be asserted that they were simply acting on the best available intelligence. Nevertheless, the administration’s response to the Senate was puzzling. The attacks on August 2 were verified, so North Vietnamese aggression had already been established. Why rely so much on the attack of August 4? The legislature was entitled to information.

The deception may not have been deliberate, but it shows that the administration disregarded protocols and was sloppy in its intelligence gathering. In addition, Congress fell for it hook, line and sinker. Senator Fulbright was later quoted as saying that if Congress would have known, it would have examined the information more methodically. Investigative authority belongs to Congress. It could have easily waited and investigated the August 4 events more thoughtfully and deliberately, but with the elections looming over its head, Congress felt the political pressure to take a firm stand in defense of the United States.

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167 Windchy, Tonkin Gulf, 300.
The American people were misled by the administration. The evidence of the attack was circumstantial at best, and yet Congress authorized an open-ended resolution. Observers can decide for themselves whether the executive abused the power derived from the resolution or if Congress proved unwilling to exercise its control over foreign affairs. Congress became the rubber stamp for foreign affairs during Vietnam; but who was really deceived? In a column commemorating the thirty-year anniversary of the Gulf of Tonkin incidents, two journalists observed that “we Americans are the ultimate innocents. We are forever desperate to believe that this time the government is telling us the truth.”

CHAPTER V

JOHNSON’S JUSTIFICATIONS FOR
THE RESOLUTION

Why should President Johnson believe that he did not actually “need” a resolution or declaration from Congress to go to war against North Vietnam? Thanks to a system that was largely constructed by past presidents and the courts, Johnson saw it as an important step, but not sufficiently crucial to veto his intentions. Congress’s approval was a mere affirmation of Johnson’s request and did not result from a thorough debate of the issues at hand. Throughout U.S. history, the executive and the judicial branch have provided a means for future presidents to expedite their powers and forgo certain restrictions in the name of peace, security and the ever evolving technology. Acts of previous presidents and judicial rulings not only provided Johnson with the means of retaliating, but also prevented lawsuits from questioning his use of force during his tenure in Vietnam.

There were two important presidential precedents that have been used repeatedly to sustain the executive’s actions abroad. The first incident occurred shortly after Thomas Jefferson assumed the role of commander in chief following the 1800 election. This precedent dealt with the Barbary pirates, but it was not Jefferson’s first encounter with them. In 1785, after arriving in Paris to negotiate
treaties between his new country and the European powers, Jefferson, John Adams and Benjamin Franklin were forced to discuss the issue of the Barbary pirates. Even back in 1785 Jefferson argued for using force rather than paying a tribute to these international criminals. He believed that, "money would only buy an uneasy peace and lead to higher and higher demands."

The day before Jefferson took office on March 4, 1801, Congress passed a statute providing for a "naval peace establishment" to deal with these pirates. Within his first week of office, Jefferson was obligated to negotiate with the "Barbary Coast Pirates." The Barbary pirates regularly captured ships as prizes and either enslaved the seamen or held them for ransom. They also "prowled" the Mediterranean like "sea wolves" searching for their Christian enemies in an attempt to promote their Muslim ideals and faith. The practice of paying annual bribes (tributes) to four states in Northern Africa, Morocco, Algiers, Tunis and Tripoli, had been the policy of Jefferson’s predecessors. Both George Washington and John Adams had paid nearly $10 million in tributes during their years in office. The “Barbary bandits” received similar tributes (payoffs) from other countries such as Great Britain, France, Sweden and Denmark. The British shelled out as much as a quarter million dollars a year, and had been paying

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169 Robert Leckie, From Sea to Shining Sea: From the War of 1812 to the Mexican War, the Saga of America’s Expansion (New York: Harper Collins, 1993), 38.

170 Ibid., 38.

171 Ibid., 30.

tribute on and off since 1646. According to historian Robert Leckie, “these payments were not tribute—but naked extortion extracted under the threat of force.” Jefferson had to decide whether or not the United States could afford this extortion. The President assembled his cabinet on March 9, 1801 to discuss the issue. The cabinet was divided, with some members “advocating the dispatch of a squadron to the Mediterranean to protect American shipping.” “Others warned that only Congress—not the executive—could declare war.”

On May 15, after two months of debate, Jefferson dispatched troops to Tripoli to halt the seizing of American ships. In the event that Barbary powers declared war on the United States, American vessels were ordered to “protect our commerce and chastise their insolence by sinking, burning or destroying their ships and vessels wherever you shall find them.” Before the dispatching of troops, Jefferson had been informed that Bashaw Yusuf Karamanli of Tripoli, ordered his soldiers to chop down the American flagpole at the United States Consulate in response to Jefferson’s discontinuance of the tributes. After receiving this information, Jefferson decided that there was “no necessity for America to respond with its own declaration.” The act itself was a declaration of war.

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173 Leckie, From Sea to Shining Sea, 32.
174 Ibid., 39.
176 Leckie, From Sea to Shining Sea, 38-39.
177 Ibid., 38-39.
Jefferson did not inform Congress about the demands of the pasha until December 8, 1801. The leader of Tripoli warned that "unless the United States paid tribute, Tripoli would seize American ships and citizens." Jefferson asked for direction from Congress. He stated that he was unauthorized by the Constitution, without sanction of Congress, to go beyond the line of defense. He justified his actions on the foundation that Congress had passed ten separate statutes in the preceding years with the latest on March 3, 1801, authorizing military operations. Nonetheless, he had already sent troops before receiving specific authorization for this event.

Jefferson had not asked for congressional confirmation partly because Congress had already recessed by May, and Jefferson refused to convene a special session of Congress. Nor did he want a battle with Congress so early in his administration. He had observed this issue of tributes for sixteen years and his inclination towards using force had not changed in that time. He had proclaimed as Secretary of State that the use of force was apparent and as president he refused to negotiate with pirates. Jefferson might have been a "strict constitutionalist," but he set the foundations for future presidents in the use of force abroad.

The second example of presidential action and congressional absence from the authorization process transpired only fourteen years before the Gulf of Tonkin incident. It involved Harry S. Truman's use of the United Nations to gain

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179 Ibid., 315.
entrance into the Korean conflict. Truman sought to defend South Korea against its Communist aggressors from the North. On June 25, 1950, the North Koreans (thought to be directed by Moscow) crossed the thirty-eighth parallel and invaded South Korea. At the urging of the United States, the United Nations Security Council met on June 26 to condemn the actions of the North. On that same day, Truman ordered United States air and sea forces to give South Koreans cover and support. He also emphasized that the Security Council had issued an order for the North Koreans to return north of the 38th parallel. Truman asserted that, "in accordance with the resolution of the Security Council, the United States will vigorously support the effort of the Council to terminate this serious breach of the peace."

The administration used the United Nations condemnation for committing troops without prior approval from Congress, and on June 29, Secretary of State Dean Acheson claimed that all United States actions taken in Korea had been under the aegis of the United Nations. Yet, Truman had committed United States forces a day before the council called for military action. The Security Council did not call for the use of force until June 27. This chronology raises questions about Truman's legal authority for committing troops without prior approval. Moreover, the Security Council's 9-0 vote in favor of incursion into Korea was

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182. Ibid., 326. Also in *Department of State Bulletin* 23 (1950) : 43.
obtained through dubious pretenses. The approval of the United Nations was secured only because the Soviet Union happened to be boycotting the Security Council at the time, and the president's constitutional powers can hardly be tied to the ebb and flow of the veto of the Soviet Union in the Security Council.\textsuperscript{183}

Truman met with congressional leaders at 11:30 a.m. on June 27, only after his policies were set and orders issued.\textsuperscript{184} He did not seek the approval of the members of Congress for his military actions in Korea. When asked after he left the presidency whether or not he intended to use military force, he replied, "no question about it."\textsuperscript{185} Truman saw his decision to commit forces as a presidential prerogative to prevent war--as opposed to an act initiating hostilities. He used the auspices of the U.N. to invoke a state of war on the Korean peninsula, and he averted congressional approval for a declaration by committing troops under the guise of the United Nations--even though the United States provided 90 percent of the manpower and money for the campaign. The suspicious United Nations endorsement allowed Truman to engage in war without approaching Congress first.

Two resolutions in the 1950s also had a major impact on congressional acquiescence in abdicating war powers to the President. The Formosa and the Middle East Resolution both relinquished congressional approval over war oversight. As historian Robert Mann stated, because of the "reluctance to


\textsuperscript{184}Fisher, "Truman in Korea," 327.

assume responsibility in the area of foreign affairs, Congress had traditionally deferred to the president during foreign emergencies."^{186} In the Formosa Resolution, Eisenhower asked Congress for advanced authorization to deploy U.S. armed forces abroad, because China had attacked Chiang Kai-shek's Nationalist troops in the Formosa Straits. The House approved the resolution 410-3 and the Senate approved it 83-3 in January 1955. It allowed the President to employ armed forces as he deemed necessary to defend the islands against armed attack.^{187}

The Middle East resolution, which became known as the Eisenhower Doctrine, was passed in 1957. It came in response to France, Britain and Israel attacking Egypt over control of the Suez Canal. The United States was also concerned that the Soviet Union might enter the fray, so Eisenhower went to Congress on January 5, 1957, to request authority to send American troops to secure and protect the region from overt armed aggression from any nation controlled by international communism.^{188} The Senate and the House both overwhelmingly passed the measure. There were questions whether Congress was abdicating its responsibilities to the executive. Senator John Kennedy (D-Mass.) asked if Congress was granting the President the right to use troops without coming to Congress first, but Senator Mike Mansfield (D-Mt.) replied that "we are not giving him the right. We are reasserting or reaffirming his right

\[^{187}\text{Ibid., 204.}\]
\[^{188}\text{Ibid., 205.}\]
already given." Senator William Fulbright (D-Ark.) also questioned the authority given to the President under the Middle East Resolution. He wondered if the resolution asked for a "blank grant of power over funds and armed services, to be used in a blank way for a blank area." The resolution "established and strengthened the precedent for congressional approval in advance of military excursions."'

Presidential precedent and prior resolutions were only half of the puzzle. The judicial branch, on occasion, interpreted the executive’s power to wage war under the United States Constitution. The courts have facilitated the growth of presidential power in the areas of constitutional theory and governmental practice in three interconnected but somewhat different ways. The courts have adhered to the "sole-organ" doctrine as propounded in the 1936 case of United States v. Curtiss-Wright Export Corporation, and the "political-question" doctrine, by inferring congressional approval of presidential action by virtue of its inaction or silence. The executive domination of United States foreign affairs represents a dramatic shift from the Framers’ understanding of the Constitution.

In 1863, the United States Supreme Court ruled on presidential power in cases of sudden attack in the Prize Cases. Even though the Court limited

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189 Ibid., 207.

190 Ibid., 205, 207.

presidential power in its ruling, the wording of the decision opened the possibility of the president employing force for defensive purposes. The Court ruled:

By the Constitution, Congress alone has the power to declare a natural or foreign war... If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force, by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be "unilateral." 

The decision clarified that it was Congress' responsibility to initiate hostilities, not the President's, but the President possessed "unlimited power to wage war in defending against a war begun through invasion or rebellion." Nevertheless, according to David Gray Adler, the "Court views its role in this area as a support function for policies already established" and they have "become an arm of the executive branch." The endorsement of legitimate defensive response illustrated their support for the executive.

The court's decision in United States v. Curtiss-Wright Export Corporation, has also been regularly cited as a precedent for executive dominance. The defendants in the case were charged with trying to sell "fifteen machine guns to Bolivia, a country then engaged in armed conflict in the Chaco, in violation of the Joint Resolution of Congress approved May 28, 1934." The case rested upon a joint resolution that stated it was "unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any

192 Adler, "Court, Constitution, and Foreign Affairs," 25.

193 "Congress, the President, and the Power to Commit Forces to Combat," 1779.

194 Ibid., 20.

place in the United States to the countries now engaged in that armed conflict (Chaco), or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress.\footnote{ibid.} The proclamation was revoked only a year and a half after it was put in effect. In deciding on the first charge about whether this resolution was an "invalid delegation of legislative power to the executive," the Court ruled that "in this vast external realm the president alone has the power to speak or listen as a representative of the nation. He makes treaties and he alone negotiates where the Senate cannot intrude. The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."\footnote{ibid.} The Court further argued,

\begin{quote}
The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success. For his conduct he is responsible for the faithful discharge of his duty. They think the interference of the Senate in the direction of foreign negotiations calculated to diminish that responsibility and thereby to impair the best security for national safety. The nature of transactions with foreign nations, requires caution and unity of design, and their success frequently depends on secrecy and dispatch.\footnote{U.S. Senate Reports Committee on Foreign Relations, 24. Also listed as a resource for Justice Sutherland's opinion in \textit{United States v.Curtiss-Wright Export Corporation}. To help sustain the charge that the president is the "sole organ" in foreign affairs.}
\end{quote}

The decision handed down by Justice George Sutherland reinforced the executive's supremacy in external relations and that he alone "initiated" foreign affairs. As David Gray Adler maintains the \textit{Curtiss-Wright Case} has "led the
judiciary to defer to executive judgment in cases involving executive agreements, travel abroad, treaty termination, and the war power." Thus, the judiciary extended much leverage and latitude to the executive.

Colegrove v. Green (1946) and Baker v. Carr (1962) were also significant. Justice Felix Frankfurter wrote the majority opinion for the Court in Colegrove, stating that the "courts ought not enter this political thicket." "The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action." Frankfurter concluded his opinion by writing that "the Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and ultimately, on the vigilance of the people in exercising their political rights." This meant, whether later justices would agree or not, that there are some things that fall outside the purview of the judicial branch. In Justice William Brennan's opinion in the Tennessee reapportionment case of Baker v. Carr, he also recognized this "political question doctrine," and said that "federal courts consistently refuse to exercise their equity of powers in cases posing political issues." In Brennan's statement on jurisdiction in Baker v. Carr, he said that under Article III, 2,

199 Adler, "Court, Constitution, and Foreign Affairs," 27.

200 Colegrove v. Green, 328 U.S. 549 (1946).

201 ibid.

Congress has the power "to assign the jurisdiction of the District Courts," and it has "exercised that power." 203

The Baker and Colegrove cases became more important as the executive office and cabinet came under fire for the war in Vietnam. In both Mora v. McNamara (1967) and Massachusetts v. Laird (1970) the defendants avowed that the Vietnam War was "unconstitutional in that it was not initially authorized or subsequently ratified by congressional declaration." 204 The courts determined that these were not judicial issues, but rather political questions that should be left to the democratic process.

Reliance on the past has helped the presidents to judge and establish that their judgments supersede those of Congress in foreign relations. Jefferson's use of force in the Mediterranean and Truman's use of troops in Korea may not have been a deliberate act of usurpation of power, but the inference they left for future executives was extremely influential. By their actions, if not intentions, they increased the power of the commander in chief clause ten-fold. Jefferson believed that, based on prior authorization and with Congress in recess, he could circumvent the system and deploy the military without express authorization from Congress. Truman on the other hand was blunt about the situation. He never intended to get congressional approval because he thought he did not need it.

203 Ibid.

David Adler has recognized that "each presidential war constitutes a precedent that in turn legalizes the next action."\textsuperscript{205} Even though it was the intent of our Founders for Congress to initiate war, time and technology have shifted that power away from the legislature and into the hands of the executive. International organizations do not have the power to coerce countries to commit forces, but United States presidents usually do if they can protect the country's peace and prevent a power struggle with Congress. International organizations just provide another avenue for presidents to make commitments beyond their constitutional provisions. And, the U.S. courts have reinforced and ratified the President's actions.

CHAPTER VI

FAILING GRADE

Several legislators commented that they regretted voting in favor of the Gulf of Tonkin Resolution, but that recognition came slowly. J. William Fulbright's (D-Ark.) own acknowledgement of his acquiescence came earlier than most, but for all of his rhetoric Fulbright was more talk than action. He recalled that his role in the "adoption of the resolution of August 7, 1964," was neither a source of "pleasure or pride." "The resolution was adopted during an election campaign, but that hardly excuses the Congress for granting such sweeping authority with so little deliberation." Fulbright and other members of Congress eventually felt betrayed by the Johnson administration. "Several legislators have claimed they were duped by clever and conspiring presidents into supporting a war they did not approve."

It took time, but Congress began fulfilling its responsibility. By 1966, the Vietnam hearings held in Washington D.C. televised the war to millions of U.S. citizens and in 1968 the Senate Foreign Relations Committee held hearings on the Gulf of Tonkin attacks of August 1964. The debates were underminded by

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the Johnson administration's ability to discredit political rivals and use the "rally around the flag" phenomenon to support our troops and avoid focus on the administration. Despite the administration's best efforts, Senator Wayne Morse (D-Or.) and a few of his colleagues refused to give the President a "blank check" in war. They consistently argued for a withdrawal from South Vietnam and to curb the presidential war making power. Although withdrawal did not happen under the Johnson administration, the struggle to regain congressional authority over war grew.

The lack of debate on the August 1964 hearings spilled over into 1965, when members of Congress wanted more information on the reasons the United States was in Vietnam. On January 3, 1965 Senator Frank Church (D-ID.) called for a full-fledged debate on Vietnam. Congress was eager to find a peaceful solution to the problem, and the administration reluctantly complied with Church's request. On January 8, Secretary of State Dean Rusk appeared before the Senate Foreign Relations Committee to discuss issues concerning our involvement in Vietnam. When Senator Fulbright asked Rusk if the committee would be consulted before any decision was made to escalate the conflict, Rusk responded that he would bring the Senate's request to the President's

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208 Mike Mansfield to Lyndon Johnson, December 9, 1964, National Security File, Name File, Container 3, LBJ Library; Lyndon Johnson to Mike Mansfield, December 17, 1964, National Security File, Name File, Container 3, LBJ Library.
Rusk’s attitude suggested that Congress’s consultation was a formality not a prerequisite to engage in hostilities.

With the optimism that the war would soon be over and a peaceful means negotiated, Senator Fulbright appeared on Meet the Press on March 14 to discuss the escalating events in Vietnam. Even though the Marines had landed at Danang a week earlier, Fulbright expressed only mild “concern over the crisis,” and doubted that the “present conditions were not so critical in Vietnam that a public debate either by my committee (Senate Foreign Relations Committee) or the Congress would serve any good purpose.” According to historian Stanley Karnow, “the marine deployment was one of those crucial decisions of the war, but it hardly stirred a ripple, either in Congress or the American press.” Fulbright did not mention the deployment in his interview, emphasizing Karnow’s assertion that the deployment was not important. Fulbright did begin to have private misgivings about the war, but he refrained from airing his differences with the administration publicly.

In the early phases of the war, President Johnson enjoyed high approval ratings. In January and February 1965, “the polls showed that people rallied behind the President as commander in chief when he acted decisively.” At this point in time, the public and legislative bodies believed Johnson had acted

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209 Declassified Hearings on the Senate Committee on Foreign Relations, 8 January 1965, 167-68. Courtesy of the Virtual Vietnam Project at Texas A&M University.


212 Ibid., 410-11.
decisively. According to historian Fredrik Logevall, "lawmakers and constituents would follow the administrations lead on the war, whichever way it chose to go." 213

Fulbright had another opportunity to debate Vietnam policy on April 30. Secretary Rusk appeared before the Senate Foreign Relations Committee again, but this time to discuss the deployment of troops to the Dominican Republic. The talk quickly turned to Vietnam. Fulbright inquired about the administration's future plans. The committee wanted reassurance that Congress would be informed about the administration's intentions regarding Vietnam, but Fulbright also wanted to reassure Rusk that they "were not willing to confront the President publicly." Fulbright added that, "a lot of us have been quiet. We do not want to embarrass the administration and so we have not discussed it in public. I think it would be wise to present this matter in front of Congress to tell us how much and how far they are contemplating going." 214

Still, the Senate and Fulbright were hesitant to refuse funding. On June 1, 1965, Fulbright helped to promote and pass an $89 million appropriations bill for social and economic reconstruction of South Vietnam, because as the senator declared, "support for this program was essential because the stakes were so high." 215 Fulbright later lamented his decision, but he deemed it necessary to

213Logevall, Choosing War, 377.

214Declassified Hearings on the Senate Committee on Foreign Relations, 30 April 1965, 17. Courtesy of the Virtual Vietnam Project at Texas A&M University

215Berman, William Fulbright and the Vietnam War, 40.
support our administration even though the United State’s prospects for peace were going by the way-side.

It took almost a full year after the passage of the Tonkin Resolution before Fulbright recognized that the administration had betrayed him. He assumed the escalation of troops and U.S. involvement would be used for a last resort, after all negotiations were exhausted. "On July 28, 1965, Johnson announced at midday, when television audiences were the smallest, that I have asked the commanding general, General William C. Westmoreland, what more he needs to meet this mounting aggression. He has told me and we will meet his needs. We cannot be defeated by force of arms. We will stand firm in Vietnam." Fulbright felt betrayed, and according to Senator Mike Mansfield (D-MT) Johnson "took the nation to war in July 1965 with only a few scattered whimpers of dissent."

Senator Fulbright defended his right to disagree with the administration in a speech on the Senate floor on September 15. "I think we Americans tend to put to high a value on unanimity-as if there were something dangerous and illegitimate about honest differences of opinions honestly expressed by honest men. It was my obligation as chairman of the Senate Foreign Relations Committee that I offer my advice in foreign matters, since the political opposition, whose function it is to criticize, was simply not doing it."

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218 *Congressional Record*, 111 (22 October 1965): 27465.
was harsh. Johnson was the type of man who took criticism personally, and Fulbright’s public display of dissent tore the two colleagues apart. Fulbright later lamented that he wished the two could reconcile their differences, but the administration labeled the chairman “persona non grata”. The separation was complete. Fulbright’s public outing solidified his public opposition to Johnson’s Vietnam policies.

After his public break with the administration, Fulbright continued investigations into Vietnam. In early March 1966, the senator received a correspondence from retired Admiral Arnold True. In the letter the admiral wrote that the “administration’s explanation of the events of August 4, 1964 sounds unrealistic.” The letter prompted Chairman Fulbright to hold a closed-door hearing on the Tonkin incidents in May 1966 before the Senate Foreign Relations Committee. Assistant Secretary of Defense, John T. McNaughton testified before the committee about the events of August 1964. McNaughton’s testimony gave Fulbright the ability to see the growing gap between the administration’s claim and the actual events that transpired in the Gulf of Tonkin in August 1964. Nevertheless, Fulbright concluded that without far more evidence, the committee could never prove that the administration had deceived the Senate about those events even though he had long since known that the incident of August 4 probably never took place. The suspicion of the inaccuracy of the

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219 Congressional Record, 114 (27 March 1968): 7387.
administration's version of the attacks of August 4 persisted long after this hearing and beyond the 1968 hearings on the Tonkin incidents.

The Senate Foreign Relations Committee held another hearing on September 20, 1966 to further probe the August 1964 events. The chairman asked the Assistant Secretary of State for Far Eastern Affairs William P. Bundy, if he were part of the administration at the time of the August 1964 events, and if any contingent drafts of the resolution existed before August. Bundy responded that the administration in fact did have drafts, but that they were merely a part of contingency planning. The administration anticipated the possibility that the situation might take a drastic turn and believed it would be wise to seek an affirmation of the desires and intent of Congress.\(^{221}\)

Fulbright not only used hearings to air his differences about the war, but he took to the college campus as well. He delivered a profound series of lectures on April 21, 27 and May 5 for Johns Hopkins University's Christian A. Herter Lecture Series. The three lectures discussed the ascension of the presidency by congressional acquiescence. In his first lecture, Fulbright examined how Congress had lost power to the President in making foreign policy because of crisis. He stated that, "the President was better equipped to handle emergencies than Congress," and the "problem was to find a way to restore the constitutional balance, so the Senate can discharge its duty of advice and consent in an era of

\(^{221}\)Statement by Senator J. W. Fulbright, Chairman Senate Foreign Relations Committee, 10 September 1966, LBJ Library.
permanent crisis." In his final speech on May 5, Fulbright openly opposed the idea of the imperial presidency and defined the "arrogance of power as a psychological need that nations need to prove how much better and bigger they are." Despite his outward appearances, he had not broken with those broader policies which helped to make the Vietnam intervention possible, and he still favored using U.S. political pressure as a stabilizing force in the world.

Fulbright's lecture series drew sharp criticism. On the day of his last lecture, former-senator from Arizona and 1964 presidential candidate Barry Goldwater, scolded Fulbright. He insisted that Fulbright resign as Chair of the Senate Foreign Relations Committee because "he was giving aid and comfort to the enemy." Goldwater was not the only individual to take a shot at Fulbright. During a Chicago dinner fund-raiser, Johnson blasted back at Fulbright's comments. He said, "I do not think that these men who are out there fighting for us tonight, think that we should enjoy the luxury of fighting each other back home. There will be nervous nellies and some will become frustrated and bothered and break ranks under the strain and turn on their leaders, their country, and their own fighting men." By labeling Fulbright a coward who

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223 Berman, William Fulbright and the Vietnam War, 66.
224 Ibid., 66.
225 Ibid., 67.
should not fight with his commander in chief when U.S. boys were in harm's way. Johnson left with little doubt what he thought about congressional dissent.

Fulbright continued to hammer away at the administration’s policies on Vietnam, and on July 19, 1967, he delivered a statement before the Subcommittee on Separation of Powers of the Judiciary Committee titled “Congress and Foreign Policy.” In his statement, Fulbright acknowledged that the authority of Congress in foreign policy had been steadily eroding since 1940, because two new devices were invented to replace congressional participation in foreign affairs: the joint resolution and congressional briefings. They were designed to win consent without advice. Congress has lost the power to declare war as it was written into the Constitution, but it has not been “so much usurped as given away.” Fulbright’s view on the accession of the power of the President was still doing little to convert his colleagues, but he was getting his message out. Despite the rhetoric, Fulbright failed to help Congress reassert its power over foreign affairs under Johnson. Almost every time a major vote was to take place to repeal the Tonkin resolution or cut funding, Fulbright feared a failure to succeed would be a reaffirmation of the President’s policies. He did not want to vote on another amendment to repeal the Tonkin Resolution for fear it would not get enough votes. As historian Stanley Karnow stated, “for all their qualms about war, members of Congress were long on rhetoric and short on action.”

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If Fulbright was unwilling to assert legislation curbing presidential power, Senator Wayne Morse (D-OR) was not. Morse was one of two individuals in both Houses who voted against the Gulf of Tonkin Resolution, and the testimony during August 6 and 7, 1964 had not changed his opinion of the unconstitutionality of the resolution. Senator Morse was an outspoken critic of the war who did more than talk. At the end of February 1966, Morse initiated a repeal of the Tonkin Resolution because of his dissatisfaction with the Vietnam Hearings. It garnered the support of only four other senators, and it was eventually shelved on March 1, because as Senate Majority Leader Mike Mansfield (D-Mt) stated “the country was at war,” and “we are in too deep now.” The Senate rejected the amendment by a resounding 92 to 5. Fulbright opposed any additional attempts to obtain repeal until the dissenters could expect to gain substantially more than 5 votes. In 1966 such attempts had no chance of winning a majority and the administration publicized results such as the March 1 vote as an endorsement of escalation.

Morse’s attitude about the wrong direction of the war persisted well into 1967 and 1968. While debating House Bill 10738 (Defense Appropriations Bill for fiscal year 1968), he stated “that the appropriations for the entire government in 1951 was $34 billion”...and “here we have a bill for $70.2 billion for defense alone. Congress cannot possibly justify a defense budget of this magnitude.” He concluded his remarks that “this is not a government by law, it is a government...

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229Ibid., 491.

230Powell, J. William Fulbright and America's Lost Crusade, 191.
by executive decree and that means government by man. Not to mention that
we have an administration that tells us that if the Tonkin Gulf Resolution were
rescinded, the President could continue to do what he wanted in Vietnam and
elsewhere in the field of foreign policy. I shall vote against the bill."231 The
senator was fervently opposed to any measure escalating the Vietnam War, and
he tried to make it clear that no matter what Congress did, the administration
would continue the war.

Senator Wayne Morse was a maverick by Congress's standards. He never
followed the rank and file of the party system, but he was a man who fought with
passion. Former colleague Senator William Proxmire (D-Wi) remembered Morse
as a man who "always argued his position with great force and most senators
deeply respected the sincerity of his convictions."232 Morse incessantly defended
his decisions not to authorize war in Southeast Asia because it was a violation of
the Constitution and international law. Six months before his death in 1974,
Morse commented on the constitutionality of legislative acts. He said "that many
people seemed to think that because the Senate passed something, that made it
constitutional. But, the Senate cannot make something constitutional that is
unconstitutional. The authority they sought to give the President in the Gulf of
Tonkin Resolution was an unconstitutional act on the part of Congress as well as
on the part of the President." According to historian Mason Drukman,

231 Congressional Record, 113 (22 August 1967): 23463-65.

232 Mason Drukman, Wayne Morse: A Political Biography (Portland, Oregon: The Oregon
"Congressional irresponsibility was revealed nowhere more than in the 1964 debate over the Tonkin Gulf Resolution."  

Because of his outspoken rhetoric on the war, Morse was defeated in his reelection bid for the Senate in November 1968. He lost to Robert Packwood, who charged that "Morse’s opposition to continued funding of military action in Vietnam was reckless, because such restrictions would cut off military support for soldiers." Morse lost because he was too candid about his opposition to the war, and because Packwood used the "support our troops" cry to portray Morse as an outsider who put U.S. soldiers in harm’s way.

Morse and the other members of the Senate Foreign Relations Committee were able to use their time effectively. According to historian David F. Schmitz, "Frank Church sought a broader forum for discussion of the war," and "in late July 1965, he urged the Senate Foreign Relations Committee to hold public hearings." Church’s urgings prompted the Senate committee to begin hearings in January 1966 on Vietnam. During January and February, Fulbright’s committee "used the well publicized televised hearings to place the Vietnam policy on trial." These were the first public airings of differences between the Senate Foreign Relations Committee and the White House. On January 28 the

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233Ibid., 408.

234Wayne Morse Center for Law and Politics, 3. morsechair.uoregon.edu/moreaboutwayne.php History of Wayne Morse’s political career.


236McFarland, Cold War Strategist, 125.
Senate committee began hearing testimony from Secretary of State Dean Rusk. In his prepared statement, Rusk reiterated that the “integrity of our commitments is absolutely essential to the preservation of peace around the globe.” Rusk repeated as President Johnson had said in his State of the Union Address last week, “the door of peace must be kept wide open for all who wish to avoid the scourge of war, but the door of aggression must be closed and bolted if man himself is to survive.”

Rusk was bombarded with questions at the close of his statement. Fulbright asked Rusk to explain the origin and basis for U.S. commitment in Vietnam. The secretary responded that we were entitled to offer assistance because Vietnam was listed as a protocol state under the SEATO Treaty. Fulbright commented later in the hearing that the obligation was to consult with our allies. “We have no unilateral obligation to do what we are doing.” Fulbright also queried the secretary about the Gulf of Tonkin Resolution. He asked Rusk if he thought the resolution followed the constitutional process. Rusk replied yes, because the “resolution was signed by Congress, the President, and it could be repealed by a concurring resolution which would not need the signature of the President.”

Senator Morse declined his opportunity to question Rusk. He merely wanted to state for the record that he disagreed with practically every major premise contained in Rusk’s prepared statement and preceding comments. “I completely

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236 Ibid., 36.

239 Ibid., 44.
disagree with the interpretation of the SETO Treaty, and I do not think the treaty justifies in any way the unilateral American action in South Vietnam." Morse's fiery temper illustrated his complete distrust of the executive to bring the war to a peaceful conclusion.

Questions and comments from the committee were not limited to Morse and Fulbright. Senator Albert Gore (D-TN) noted that he voted for the resolution in response to this specific attack. He disassociated himself from any interpretation that he voted for a declaration of war. Rusk responded to the senator's comments by stating that "it seems quite clear that the way this matter was discussed at the time (August 1964), it was not related solely to the attack on a ship in the Gulf of Tonkin." Rusk understood that the resolution was in fact a de facto declaration of war. Senator Clairborne Pell (D-Rhode Island) proclaimed "each year we do what the military asks us and we give them what they want." He "did not think any of their requests for money or materiel have been turned down but the country seems no nearer the end of the road now then we were then." The senators were beginning to understand that Vietnam was a quagmire, and advances had not been made despite considerable funding.

Questions arose outside the Senate as well. During a CBS Prime-Time special on February 1, Senator Fulbright talked about the situation in Southeast Asia. He apologized for his role in pushing the Tonkin Gulf Resolution through

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240 Ibid., 13-14.
241 Ibid., 44-45, 50.
the Senate. He said, "I should have had greater foresight in the consideration of that resolution. I think we are in a terrible situation and I am hoping we can find an honorable way out of it." During his interview, Fulbright did not mention repealing the Tonkin Resolution which could have emphatically reversed the administration's position on the war or at least reasserted some congressional authority.

The committee hearings resumed on February 10, when former United States Ambassador George Kennan appeared before the committee. Kennan stated in his prepared testimony that "if we were not already involved in Vietnam as we are today, I would know of no reason why we should wish to become so involved. Vietnam is not a region of major military or industrial importance. We should liquidate our involvement in Vietnam just as soon as possible without jeopardizing our prestige or stability of South Vietnam." His statement reinforced the fears many members had. Senator George Aiken (R-VT) acknowledged that to "commit ourselves without limitations is certainly a pretty heavy responsibility for anyone to assume." As would become clear, many of the senators believed that they had not made an unlimited commitment to hostilities in Vietnam; yet given the wording of the Gulf of Tonkin Resolution that intention was difficult to refute. Senator Frank Church, similar to Senator

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244 United States Congress, Senate, Committee on Foreign Relations, The Vietnam Hearings, 108-09.

245 Ibid., 149.
Fulbright, "regretted" his vote in favor of the Gulf of Tonkin Resolution “to the end if his life.”

Former Ambassador to South Vietnam and the current Special Assistant to the President, General Maxwell D. Taylor appeared before the committee on February 17. His testimony irritated Senator Morse. Their exchange of words in the hearing personified the debate that began to stir the country. Morse said to Taylor that “you know we are engaged in historic debate in this country, where there are honest differences of opinion. I happen to hold to the point of view that it is not going to be long before the American people as a people will repudiate our war in Southeast Asia.” Taylor quickly responded “that, of course, is good news to Hanoi, Senator.” That poignant remark personified the administration’s position that public dissent hurt the soldiers in combat. When asked by the committee what the limits on U.S. forces were in Vietnam, General Taylor replied that the North Vietnamese were the ones to decide what that limit was through the extent of their aggression. General Taylor’s remarks suggested the administration was in South Vietnam for the long haul.

The impact of the hearings was tremendous. The Senate Foreign Relations Committee examined the potential threat of China and the Soviet Union, and they better understood that the country’s commitments in Vietnam threatened disastrous consequences if left unchecked. Frank Church called the hearings profound. “Once it became apparent to the American people that there were

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246 F. Forrester Church, *Father and Son: A Personal Biography of Senator Frank Church of Idaho by His Son* (New York: Harper and Row, 1985), 59.

247 *The Vietnam Hearings*, 187.
members of this committee, who were loyal Americans who disagreed with the war, then the general resistance to the war and the debate itself over the war began to spread. But if we had not gone out from behind closed doors, this never would have happened.\^248

Millions viewed the hearings. Some 30 million viewers watched the hearings, but a survey by the Louis Harris Poll indicated that only 37 percent of the public heard about the hearings, and most of those were college educated individuals. Fifty-five percent of those polled believed the hearings were helpful, whereas 45 percent thought otherwise. A damaging 60 percent felt that Senator Wayne Morse had been more harmful than helpful to the proceedings with his outspoken criticism.\^249 Only 37 percent of Americans heard of the hearings was in part because, Johnson hastily initiated a conference in Honolulu in early February to divert public attention. The administration’s hope was to avoid bad news that might come out of the televised hearings. While in Honolulu, Johnson meet with the leaders of the South Vietnamese government Nguyen Cao Ky and General Nguyen Van Thieu and promised them that America will hold firm in its commitments to South Vietnam.

During Johnson’s administration, the majority of doves in Congress were Democrats. It was difficult for many congressmen to refuse support to their party’s leader, and Johnson’s personality made it even more difficult. He did not permit criticism and his commanding demeanor demanded obedience.

\^248 David F. Schmitz, “Congress Must Draw the Line: Senator Frank Church and the Opposition to the Vietnam War and the Imperial Presidency,” 132.

Moreover, during the early phases of the war, Johnson's approval ratings were high. The May 7, 1965, issue of *Time Magazine* praised Johnson for "acting swiftly and with strength of purpose." But the "problem Frank Church (D-ID)" and other Democrats "faced throughout 1964-65 was how to criticize American policy while still backing the new president, Lyndon Johnson, whose domestic programs he fully supported."

Nonetheless, Johnson's leadership was repeatedly questioned. Just before the start of the Vietnam Hearings, Senator's Mike Mansfield (D-MT) and George Aiken (R-VT) prepared a report in January 1966 concerning the prospects of the Vietnam crisis after they toured Southeast Asia. The report suggested that the "conflict in Vietnam was teetering on the brink of disaster, and it was quickly becoming open-ended and it had the potential to spill over into China." Despite growing concern over Vietnam, Johnson reiterated his strong stance in his State of the Union Address on January 12. Johnson declared that "days may become months and months may become years, but we will stay as long as aggression commands us to battle."

Later that same month, Senator Vance Hartke (D-IN) sent a letter to the President, calling for him to halt the bombing and for the United States to pursue aggressive negotiations. Hartke delivered the message to the President with the

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251 David F. Schmitz, "Congress Must Draw the Line: Senator Frank Church and the Opposition to the Vietnam War and the Imperial Presidency," 125.  


support and signatures of 14 other senators. Johnson was less than thrilled by this outburst of congressional opinion, and he publicly labeled Hartke as "obstreperous" and privately as a "prick." In retaliation for his remarks, Johnson dismissed the senator's protégés from their federal positions.²⁵⁴ Publicly berating congressmen was an effective mechanism the White House used to keep order. If members of Congress praised the administration they were rewarded with special favors, but critics were called to the White House for a special dose of the infamous Johnson treatment where a member might find himself "ostracized" and "publicly discredited" as unpatriotic.²⁵⁵

Senator Hartke was not the only individual to press for peace negotiations. Senator Church publicly urged the President to negotiate with North Vietnam, and that infuriated Johnson. During a crowded White House dinner in May 1966, Johnson replied to Church's communication and asked him who he consulted in preparation of his speech. Church replied that he conferred with Walter Lippman (newspaper columnist for the New York Times). Johnson snapped and said, "alright Frank, next time you want a dam for Idaho, go talk to Walter Lippman." After being publicly degraded, Church fell into line with nearly the entire Senate to grant Johnson's request for $700 million in appropriations to conduct the war. Johnson had not needed the funds, but he wanted a reaffirmation of congressional assent for his Vietnam policy. Johnson was even able to get former President Eisenhower to issue a statement declaring "none of us should

try to divide the support that citizens owe their head of state in critical international situations."^{256}

As the war escalated so did the financial burden, and most of the senators who ideologically opposed the war, like Senator’s Fulbright and Mansfield, were persuaded that “our boys had to have whatever they needed on the front, whether we wanted them there or not.”^{257} The United States sent billions in securing its defenses in Vietnam, and in “1967 the war cost the United States $10 for every $1 worth of damage inflicted.”^{258} From March 1965 to November 1968, Operation “Rolling Thunder” dropped over a million tons of bombs, rockets and missiles and the United States imposed about $300 million in damage on North Vietnam, but at a lose to the American air force of 700 aircraft valued at $900 million.^\textsuperscript{259} The “rally around the flag” phenomenon effectively served the White House through the summer of 1973 when Richard Nixon was President. Presidential administration’s used this tactic brilliantly to counter dissenters. Senator Richard Russell (D-GA) echoed these sentiments in a letter to a constituent on August 14, 1965. Russell replied to his constituent that “we are there now, and the time for debate has passed. Our flag is committed and American boys are under fire.”^{260}

^{256}Karnow, Vietnam: A History, 421.


^{259}Ibid., 454, 457.

The escalation of forces and funding rose sharply after the United States
committed troops to South Vietnam in March 1965. At end of year 1966 there
was 386,300 military personnel in South Vietnam, and that number increased by
100,000 by December 31, 1967. Military personnel would max out at 543,400 in
April 1969, and by 1967, 6,000 U.S. soldiers had been killed in Vietnam.\textsuperscript{261} The
military budget for Vietnam in fiscal year 1967 was estimated to cost between
$11-17 billion, but it consumed $21 billion.\textsuperscript{262} It averaged out to $1.75 billion a
month, $403,850 million a week, and $57.5 million a day. The conflict in Vietnam
"demonstrated to the world that even with an army of half a million men and
expenditures of $21 billion per year, America could not win a crucial war for a
regime which was incapable of inspiring the patriotism of its own people."\textsuperscript{263}

The executive's request for money and personnel went unobstructed, and the
insignificant dove call was drowned out by the hawks. By October 1966 only 15
percent of the congressional membership favored greater stress on initiating
peace talks, and as author William C. Berman stated "after the November
election Congress was even more hawkishly inclined than the previous one."\textsuperscript{264}

During the early stages of the war, the doves were drastically outnumbered. It

\textsuperscript{261} Herring, America's Longest War, 182. Table showing the increase of military strength
in South Vietnam from December 31, 1960 through June 30, 1973. It was broken down yearly
and by branch of the armed services.

\textsuperscript{262} Karnow, Vietnam: A History, 487.

\textsuperscript{263} Powell, J. William Fulbright and America's Lost Crusade, 198.

\textsuperscript{264} Berman, William Fulbright and the Vietnam War, 74.
would not be until late 1969 when the doves gained a commanding lead over the hawkish Senate 55-31.\textsuperscript{265} Even so, their influence was only beginning to be felt.

The President placated Congress by recalling General William Westmoreland back from Vietnam to "revive the country's flagging spirit" in November 1967. The administration had Westmoreland trek across the country to give optimistic portrayals of the war to the public. He was purposely steered away from dovish Senate Foreign Relations Committee because the administration feared that the committee might stir up controversial issues. Instead, General Westmoreland met with "tamer" members of Congress and gave a rosy picture of the situation in Southeast Asia.\textsuperscript{266} The decision to keep him away from the Fulbright committee was an indicator that the situation in South Vietnam was not as secure as the administration claimed, and keeping it out of the public eye was necessary to stay the course.

Despite the public's growing opposition to Vietnam, it was quite clear that congressional power to control war slipped. Historian Henry Steele Commager discussed the issue in an article about whether the Senate could limit presidential power. In his examination of senatorial control over presidential power, he quoted Under-Secretary Nicholas deB Katzenbach having said "that declarations of war are outmoded;" thus neatly repealing a clause in the Constitution without the bother of congressional and state action. He concluded his remarks that the


"Tonkin Resolution combined with the SEATO Treaty constituted a functional equivalent to a declaration of war."²⁶⁷

Even though the dovish members of Congress were unable to repeal the Tonkin Resolution or reduce funding, they did investigate extensively the circumstances surrounding the official U.S. commitment to Vietnam. During a presidential breakfast with congressional leaders in January 1968, Senator Frank Lausche (R-OH) warned the President that Secretary McNamara would be called before the Senate Foreign Relations Committee to demonstrate that he mislead the nation into improper use of military forces in the Tonkin Bay.²⁶⁸ On February 20, 1968, Secretary of Defense Robert McNamara appeared before the Senate Foreign Relations Committee. In a letter sent by Senator Fulbright, he assured the secretary that “the interest of the committee is in your testimony of August 6, 1964, and of discussing what lessons have been learned about the problems of analyzing information in the midst of a crisis.”²⁶⁹

In his prepared statement, McNamara reasserted his claim that both attacks did occur: “We had intelligence reports of a highly classified and unimpeachable nature that the attacks took place on both August 2 and 4.”²⁷⁰ He argued that it was possible that the confusion surrounding the August 4 attack was mistaken or replaced with the events of September 18, 1964. The U.S.S. Morton and

²⁶⁷ Congressional Record-Senate, 115 (22 April 1968): S4349.
²⁶⁹ Secretary of Defense Robert McNamara’s Testimony before the Senate Foreign Relations Committee on February 20, 1968, 2. Courtesy of the Virtual Vietnam Project at Texas A&M University.
²⁷⁰ Ibid., 9.
Edwards patrolled the Gulf of Tonkin on September 18, at night, and they initially reported that they were under attack, but both "Washington and the field command levels" insisted there was "no credible evidence an attack existed." McNamara persisted that the administration possessed incontrovertible evidence that the attack on August 4, 1964, occurred. The secretary declared that in July 1967 the United States captured a North Vietnamese naval officer who provided the name of the commander of the PT squadron in the Gulf on August 4. The "intelligence reports received immediately after the August 4 attack, included the commander and squadron by name and number as participants." There was "no uncertainty about the fact that an attack took place on August 4." McNamara also addressed the issue that the U.S. naval forces provoked an attack. He insisted that the Turner Joy and Maddox "played absolutely no part in the South Vietnamese naval activity. The two operations were separate and distinct." Nevertheless, the secretary disclosed that even though he claimed the destroyers had no knowledge of the South Vietnamese activities, the "U.S. destroyers were directed to remain in waters which would keep them from becoming operationally involved with the South Vietnamese activity." In addition, McNamara reaffirmed that the U.S. vessels were in international waters. The United States recognized only a 3 mile territorial coastal limit, and Hanoi never officially changed it; so the United States adhered to the 3 mile limit.

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271 ibid., 17.
272 ibid., 15, 18.
273 ibid., 9, 14.
274 ibid., 14.
established under the French government. Hanoi had not claimed 12 mile territorial limit until September 1, 1964 when it was broadcast on Radio Hanoi.  

Senator Morse, the administration's leading critic, accused the administration and McNamara of misleading the Senate in August 1964 with fragmented information. Morse read a message that was sent out on July 15, 1964, by a naval commander of the Pacific Fleet. The message spoke of increased activities of OPLAN-34A. Morse believed that the United States was not only "involved in an electronic spying mission," but also "provoked the North Vietnamese" to the brink of war.

During a presidential luncheon on February 20, McNamara discussed his testimony with the President and other cabinet members. The President commented that he supposed McNamara had a "better case on the fact the attack occurred than on the charge that we did provoke the attack." The secretary responded by saying "I have a good case that there was an attack. They think we responded too soon."  

After these new rounds of hearings on the Tonkin incidents in January 1968, Johnson was unable to control dissent or gain congressional favor for his Vietnam policies. In a report about additional troop escalation in Vietnam,

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276 Congressional Record, 114 (21 February 1968): 3814.

277 Congressional Record, 114 (28 February 1968): 4578-79. Senator Wayne Morse gave a statement on our aggression in the Gulf of Tonkin and how the administration failed to give the Senate this information before they deliberated on the resolution.

Senator Mansfield responded to the President's request that "any increase above the 525,000 assigned level ought to be resisted." Mansfield insisted the United States "ought to conserve its sources." On March 4, the President met with his senior foreign policy advisors to discuss Vietnam policies. Secretary of State Dean Rusk told the President that "we could go to Congress for specific actions," but "we do not want a general declaration." The President responded that "we face a real problem" in the Senate. "Anything that required any authority may result in a filibuster." The administration knew it was losing control over the war, but they still enjoyed a joint resolution that granted the White House the power to wage war.

\footnote{276}{ibid., 668. Letter to Lyndon Johnson from Senator Mansfield concerning requests for additional troops in Vietnam.}

\footnote{280}{ibid., 650.}
CHAPTER VII

SMALL GAINS, HUGES LOSSES

The nation elected Richard M. Nixon in November 1968 with the hope that his plan for peace would prevail and the United States could escape Vietnam. Congressional resurgence grew but did not come to fruition until the beginning of Nixon's second administration, and shortly before his resignation over the Watergate scandal. Congress had grown weary of the war by 1968. In addition, after 1968 congressional Democrats no longer felt torn between loyalty to a president of their own political party and the growing antiwar sentiment. Nevertheless, Congress's small gains in reasserting power were lost in the passage of the War Powers Resolution of 1973.

Congress was willing to give President Nixon an opportunity to end the Vietnam War. Nixon enjoyed a year-long honeymoon on Vietnam, but that did not stop Congress from indirectly investigating the White House's Vietnam policy through Stuart Symington's (D-MO) subcommittee of the Senate Foreign Relations Committee. The subcommittee focused on U.S. military assistance to Laos in the spring and summer of 1969. Symington was appointed by William


282 Ibid., 282, 284.
Fulbright on February 3, 1969, to head the ad hoc Subcommittee on Security Agreements and Commitments Abroad. Fulbright railed against the current administration for conducting a "secret war." The Symington subcommittee believed that both President's Johnson and Nixon were maneuvering to secure congressional acquiescence in the early stages of another open-ended commitment similar to the growing involvement in Vietnam in the early 1960s. Nixon thought the only way to deal with Symington's committee was to give it as little attention as possible and hope Laos would fade from the public eye. According to historian Linda McFarland, "not only did the Nixon administration refuse to cooperate in providing information, it also forbade administration witnesses to appear before the subcommittee, because Southeast Asia was a particularly sensitive area."

Despite Nixon's confidence that there was a large "silent majority" who supported his policies, Congress was no longer willing to let the president go unchecked. On December 18, 1969, Senator John Sherman Cooper (R/KY) and Senator Frank Church (D-ID) successfully attached the Copper-Church amendment to a Department of Defense Procurement and Development Act. This measure limited U.S. activities in Southeast Asia by prohibiting appropriations supporting United States combat troops in Laos and Thailand.

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283 McFarland, Cold War Strategist, 145.
285 McFarland, Cold War Strategist, 146.
286 David F. Schmitz, "Congress Must Draw the Line: Senator Frank Church and the Opposition to the Vietnam War and the Imperial Presidency," 137.
Congress would not go further; a large majority felt they could not break with the President without jeopardizing the lives of American troops.\(^{287}\)

In June 1970 Congress attempted to repeal the Gulf of Tonkin Resolution. On June 24, the Senate voted to rescind the resolution by a vote of 81 to 10, and on January 12, 1971, the House followed suit and repealed the resolution.\(^{288}\) The Nixon administration appeared unconcerned about the repeal because the President and his advisors believed they did not need the resolution to wage war in Vietnam. Nixon based his legal justification for being in Vietnam on the “right of the President of the United States under the Constitution to protect the lives of American men.”\(^{289}\) The administration also claimed that by 1971 a number of different appropriations had authorized the war. “Throughout the six year life of the resolution, Congress had given its stamp of approval for the war more than once.”\(^{290}\)

The repeal of the resolution was a major advance for congressional power, but it did not end the war. By December 1970 the United States still had over 334,000 troops in Vietnam and by the end of 1971, almost a full year after the


\(^{288}\) Public Law 91-672 13 January 1971. Repeal of the Tonkin Gulf Resolution.


repeal, the troop level remained over 156,000 troops. In practical terms the repeal failed to end the military involvement that its creation had begun.

Copper-Church and the repeal of the Gulf of Tonkin Resolution were not the only attempts to reassert congressional power. During the May 1970 session of Congress, both the second version of the Cooper-Church amendment and the Hatfield-McGovern amendment were scheduled for debate. The second Cooper-Church amendment was introduced on May 11, to cover the area not included in the first amendment: Cambodia. This measure sought to “prevent the United States from getting bogged down in Cambodia” by “restricting the deployment of troops” there. The Senate passed it on June 30, 1970, but the “House of Representatives did not approve the modified version of the amendment until December.” The Hatfield-McGovern amendment proposed to cut off all funds for the war after 1970 and to direct the withdrawal of all U.S. troops by June 30, 1971, unless Congress declared war in the interim. The withdrawal date was pushed back to gain support from Republican Senator Jacob Javits (R-NY), but the amendment failed to garner enough support and was defeated 55-39. That did not stop George McGovern from directing his anger at fellow senators. Minutes before voting began, McGovern lashed out on the Senate floor. He stated that “every senator in this chamber is partly responsible for sending 50,000 young Americans to an early grave. This chamber reeks of blood.”

291. Herring, America’s Longest War, 182.
293. Mann, A Grand Delusion, 659, 667.
McGovern continued that “not very many of these blasted and broken boys think this is a glorious adventure.” “It does not take any courage at all for a congressman, or senator, or president to wrap himself in the flag...if we do not end this damnable war, those young men will curse us for our pitiful willingness to let the executive carry the burden that the Constitution places on us.”

Congress’s restriction of funds did effect the Nixon administration. On October 26, 1972, National Security Advisor Henry Kissinger proclaimed that peace in Indochina was at hand, and the administration called off the bombing of North Vietnam until after the election. But on December 18, the administration announced that negotiations had been broken off, and the bombing resumed. By the end of 1972, the United States had a mere 24,200 troops left in Vietnam, and congressional pressure helped to force President Nixon to halt the bombing in early January. Kissinger wrote in 1972, that “sooner or later, one of the amendments to cut off funds would pass.”

On January 23, 1973, Nixon pronounced that the United States had concluded an agreement to end the war and bring peace with honor. Without Congress’s reassertive mindset, Nixon might have carried out the bombing

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296 Herring, America’s Longest War, 182.
297 Mann, A Grand Delusion, 704.
298 Eagleton, War and Presidential Power, 145.
campaign for years to come. In March, Nixon resumed bombing Cambodia and Laos despite congressional opposition. On May 10, the House voted 219-188 for the Addabbo Amendment to cut-off funds to Indochina. It was the first time funds were directly cut off for the fight in Vietnam. Then on May 31, the Senate prohibited any funding for combat activities in Laos or Cambodia.\footnote{\textit{Ibid.}, 159.} It was clear that for all practical considerations, U.S. military activities in Southeast Asia were ending.

The Congress was not through reasserting its influence. Congress was not satisfied with ending the conflict, it sought to insure that this kind of war would never happen again. At least that was the thinking behind the creation of the War Powers Resolution. In July, both the House and the Senate adopted versions of the War Powers Resolution that Representative Clem Zablocki (WI) first introduced in 1970. On November 16, 1970, Zablocki introduced H.J. Resolution 1355 concerning war powers of the Congress and the President. The bill recognized that there were “extraordinary and emergency situations” and that “whenever feasible the President should seek appropriate consultation with Congress before involving the armed forces.” Zablocki said the bill called for the President to inform Congress “under what authority he took action,” and for the President to “estimate the scope of activities.”\footnote{\textit{Congressional Record}, 116 (16 November 1970): 37398.} The representative insisted that this resolution was crucial because “in time of future crisis, the safety and

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\begin{footnotesize}
\footnote{\textit{Ibid.}, 159.}  
\footnote{\textit{Congressional Record}, 116 (16 November 1970): 37398.}
\end{footnotesize}
salvation of our nation could well depend on just such harmony and cooperation,” and the “President and Congress must work together.”

Representative Gerald Ford (R-MI) responded that the resolution was necessary, and “the language is very clear and forthright.” Ford also asserted amazingly “that through his time in Congress from Truman to Nixon, he knew of no President who had been false or deceptive in the information that came out of the White House.” When asked about the Tonkin Gulf incident, Ford responded that he “believed that the important and responsible committees in Congress knew what President Johnson had in mind at the time the resolution was submitted to Congress.” The resolution passed the House by an overwhelmingly vote of 289 to 39, but the Senate failed to act on the issue before the end of the 91st Congress.

The measure was taken up again in August 1971. This time Representative Zablocki eliminated the phrase “whenever feasible” from the new version of the war powers resolution, but that did not conclude the debates. Representative Mitchell, responded to the new resolution that “we must not delude ourselves into thinking that the War Powers Resolution is a meaningful deterrent to require that the Chief Executive submit a report to the body after he initiates significant military action. Consultation is no more than a token and ineffectual gesture and Congress must do something concrete in the area of war-making powers.”

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301 Ibid., 37398-399.
302 Ibid., 37403.
303 Congressional Record, 117 (2 August 1971): 28870.
304 Ibid., 28878.
Representative Abzug said the measure “fails to define the power reserved to Congress by the Constitution to declare war,” and it “leaves the President just as free as he is now.” Abzug and Mitchell both declared that they would vote no on the bill, and urged others to oppose this “toothless resolution.” That measure again felt short—it passed the house but the Senate passed its own version and a “parliamentary snail ensued.”

Major debate on the War Powers Resolution resumed on June 25, 1973. Debate lasted for over three hours on the floor of the House, and a variety of congressmen voiced their opinions concerning war powers and Congress. Clem Zablocki continued to promote his legislation. This new version also contained a provision that “directed the President in every possible intent to consult with the leadership and appropriate committees.” This measure stated that the President was “precluded from committing U.S. troops for more than 120 days without specific congressional approval.” The 120 days provision also raised considerable concern. Representative Dennis (IN) questioned if the constitutional right to defend the nation expired in 120 days if Congress failed to reaffirm the President’s decisions. Representative Frelinghuysen (NJ) replied that “if there is authority in the President to take these actions, the lapse of time period could not deprive him of that power.”

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305 Ibid., 28878.


307 Ibid., 21210.

308 Ibid., 21215.

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During 1972 and 1973, Congress was able to reconcile and pass a war powers resolution. The House passed their version of the bill on July 18 and the Senate passed a version on July 20, 1973. The House-Senate conference committee produced a final resolution in October and was ready to send it on to the President. The House passed the conference bill on October 12, 283-123 and the Senate passed it 75-20. It was then sent to the president, and Nixon vetoed the measure as expected. The House overrode Nixon's veto by four votes to reach the required two thirds (284-135).

The War Powers Act of 1973 became public law 93-148 on November 7 without the president's signature. The language of the bill that came out of Congress failed to reverse the increasing power of the executive in foreign affairs. The intent for the legislation was noble, but the outcome did not fulfill those gallant aspirations. Contained within the bill were several sections that declared Congress's intent. Section 2(a) said that the purpose of the legislation was to fulfill the intent of the framers of the Constitution for collective judgment of both the Congress and the president. Congress was looking for a judicious application of its power as a partner and overseer of the executive. The intent was to regain footing lost during the Vietnam conflict and since the emergence of the "imperial presidency" in 1940.

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But the resolution actually conveyed congressional power to the President, because the executive can wage war for sixty days and that can be extended for thirty more if Congress was unable to convene. The President was required to report to the Congress within forty-eight hours to apprise them of why he had committed U.S. troops, but the key contradiction was that he had to report after hostilities had begun. As Timothy Baylan wrote in his article "A War Powers Resolution: A Rationale for Congressional Inaction," "presidents have reshaped the communications requirements to report decisions and actions already taken and go public on television to solidify popular reaction and support." Nixon himself called the H.J. Resolution 542 "unconstitutional and charged that it would seriously undermine this nation's ability to act decisively and convincingly in times of international crisis." Nixon's State Department agreed that the legislation was unconstitutional, but for different reasons. It saw the bill as a ninety day open-ended grant of authority, not a restriction on presidential authority.

The objective behind the legislation was good. Section 8 (d) stated that nothing in this joint resolution is intended to alter the constitutional authority of the Congress or the president. Senator Thomas Eagleton (D-MO) disagreed

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313 Eagleton, War and Presidential Power, 213.
314 Ibid., 216.
with that. He wrote portions of the first war powers legislation before it was
changed to reflect the current legislation. He called the final bill a “failure.” “It
does not limit the president’s war power. The bill gives the president unilateral
authority to commit American troops anywhere in the world, under any conditions
he decides, for sixty to ninety days. I labored to enact war powers legislation
because I believed that the intent of the Constitution could be recaptured by
statute.”

What Eagleton overlooked was that there was already a constitutional
provision for Congress to reclaim power over war: Article I Section 8 Clause 12 of
the Constitution (To raise and support armies). No legislation could block that
function. A country cannot wage war without appropriating funds. If Eagleton
believed that the intent could be recaptured by statute, then once the maximum
ninety days was reached would he and other congressmen pull the funding for
soldiers who were in harm’s way? Or would there be more of the same and rally
around the flag? Essentially, the War Powers Act allows for Congress to hide
and the president to aggrandize. Who is going to deny funds to a president
when the U.S. flag has been committed?

The framers knew that the power to commit to war was a huge responsibility,
and that was why they separated the ability to wage war into two branches of the
government. Congress declares and supports war while the executive manages
the war. If the legislature opposed the war, it had the power to stop hostilities by

310 Eagleton, War and Presidential Power, 216, 224.
317 Ely, War and Responsibility, 34.
refusing funds. Distrust of the executive caused the Founders to vest the power of initiating war exclusively in the Congress.\textsuperscript{318} Again, the framers believed that a “decision for war should be taken by a broadly representative group after debate and deliberation; for that body to shirk its responsibility and transfer the power of decision to a single person was to acquiesce in tyranny.”\textsuperscript{319} That was what the War Powers Resolution did. It, like the Gulf of Tonkin Resolution, gave the President a future blank check.

Not everybody objected to the resolution. The co-sponsor of the resolution in the House, Clem Zablocki, believed the bill permitted Congress to respond in an appropriate and timely fashion to its constitutional responsibilities in future crisis situations.\textsuperscript{320} Senator Jacob Javits (R-NY) also suggested that the major purpose of the legislation was to force the presidency to “stop, look, and listen and to take prudent council when a military operation is suggested.”\textsuperscript{321} Zablocki and Javits argued that the legislature had learned a lesson and hoped to prevent learning that lesson again by creating language that would prevent the Congress from granting another blank check. Senator Frank Church reiterated this message when he concluded that the legislation was “unfortunate” but “necessary because


\textsuperscript{319}Ibid., 218.


\textsuperscript{321}Ibid., 66-67.
Congress had learned the hard way not to write blank checks. But in a hearing before the House Committee on International Relations in 1975, a legal advisor for the State Department said that if the President had the power to commit men to hostilities "that power could not be taken away by concurrent resolution because the power is constitutional in nature."

According to historian Louis Fisher, presidents have submitted a number of reports under the War Powers Resolution since its creation. On three separate occasions President Gerald Ford "reported to Congress in his efforts to evacuate U.S. citizens and refugees from Vietnam and Cambodia citing his constitutional authority as commander in chief." In 1980 President Jimmy Carter reported to Congress on the use of military force in his unsuccessful attempt to rescue American hostages in Iran. He also relied on the power of commander in chief and "Carter’s effort to consult with Congress was no better than Ford’s," but "there was little criticism from legislators." President Ronald Reagan sent troops into Lebanon in 1982 and 1983 without reporting to Congress under Section 4(a)(1) of the War Powers Resolution. Again, Reagan used the power of commander in chief to justify his actions abroad. The use of the commander in chief phrase continued long after the War Powers Resolution.

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322 P. Edward Haley, Congress and the Fall of South Vietnam and Cambodia (Rutherford, New Jersey: 1982), 44.
323 "War Powers: A Test of Compliance," hearings before the House Committee on International Relations, 94th Cong., 1st Session 91 (1975).
324 Fisher, Constitutional Conflicts, 286.
325 Ibid., 287.
Reagan was challenged in court twice for his use of war powers. In *Crockett v. Reagan* twenty-nine members of Congress sued the administration for violating the War Powers Resolution by not reporting after sending troops to El Salvador. The judge said that he would not rule because "Congress failed to act legislatively to restrain Reagan." Congress also sued the President for his actions in Grenada in 1983, because he violated Congress’s constitutional obligation to declare war. But the judiciary refused to act because there was "relief available through the regular legislative process." 

The use of the President’s authority to command troops did not stop with Reagan. In 1990, President George Bush sent troops to Saudi Arabia (in preparation for the invasion of Iraq) after Iraq invaded Kuwait. The President claimed "authority as commander in chief to take unilateral military action" in Iraq. On December 13, 1990, U.S. district courts rejected two legal challenges. In the most important decision, *Dellums v. Bush*, the court ruled that "if Congress confronted the President and the President refused to accept a statutory restriction, the issue might be ripe for the courts." 

The debate over the power to wage war remains alive today. There are various distinguishing characteristics about each branch’s power to control war, and countless numbers of interpretations about who can do what. As Louis Fisher contends, "presidents regularly claim the commander in chief clause..."

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empowers them to send troops anywhere in the world, including into hostilities, without first seeking legislative approval. This theory has withstood the argument time and again. In the history of the United States, only five wars have been declared whereas the nation had fought more than twenty undeclared wars.

Two basic approaches to the problem of war power apply to this discussion: pro-Congress and pro-executive. The pro-Congress approach asserts that the “Constitution goes out of its way to take this power to declare war away from the president and give it to Congress.” The framers gave the power of the purse to Congress because “executives tended to be more warlike than legislative bodies.” The power to declare war was not meant to take power away from the executive, it was meant to counteract it.

The pro-executive position, as John Yoo would have us believe, portrays the Constitution as a “flexible system where the president possesses the power to initiate and conduct hostilities as commander in chief and checked by Congress’s power of the purse.” As the Vietnam experience demonstrated, that power to fund was crushed by the administration’s cry to “rally around the flag.” Yoo argues that the executive’s “fundamental superiority to Congress in foreign

329 Louis Fisher, Presidential War Power (Lawrence, Kansas: University of Kansas Press, 1995), 185.


332 Ely, War and Responsibility, 3.

333 Yoo, “War and the Constitutional Text,” 2.
affairs" provides the flexibility needed "to accommodate the realities of the modern world." He also contends that the "Framers did not believe they had established a strict, legalistic process for war making, but rather it was a living, breathing, working document in today's society."\textsuperscript{334} Declaring war was simply an outmoded action of Congress. It meant the power to "proclaim, recognize or publish,"\textsuperscript{335} it did not mean initiate.

In retrospect, the War Powers Act was a completely unnecessary piece of legislation. The war was ending, troops had been pulled out and Congress had lived up to its constitutional mandate to cease funding for military activities in Indochina. So why the need for new legislation? Congress feared a future Vietnam, and congressmen did not learn by looking at the past and correcting what went wrong. The Gulf of Tonkin Resolution was what went wrong. When Congress passed legislation stating "this resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions," and allowing the president "to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression,"\textsuperscript{336} Johnson and then Nixon were given virtually unlimited discretion. Whether or not the intention was good, the legislation was bad. If Congress had fulfilled its responsibilities to debate the resolution, the U.S. role in Vietnam might have been drastically different.

\textsuperscript{334}ibid., 3, 10.

\textsuperscript{335}ibid., 13.

\textsuperscript{336}Gulf of Tonkin Resolution, Public Law 88-408; 78 Stat. 384, 10 August 1964.
“Perhaps a more active role on the part of Congress in the decisions for war might have averted disaster.”

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The Gulf of Tonkin Resolution was a spring-board for the War Powers Act, giving the executive legal justification and precedent to use forces abroad without a declaration from Congress. The intent behind the War Powers legislation might have been good, but that does not make it constitutional. Congress should provide the nation with a diversity of ideas and debate, but the American public did not get that with the Gulf of Tonkin Resolution. Only forty-four minutes of debate in the House and two hours in the Senate did not satisfy this expectation.

Unfortunately, since World War II the United States have had to live in a highly complex and dangerous world. The United States faced weapons of mass destruction in 1964 and an enemy ideology that was frightening to most Americans and politicians. Communism was perceived as a world-wide threat, and most U.S. policymakers deemed it the driving force in South Vietnam. They could not let a country ostensibly yearning to be free, fall under oppression. The fear of twenty years of a Cold War policy affected every aspect of American life, and of course infiltrated the political system.

The Founders may not have predicted how the world would turn out, but they were sure of the way they intended the government of the United States to handle war. It has been a struggle for modern day scholars to decipher the
founder's intentions (if that can even be accomplished). Whether or not scholars believe in an evolving or static Constitution, it is clear that interpretations have changed. Distrust of the executive has faded in favor of placing trust in one man to better deal with the rapidly changing world that included nuclear weapons.

If the nation is willing to place its trust in one individual to plunge the United States into hostilities, then what does that say for the Congress? It is supposed to be the forum of discussion and examination of executive initiation. Congress did neither when considering the Gulf of Tonkin Resolution. Those senators who claimed to have voted for the resolution as only a retaliatory response to the attacks in early August either did not read the legislation or were being disingenuous. According to Pat Holt, the acting staff director of the Senate Foreign Relations Committee, "observed that most Democratic senators accepted the resolution as a measured, moderate response to the alleged provocations in the Gulf." The Tonkin Resolution provided Johnson with an open mandate to fight aggression as long as he deemed it necessary to secure peace and safety in Indochina.

Even with early questioning of the Gulf of Tonkin incidents of August 4, 1964, Congress still failed to respond. It appropriated billions after billions of dollars for the war effort even after public condemnation for the war had swelled to record heights in the late 1960s. The dissent was like a snow ball tumbling downhill, and by 1969, Congress had begun to live up to its responsibilities by halting funds for certain activities in Indochina. That was too late to help the thousands

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of soldiers who had died in an undeclared war. Francis D. Wormuth and Edwin B. Firmage declared that “the Vietnam War was a cooperative action. The President determined whether there should be war, who the enemies should be from time to time, and eventually, whether there should be no war. Congress contributed men and money for the President to use against whatever Indochinese he chose if he should decide to make war; Congress let him free to discontinue war at will. In short, Congress abdicated.”

Several congressmen have said that they opposed the Vietnam War and the direction of United States foreign policy, but they did nothing because our “flag was committed.” They did not want to be associated with failing to support the troops in the field and so most reluctant congressmen fell into line by approving the administration’s supplemental appropriations year after year. Congress then created an avenue for the President to wage limited war on a more general basis without congressional approval by establishing the War Powers Act. Congress was long on talk but short on action.

The actions in early August 1964 and the years leading up to the War Powers Act are instructive. As George Wilhelm Hegel stated, “what experience and history teach is this—that people and governments never have learned anything from history.” The nation has now entered another war in Iraq by way of resolution. In the lead-up to the Iraq War, Secretary of State Colin Powell asserted before the United Nations and the world that the United States government along with its allies, had uncovered connections between al Qaeda

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Wormuth and Firmage, To Chain the Dog of War, 218.
and Saddam Hussein and that Iraq had weapons of mass destruction. Much like the Gulf of Tonkin Gulf incidents, we have learned that those connections made by Colin Powell have so far proved false. When the United States first entered hostilities in Iraq, there was little debate. There was the tendency to rally around the flag and fall in line behind the president to fight what some have called “America’s new Cold War” on terrorism. Dissent has grown in part because of the presidential elections, as was the case in 1968, when Nixon promised to end the war with honor.

The American President has sought congressional approval not for legitimacy, but for “moral authority.” As Bob Woodward explained in his book Plan of Attack, White House Chief of Staff Andrew Card held an Iraq Coordination meeting on September 3, 2002, with other senior advisers to explain that the “President wants to involve Congress because he wants more moral authority in moving forward.” George W. Bush and other presidents have deemed congressional approval secondary to the President’s power of commander in chief, and Bob Woodward called the current resolution to wage war in Iraq “a blank check.” It authorized the President to use U.S. armed forces in Iraq “as he deems to be necessary and appropriate”...while reporting back to Congress “no later than forty-eight hours after exercising authority.”

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341 Ibid., 204.
342 Ibid., 203-04.
The United States claimed that it was in Vietnam to help stabilize democracy and prevent the spread of communism. Not much has changed since then. The United States is in Iraq to prevent the spread of terrorism and stabilize a democracy in the Middle-East. In a chapter of his book, Does America Need a Foreign Policy, former Secretary of State Henry Kissinger said that in talking about Iraq, "the United States and other industrial democracies have a compelling national interest in preventing the region from being dominated by countries whose purposes are inimical to ours." That was the justification for being in South Vietnam. The United States could not let the region fall because it was vital to its national interest.

There are two U.S. Supreme Court cases that have been decided since the War Powers passage in 1973 that might override the constitutionality of the resolution. The first decision decided in 1983 was INS v. Chadha. Here the Court struck down the legislative veto because if "Congress wanted to control the executive branch it had to act not merely by both Houses but in a bill or joint resolution that is presented to the President." The second case was the Court's decision in William J. Clinton, President of the United States v. City of New York (1998), which questioned the legality of the presidential line-item veto. Justice Anthony Kennedy spoke for the majority decision (6-3) in announcing that it was unconstitutional to surrender a power from one branch of government and...
give that power to another branch. "That a congressional cession of power is voluntary does not make it innocuous."\(^{345}\)

Twenty-twenty hindsight is a powerful tool. As Friedrich von Schlegel said, "an historian is a prophet in reverse." From that perspective, one might argue that the War Powers Act is unconstitutional. Congress cannot give up its duties in an effort to legislate new controls over foreign affairs. A new statute, regardless of Senator Eagleton's concerns, was not needed then and it is not needed now. As Timothy Baylan and Glenn A. Phelps stated "Congress has not exercised—and seldom even threatened to exercise—the power of the purse once the President has taken action."\(^{346}\)

For a democracy to exist there needs to be a collective body to deliberate and discuss the possibility of war before entering hostilities. Congress owes the men and women who put their lives on the line the assurance that not only the president, but that the American public have fully debated the reasons for deciding to go to war. As J. William Fulbright said in 1966, "dissent is the higher form of patriotism." Not only must Congress agree, it must agree to disagree. As we have seen again in the past few years, those who dissent in time of war can and often are ostracized by the public and the White House. One can only hope the nation learns from the past and Congress fulfills its responsibilities to debate from beginning to end. The American public deserves at least that much. After


all, the failure of debate over the Gulf of Tonkin crisis led Congress to enact a War Power’s Resolution that actually grants power to the President not present in the Constitution.
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