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# Unilateral executive power: Bush push or congressional cave? An examination of executive-legislative relations during the first term of President George W. Bush, 2001-2004

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Unilateral Executive Power: Bush Push or Congressional Cave?

An Examination of Executive-Legislative Relations During the First Term of President George W. Bush, 2001-2004

(TITLE)

BY

Erika N. Cornelius

THESIS

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
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**Unilateral Executive Power: Bush Push or Congressional  
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Eastern Illinois University  
Political Science Department  
Master's Thesis  
Summer of 2006

## ABSTRACT

The events of September 11<sup>th</sup> once again brought the unique power-sharing relationship between the executive and legislative branches into focus. The framers created the presidency to deal with direct threats to the national security of the United States and in situations such as September 11<sup>th</sup>, American citizens and Congress naturally rally-round the national leader, the president. This thesis examines the interaction between the Bush White House and 107<sup>th</sup> and 108<sup>th</sup> Congress, following the events of September 11<sup>th</sup>.

This study explores the political interplay between Congress and the president in the area of foreign policy, with special emphasis given to war powers and military tribunals. Was the war powers interplay simply "business as usual," following the pattern of executive assertiveness and congressional acquiescence, or did the events of September 11<sup>th</sup> alter the balance of power? The general conclusion is that President Bush's strong approval rating following the terrorist attack, combined with partisan politics and domestic political variables, created a tendency for congressional deference.

## DEDICATION

*This thesis is dedicated to my family for their  
love, encouragement and financial support..*

*Also to myself,  
for my hard work and discipline over the course of a  
beautiful summer.*

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## Introduction

The balance of power between the executive and legislative branches of government has been a recurrent issue of debate in American politics. The very statutory and constitutional structure of our federal government is designed to create legal boundaries for the actions of those institutions, but the desire for political power continually tests those boundaries, often leading to situations where one branch encroaches upon the territory of the other.

Yet, in some circumstances the Constitution appears to welcome conflict. As Fisher (1997) notes, conflict between the branches serves the useful purpose of preventing an accumulation of power and the abuses that arise from unchecked power. Equally important, conflict leads to compromise in the development of public policies that have a broad base of support.

Although the design for our constitutional system of government creates situations of conflict as a result of overlapping powers, the separation of powers principle alludes to the idea that it is possible to clarify the political responsibilities and constitutional authority of each branch. In a search for understanding of the respective roles of the seemingly coequal branches of government, this thesis examines one of the central constitutional conflicts between the president and Congress: foreign policy.

The contest between the president and Congress for a dominant position in the conduct of foreign affairs has been a constant in American history. Presidents since George Washington viewed the Senate as an obstacle to treaty making. Woodrow Wilson struggled with Congress over American membership in the League of Nations. Mounting opposition in Congress partially diminished President Lyndon Johnson's credibility

during the Vietnam War. Even recent presidents such as Ronald Reagan and William Clinton experienced friction with Congress at some point during their years in the White House. Throughout history, an active and aggressive Congress has disagreed sharply with the president over almost every objective and method of foreign policy.

There is one notable exception to this rule. A strong consensus still remains between both executive and legislative branches of government, as well as both political parties, that the executive generally dominates on issues pertaining to war powers and the use of force. As Campbell (2003) observed, the chief executive's capacity to deploy U.S. armed forces and Congress's fear of being perceived as undermining those forces has been a particularly powerful weapon in this regard. When it comes to situations involving war powers or national security, there are countless examples of executive assertiveness and congressional acquiescence.

The events of September 11<sup>th</sup> once again brought this unique relationship between the branches into focus. The framers created the presidency to deal with direct threats to the national security of the United States and in situations such as September 11<sup>th</sup>, American citizens and Congress naturally rally-round the national leader, the president. This bipartisanship initially translated into high rates of legislative success for President George W. Bush, but the strain on both parties soon became evident as the president's "war on terrorism" impeded or overruled the normal partisan agenda that previously divided Congress. This thesis examines the interaction between the Bush White House and 107<sup>th</sup> and 108<sup>th</sup> Congress, following the events of September 11<sup>th</sup>. Was it simply "business as usual," following the pattern of executive assertiveness and congressional acquiescence, or did the events of September 11<sup>th</sup> alter the balance of power? This thesis

examines the political interplay between congress and the president in the area of foreign policy, with special emphasis given to war powers and military tribunals.

With the Republicans taking control of a unified government for the first time since the 1950s, an analysis of war powers in the Bush administration should reveal extremely high levels of presidential support from Congress. The Bush White House has the advantage of not only partisan control of both houses of Congress, but also a national security crisis to bolster the scope of power of the executive. The analysis should reveal little objection from most members of Congress on unilateral assertions of power by the executive and any such objections will most likely be overruled by presidential prerogative.

The first chapter of this thesis provides the reader with a broad discussion of previous literature analyzing the relationship between the president and Congress, with particular attention paid to issues of foreign policy. The basic focus will be on the debate among scholars as to the proper balance of the authority of the two branches in foreign policy and war powers, and the conclusion by most scholars that balance of power consistently tilts in favor of the executive. This chapter also provides a discussion of the methodological approaches used throughout the thesis.

The first analysis of executive-legislative relations under the Bush administration, chapter two, studies the legislative success of President Bush before and after September 11<sup>th</sup> on issues dealing with foreign policy, war powers and the use of force. While this chapter will provide a broad overview of President Bush's first term foreign policy success rate, the following chapters will offer closer examinations of the inter-branch dynamics.

A case study focusing on interplay between Congress and the president in committing troops to a multinational U.N. mission in Haiti is offered in chapter three. This study illustrates that although the president initiated intervention in Haiti at the behest of a few members of Congress, once the decision to commit troops was made he departed from the congressional position on the issue. Special attention is paid to the authority the president cites for the deployment, and the political interplay that ensued during the deployment.

Chapter four looks at the roles of the president and congress in the establishment and administration of military tribunals. While the main topic of the chapter focuses specifically on the constitutional and legal aspects of tribunals, the discussion makes clear that this aspect of war powers can be meaningfully understood in terms of the larger context of separation of powers on foreign policy issues.

The final chapter offers an assessment of the nature and implications of the "invitation to struggle" in regard to the foreign policy of the United States today and in the years ahead. While the president has generally taken the lead in foreign policy, particularly in issues pertaining to war powers, there are also valid reasons to believe that under some circumstances the president and Congress can achieve high levels of cooperation.

## Chapter One

### Literature Review

The debate over which branch should hold the dominant position in U.S. foreign policy stems from two broad views on sources of power: those conferred or implied by the Constitution; and those that are outgrowths of “tradition, precedent, or historical necessity” (Crabb and Holt 1992, 10). Scholars arguing from a historical, Constitutional perspective, generally agree that the Constitution confers substantial foreign policy powers, via checks and balances, to both the legislative and executive branches of government (Sundquist 1981; Mann 1990; Lindsay 1993; Lindsay 2003a; Fisher 2003a). In Federalist No. 75, Hamilton noted that the act of making treaties “will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them” (Kesler and Rossiter 1961, 449). The Constitution itself grants Congress foreign policy and war powers in several clauses, including the power to declare war, raise and support armies, maintain the navy, and “define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations” (U.S. Constitution, Article I, Section 8). These constitutional scholars further suggest that the two branches be viewed as coequal partners in the shaping of foreign policy in areas such as treaty-making and interpretation.

Some scholars also argue that the Constitution actually grants Congress greater power than the President, with respect to authority over foreign policy and war powers. From this perspective, they argue that the Constitution indicates that all uses of force abroad, with the exception of those in self-defense, must be pre-approved by Congress (Ely 1993; Franck 1992; Glennon 1990; Koh 1990; Fisher 2004). Fisher (2004) argues

that the framers were determined to circumscribe the executive's authority to take unilateral military action and that the "duty to repel sudden attacks represents an *emergency* measure that permits the President to take actions necessary to resist sudden attacks" against the mainland and U.S. troops abroad.<sup>1</sup> In other words, the President was never constitutionally granted authority to deploy troops abroad whenever and wherever he thought best.

In addition to inviting debates over the Constitutional provisions of foreign policy powers, the constitutional "invitation to struggle for the privilege of directing American foreign policy" also creates questions of political power and policy (Corwin 1957, 171). Arguing from tradition and observations of the evolving political relationship between the two branches, analysts overwhelmingly concur the president holds the dominant political position over issues of foreign policy, particularly those pertaining to the use of force (Schlesinger 1973; Wildavsky 1975; Edwards 1986; Mann 1990; Crabb and Holt 1992; Hendrickson 2002a; Lindsay 2003b; Kassup 2003; Fisher 2000; 2003a; 2003b; 2004; Schonberg 2004; Bessette 2006; Hess 2006). Some authors attribute the beginnings of the recent decline of the congressional political role in foreign policy to the perceived political necessity of resisting the Soviet Union, which they believed required not only the resistance of Communist expansion, but also strong presidential leadership (Crabb and Holt 1992; Lindsay 2003a). Throughout the 1950s and 1960s congressional actors grew more deferential, opening the door to the "imperial presidency" (Schlesinger 1973; Lindsay 2003b). Sundquist (1981) noted that members of Congress were "stumbling over each other" to vocally support bold presidential foreign policy decisions (125).

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<sup>1</sup> Emphasis added.



Hendrickson (2002a) observed that U.S. agreements to participate in the United Nations and the North Atlantic Treaty Organization (NATO) have also led to presidential claims of authority as “commander in chief.” Since the Truman administration, some members of Congress have implicitly and in other cases explicitly recognized actions under the U.N. Security Council as “police action” that do not require congressional approval (Hendrickson 2002a, 4; Franck and Patel 1991). Franck and Patel (1991) argue the U.N. Security Council is an internationally empowered institution that has the ability to quickly respond to international policing needs and that this type of institution represents the “new” form of international responsive action. In line with moving away from the “old,” they then infer that the president does not require congressional approval for uses of force under the United Nations.

Although this view may have later become political practice, congressional records of debates surrounding American membership in the United Nations certainly do not indicate congressional willingness to automatically defer authority. Originally, Congress intended to play a significant role in the decision to commit troops to missions under the banner of the United Nations or any international organization. During World War II, Congress understood the importance of an international organization that would promote international conflict resolution through peaceful means (Fisher 1999) and in 1943, both houses worked to support resolutions for membership in such an organization. Yet, resolutions for membership would only pass if they included certain provisions assuring congressional involvement in decisions to use force abroad (Hendrickson 2002a, 8).

Congress reinforced this understanding of their responsibilities, in decisions to participate in UN military operations, by passing the United Nations Participation Act in 1945. Section six of the Act states:

“The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with Article 43 of said Charter” (Use of Armed Forces, Dec. 20, 1945, 59 Stat. 621).

The President could commit armed forces to the United Nations only after Congress gave its explicit consent. In practice, however, Article 43 agreements with the UN have never been negotiated under the United Nations Participation Act. With the exception of participation in the Gulf War in 1991, Congress has allowed American participation in U.N. military operations without ever granting specific authorization.

This view of presidential war ‘empowerment’ has become accepted as part of the operative norm of the foreign policy process. In regard to deployment during the first Persian Gulf War, the Secretary of Defense and now current Vice President, Richard Cheney noted, “I do not believe the president requires any additional authority from Congress...Of the more than two hundred occasions in American history when the presidents have committed U.S. military force, on only five of those occasions was there a prior declaration of war” (quoted in Hendrickson, 2002a, 4). Hendrickson also noted

that former President George H.W. Bush shared a similar philosophy of presidential power, and went to Congress to “request” approval while still maintaining that he was not required by the Constitution or the War Power Resolution to do so (4). Further emphasizing his point, the elder President Bush noted:

“As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President’s constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution” (Bush, January 14, 1991: 40).

Yet, the pendulum of war powers authority has not always swung dramatically in favor of the president. During the 1970s Congress attempted to reassert its role in foreign policy, particularly in the use of military force abroad (Manley 1971; Sundquist 1981; Katzmann 1990; Mann 1990; Meernik 1995; Lindsay 2003a). In 1973, Congress passed the War Powers Resolution (WPR) “to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities” (93). It placed several limitations on the president’s ability to deploy troops abroad, including restricting presidentially initiated uses of force to a national emergency, a declaration of war by Congress, or statutory approval by Congress. Every other circumstance of force including the use of U.S. troops fell under the jurisdiction of the WPR. In addition, the WPR requires the president to “consult” with Congress before and after the deployment of troops, to ensure Congress is informed at all times.

Following Congress's dramatic attempt to reassert itself, war powers scholars began frequently noting congressional positions on foreign policy and many believed Congress could play both an active and constructive role in foreign policy making in the future (Franck and Weisband 1979; Destler 1985; Meernik 1995). Despite this initial optimism, most scholarship written on the War Powers Resolution has labeled it as a failure. Presidents have never acknowledged the WPR's constitutionality and have consistently ignored its terms (Yoo 2005). This is partially attributed to Congress's unwillingness to invoke the provisions (Hendrickson 2002a; Boylan and Phelps 2001; Fisher and Adler 1998) but also the vagueness of the language of resolution, including often debated terms such as "consultation" and "hostilities" (Katzmann 1990; Fisher 2004). Scholars now characterize this as a standing pattern: the president has taken the primary role in deciding when and how to initiate hostilities while "Congress has allowed the executive branch to assume the leadership and initiative in war, and has chosen for itself the role of approving military actions after the fact by declarations of support and by appropriations" (Yoo 2005, 13). Koh (1990) describes the process as "executive initiative, congressional acquiescence, and judicial tolerance" (117).

Following the WPR scholars, other researchers approached the question of presidential war power and congressional acquiescence from a different perspective. They argue instead that the extent of presidential influence over congress ends with issues of foreign policy, and maintain that there is very little evidence that the president has any influence on domestic issues (Kingdon 1981; Matthews and Stimson 1975; Wildavsky 1975). Wildavsky (1966) argued that "Since World War II, presidents have had much greater success in controlling the nation's defense and foreign policies than in

dominating its domestic policies” (7). In domestic affairs, presidents are sometimes frustrated by congressional resistance, but foreign affairs have historically been a presidential “preserve” (Sigelman 1979). If this is true, several other questions arise from this research: has the tendency for greater success on foreign policy changed over time, does it occur to the same extent in both the House and Senate, and what are the sources of additional support that lead to more victories on foreign policy? In other words, does the president receive more support from members of both parties on foreign policy, or does the additional support come only from members of his party or from members of the opposition?

Wildavsky revisited his thesis in 1975, in an attempt to answer at least some of the above. He argued that the presidency has become even “more powerful vis-à-vis institutional competitors”: “Presidents remain preeminent in foreign and defense policy...In the backwash of Watergate, it has become all too easy to imagine a weakening of the presidency. Not so...The weakening of the presidency is about as likely as the withering away of the state” (57-58). Peppers (1975), a former student of Wildavsky, reexamined the two-presidencies thesis and suggested instead that the theory may have “lost something” as a result of Vietnam, Watergate, and the blurring of the distinction between domestic and foreign affairs that has been caused by the increasingly economic emphasis of American foreign policy” (57-58).

The debate between subscribers and opponents of the “two presidencies” theory also largely lies in the different methodological approaches the studies employ in their measures of success (Pritchard 1983; Edwards 1985; Bond and Fleisher 1988). George Edwards (1985) responded to the various methodological criticisms by offering and

analyzing four alternative approaches to studying presidential-congressional relations. Previous empirical measures have included the use of boxscores, Key Votes, and individual presidential support scores (Wildavsky 1966; Sigelman 1979; Bond and Fleisher 1988). Although each of the measures offers different insights into presidential success, none is able to singularly address questions arising from the Wildavsky thesis. Edwards (1985) concludes by suggesting that “using more than one measure...increases the probability of our understanding presidential influence” and therefore creates a more comprehensive view of the legislative relationship between the president and Congress (673-675).

Researchers from both the two presidencies and the WPR schools agreed that by the 1980s there was a decline in congressional assertiveness once again. These scholars eventually began to note “much of the bloom had left the congressional rose” as the executive regained much of the influence over foreign policy decisions and the use of force abroad (Destler 1985, 344). While some authors began speculating the ultimate demise of Congress’ role in foreign policy once again, other scholars noted that the presidency of Ronald Reagan saw a slight resurgence of congressional involvement, and small battles occurred between the two branches over issues of aid to the contras, war powers, trade, and congressional “micromanagement” of the conduct of foreign policy (Mann 1990, 1). It has also been observed that William Clinton faced similar political battles with Congress over the American troop presence in Somalia in 1993, slashed foreign aid, and refusal of fast-track trade agreements (Lindsay 2003b). Other scholars argued that as a result of the interplay over war powers during the Clinton administration the balance of presidential war continued to “tilt” in favor of the presidency during the

eight years President Clinton was in office (Hendrickson 2002a). Hendrickson also concluded that a combination of individual actors, partisan politics, and domestic factors all contributed to the continued presidential unilateralism and congressional deference under President Clinton. Philip Trimble (1995) argued that uses of force under the Clinton administration confirm the President's constitutional authority to use force without prior congressional authorization. In February of 1998, President Clinton claimed his powers as Commander in Chief gave him the discretion "to use armed forces to protect our national interests," a "breathtaking" interpretation of the law according to Fisher (1998, 795).

Whether or not the conflicts over war powers are the result of activities of either branch, scholars have also characterized these new executive-legislative clashes entailed a new pattern of foreign policy "dealing." Lindsay (2003b) suggests, "the public's diminished interest in foreign affairs after the collapse of the Soviet Union also encouraged [Congress] to cater to groups with narrow but intense preferences on foreign policy" (533). Thus many scholars, as well as members of Congress, noted "the franchising of foreign policy" to interest groups that began occurring in Congress during the 1990s; Lindsay 2003b; Carter 2001).

This is not say that Congress is entirely to blame for its limited and selective role in foreign policy, particularly the use of military force abroad. Throughout history, presidents have taken executive liberties during wartime, even peacetime, that were later deemed to be excessive and even unconstitutional. Kassop (2003) observes that history is replete with examples of presidents using "their tools-declarations of emergency,

commander-in-chief designation, executive orders, the bully pulpit, and broad delegations of power from Congress-to facilitate” the enlargement of presidential war powers (511).

War powers scholars who have followed the activities of the current administration under George W. Bush maintain that his presidency is no exception, and argue that the new methods of waging war are “the latest in a decades-long series of steps away from the constitutional balance of war-making powers” (Schonberg 2004, 115; Kassop 2003; Fisher 2003b; Lindsay 2003b). These scholars attribute this constitutional balance of powers erosion not only to presidential willingness to gain power, but also acquiescence on the part of Congress and encouragement of an emotional public.

In regard to the former, Sinclair (2004) attributes the growing imbalance of power between the executive and legislative branches to presidential prerogative. She observed that Bush and his then vice-presidential running mate Richard Cheney made it absolutely clear from the beginning in 2000, even throughout campaigning, that they intended to reassert executive authority in relation to Congress. In support of Sinclair, Aberbach (2004) argues that “the clearly articulated goal of the Bush administration is to enhance presidential powers” (58). White House council has even been cited announcing, “The framers of the Constitution, I think, intended there to be a strong presidency in order to carry out certain functions, and [President Bush] feels an obligation to leave the office in better shape than when he came in” (quoted in Aberbach 2004, 58).

In addition, these same authors noted the president’s willingness to use Executive Orders to accomplish administration goals. One of the most important executive orders issued under President Bush’s first term allowed the government to use military tribunals to try noncitizens charged with acts of terror. Aberbach (2004) observes that “Bush’s



order...covers any noncitizen in an open-ended war without a named national opponent” (63). Author of one of the more extensive works on military tribunals, Fisher (2005) argues the executive order clearly oversteps boundaries and safeguards established by the Constitution, separation of powers, and judicial review. In his view, the order clearly appears to be an inappropriate use of presidential.

In addition to a presidential agenda set on reclaiming executive power, Bush has been supported and partially enabled by public approval. Lindsay (2003b) notes that the impact of September 11<sup>th</sup> on American public opinion almost doubled Bush’s polling numbers, which continued to remain high even a year after the attacks (537). Schonberg (2004) writes that the War on Terror is “only the latest in a series of presidential wars, which have been both the cause and the effect of a steadily growing willingness of Americans and their elected representatives to accept that the president can determine unilaterally when, where, who, and how the nation will fight” (123). These shifts in public opinion were also felt deeply by Congress (Lindsay 2003b; Kassop 2003). Congressional Democrats who were bold enough to question the president’s policy publicly were chastised by Republicans for trying to “divide our country” and accused of “giving aid and comfort to our enemies” (Lindsay 2003b). As a result, all but one member of Congress voted to give the president the authority to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons” (Authorization for Use of Military Force, September 18, 2001). In other words, it is maintained that Congress wrote the president a blank check to wage war on anyone he deemed an enemy.

Kassop (2003) observed that the antiterrorism policies resulting from congressional approval of the Authorization for Use of Military Force (AUMF) in 2001, as well as the USA PATRIOT Act in 2001 and the AUMF against Iraq in 2002, have “created a blurring of distinctions between military action and law enforcement...rejected judicial oversight ...and manifested a disregard for Congress, or manipulated it when it suits the president’s needs” (511). In sum, scholars such as Kassop argue this policy of centralization of policy-making power under the president has “drained” the authority from the other two branches of government.

Those scholars searching for some sense of justification for the president’s actions have deemed the situation a “politically declared but legally undeclared war” (Risen and Johnston 2002; Kassop 2003). President Bush, in the same token, continually reminds America that “It’s a different kind of war. It’s a war that is not measured by the destruction of tanks, or ships, or aircraft, because we’re fighting a different kind of enemy. This is a war that is measured in terms of killers caught” (Bush, September 19, 2002, 1585). By characterizing the “War on Terror” and the events of September 11<sup>th</sup> as an “act of war,” Bush classified himself as a “wartime president” and sought the authority that “flows to presidents during such periods” (Kassop 2003, 509). Even short of war, the use of military force abroad tends to increase a president’s ability to pursue policy objectives (Blechman and Kaplan 1978; Stoll 1987).

In contrast to scholars criticizing this type of approach to governance, Yoo (2005) argues that the constitutional text, structure, and history actually lead to an interpretation in favor of expanded presidential power. He argues for an alternative approach to interpreting the Constitutional powers, based on British roots and the Articles of

Confederation, which creates a less rigid philosophy of interbranch cooperation (Yoo 1996; 2005). Specifically, he asserts that the “Constitution does not require a single, correct method for making war or peace, for making international agreements or breaking them, or for interpreting and enforcing international law” (2005, viii).

Other scholars writing in support of Yoo’s position look to the pragmatic aspect of having a president with strong authority over war powers. In his study of Clinton’s decision to use force in Haiti, Trimble (1995) concludes that small-scale deployments, such as Panama, Grenada, and Haiti, are governed by a separate precedent of authorization than larger deployments such as Korea, Vietnam, and Iraq and that “important democratic values can actually be served by placing constitutional authority to use limited military force in the hands of the President” (Trimble 1995, 87).

Scholars responding to these same arguments in Yoo’s previously published work, claim his constitutional interpretation contradicts records from the ratifying convention, the state ratification debates and the Constitution itself (Fisher 2000; Adler 1996). Although these authors may refute his Constitutional findings, Yoo (2005: 19-20) further argues that scholars should “classify the conduct and control of foreign policy as inherently ‘executive’ in nature do to practice and function” and that the international global system demands management of foreign affairs by a single “unitary, rational actor”. While this interpretation may be not be accepted by ‘mainstream’ war powers and constitutional scholars, Yoo certainly does raise interesting points relevant to modern debates over war powers and presidential authority to use force abroad.

While many of the authors noted above resurrected interesting questions about the balance of power post September 11<sup>th</sup>, this study seeks to create a more comprehensive

understanding of the executive-legislative relationship between George W. Bush and the 107<sup>th</sup>-108<sup>th</sup> Congress. As Hendrickson (2002a) noted, with a new understanding of terrorism and the development of a new concept of “war,” “there is a renewed necessity to understand United States’ policy-making process on the use of force abroad and the constitutional requirements surrounding war powers” (xv).

## Methodology

The research methodology for this thesis includes a logistic regression model in chapter two, followed by two case studies of war powers issues in President George W. Bush's first term. Specifically, the thesis attempts to capture the interplay between the branches to determine how competitive or cooperative the relationship was when it came to war powers between President Bush and the 107<sup>th</sup>-108<sup>th</sup> Congress. The first chapter will incorporate both quantitative and qualitative data to achieve the task of assessing President Bush's foreign policy legislative success from 2001-2004. Using the *Congressional Quarterly Almanac*, this research will examine Presidential Support and Opposition scores and Presidential Position Roll-Call votes on foreign policy issues for both houses of the 107<sup>th</sup> and 108<sup>th</sup> congressional sessions to analyze President Bush's overall success rate, as well as the partisan or bipartisan base for that support. Greater detail of the binary logistic regression and variables incorporated in the analysis will be discussed in chapter two.

Chapters three and four utilize case studies to examine the congressional-executive interplay. The use of case studies in international relations research, as well as American foreign policy studies, is an effective way of filling in the gaps of the policy process not covered by theoretical models alone (Carter 2005). Case studies can incorporate either qualitative or quantitative data from sources such as fieldwork, archival data, verbal reports, observations, among other sources of data (Yin 1981). George and Bennett (2005) argue that case studies are methodologically strong in four areas: conceptual validity, deriving new hypotheses, exploring causal mechanisms, and modeling and assessing complex cause relations. Within a single case, researchers are

able to “look at a large number of intervening variables and inductively observe any unexpected aspects of the operation of a particular causal mechanism or help identify what conditions present in a case activate the causal mechanism (George and Bennett, 2005, 21). In other words, case studies allow researchers to identify and measure concepts that are difficult to measure in statistical studies, such as “democracy” or “power” and further allow researchers to identify deviant and intervening causal relationships. Not only do case studies provide insight into the human dimensions of policy-making, but scholars such as Levy (1989) argue that they provide a methodological advantage for a “more focused analysis of war” (284). Although he was writing about potential diversionary uses of force at the time, Levy’s findings also pertain to general forms of troop deployment and uses of force abroad. As Hendrickson (2002b) notes “a case study of the use of force allows for a close analysis of the decision-making process, the actual conditions surrounding the military action, and the reaction from Congress and abroad, which is not always available by other means” (311).

The case studies selected for this research were chosen to illustrate an important aspect of executive-legislative relations, specifically, the importance of domestic factors in the war powers interplay. The first case study, chapter three, will include a qualitative analysis of the war powers interplay surrounding President Bush’s decision to deploy U.S. troops to Haiti in 2004. The analytical framework of Hendrickson’s (2002a; 2002b) case studies will guide this research. In addition, this thesis will attempt to assess war powers in the Bush administration from three “structured, focused” perspectives (George 1979): the constitutional sources cited by the President for his commitment of troops to Haiti and the UN mission; congressional deference or reassertion of war powers during

the Bush administration's deployment; and domestic political variables affecting the war powers interplay between the two branches. For data, this chapter will rely on the *Congressional Record*, any relevant Congressional committee hearings, *Congressional Quarterly Weekly*, the *Public Papers of the President* and any relevant journalistic accounts. In addition, war powers analysts have not yet examined the political interplay between Congress and the President over this deployment, which makes it ripe for analysis.

Chapter four, the second case study, will examine the constitutionality of military tribunals created by President Bush's Military Order in 2001, operating under the supervision of the United States exclusively. As in chapter three, the analytical framework of this case study consists of a two part "structured, focused" (George 1979) analysis of President Bush's actions: an analysis of the documents cited by President Bush for legal authority for the Military Order, an analysis of the constitutional and political interplay between Congress and the President over the establishment of the military tribunals, and potential intervening domestic political variables.

For the purposes of this thesis, the term "military tribunals" is used to describe the military trials referred to as "military commissions" by the Bush administration. The two terms are used in reference to the same form of military trial, although each phrase carries a separate connotation. Most scholars analyzing the legal aspects of the trials refer to them as "military tribunals" and the clearest explanation for the argument over terminology is captured by Fisher (2005):

"I regard the two terms as interchangeable, although in some cases persuasive reasons can be offered in favor of *commission*. However, *tribunal* seems to me to

clearly carry the meaning of a court, capable of issuing binding decisions. In contrast, a *commission* is often a study body, authorized to submit recommendations but lacking authority to do more” (xiii).

It is also important to understand the reference to the phrase military *tribunal* for the purpose of later discussions of the constitutional authority to establish them in this research. Although it will be discussed in greater depth in chapter four, the constitutional reference to congressional war powers includes the relevant phrase “to constitute *Tribunals* inferior to the supreme Court” (U.S. Constitution, Article I, Section 8).<sup>2</sup>

In addition, because the focus of this research is primarily executive-legislative power relationships, commentary on the extent of protected civil rights and liberties in the tribunals trials will be excluded to narrow the analysis. Instead of assessing the military tribunals from the position of civil libertarians, this work will take the unique position of evaluating President Bush’s action in the context of presidential and congressional authority in times of “war.”

This case study will begin by analyzing the sources cited by the Military Order, the Authorization for Use of Military Force Joint Resolution, and sections 821 and 836 of the Uniform Code of Military Justice, as well as statements from the *Public Papers of the President*, *Weekly Compilation of Presidential Documents*, and the *Congressional Record*. These documents, as well as opinions by U.S. Supreme Court justices in prior opinions pertaining to military tribunals, will be examined to determine how they impacted the interplay between Congress and the president.

Limitations that apply to this research are similar to those that apply to case studies in general. Frequent criticisms of case study methodology are that its dependence



on a single case renders it incapable of providing a generalizing conclusion. Researchers may also engage in case selection bias, and there is potential inability to distinguish between competing explanations (George and Bennet 2005, 23-31). It could also be argued that case studies can become too overwhelmed by detail and are too historical (George 1979).

Yet, this thesis can overcome some of these potential short-comings through its incorporation of both statistical and case study methodology, which utilize two different methodological perspectives of the executive-legislative relationship. Yin (1993) notes that an analytical model can provide direction to a case study, and if employed well, perhaps can be useful in theory development and replication in future studies. In this case, following the method of previous research (Hendrickson 2002a; 2002b; George and Bennett 2005), this thesis will utilize a systematic framework for analyzing the two case studies. Overall, the advantages that case studies provide to this type of research through the incorporation of deviating causes and ability to expand the research to develop new hypotheses lead to a positive trade-off for the overall strength of this thesis.

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<sup>2</sup> Emphasis added.

## **Chapter Two**

### **Foreign Policy Roll-Call Analysis**

This chapter analyzes executive-legislative interplay over foreign policy legislation under the Bush administration, before and after the terrorist attacks on September 11, 2001. Its purpose is to provide a broad overview of the executive-legislative interplay on the variety of foreign policy issues considered in Congress, the success of President Bush in achieving congressional support for his position, and an alternate perspective of the dynamics between the two branches in forming policy pertaining to international issues and war powers. Finally, the chapter concludes with a discussion of advantages and disadvantages to this approach, as well as potential areas of further research for studying the interplay between the executive and Congress.

### **Presidential Support and Legislative Roll-Call Votes**

Congressional voting behavior provides insight into a variety of perspectives on the congressional-executive foreign policy-making process. To review briefly, the “two presidencies” thesis argues that congressional support for presidents will be higher on foreign than on domestic policy roll-call votes, because of informational advantages, the rapidity of international developments, and the lack of centralized congressional control (Wildavsky 1966). There have also been more recent studies of bipartisanship in Congress on foreign policy matters, which explore how factors such as party, ideology, the international environment, and domestic conditions affect the tendency of majority parties to support presidents on foreign policy votes (McCormick and Wittkopf 1990, 1992; Meernik 1993). Since the focus of this research is solely on foreign policy matters,

no claims will be made regarding the relative levels of support presidents obtain on domestic and foreign policy. Instead, the votes in this chapter focus solely on the president's leadership as commander in chief.

In addition to the works noted above, several authors study the affects of external influences on interbranch cooperation. As established earlier, scholars have observed that no single type of event rallies members of Congress under the presidential banner more than war. At few other times is the nation's security more significant to legislators and their constituents. Even short of war, the use of military force abroad tends to increase a president's ability to pursue policy objectives (Blechman and Kaplan 1978; Stoll 1987). This chapter will attempt to not only account for "internal" influences on the legislative relations, such as party identification and ideology, but also external influences such as periods of conflict and presidential popularity. Inclusion of both categories in this research will create a multi-dimensional approach to analyzing the success of presidential supported or opposed foreign policy and a more comprehensive explanation of why that position is or is not met with support by both houses and members of Congress.

### **Methodology**

For this research, legislator voting behavior on roll calls is used to measure legislator policy preferences. Foreign policy issues are divided into three categories: (1) national security and the use of force abroad, as well as appropriations for such deployments, (2) trade, international agreements, and participation and funding of international organizations and (3) one broad category of foreign policy incorporating both of the above. By separating the policies into the initial two categories for separate

analysis, the researcher can then measure support for presidential foreign policy and internationalism separate from the president's leadership as commander in chief. Those votes classified as relating to "war powers" involve authorization for presidential deployment of troops abroad, funding of those troops, and issues where the president has declared his authority based upon his perceived constitutional powers as Commander-in-Chief of the armed forces. These categorical divisions will allow the research to not only measure the president's overall foreign policy success, but also create a comparative aspect to illustrate how the legislative relationship differs on matters involving the use of military force.

The selection of roll-call votes is based on an issue coding scheme developed by Rohde (1991). Descriptions by *Congressional Quarterly Almanac* of every roll-call vote in the House of Representatives and Senate were examined and each roll call was assigned a specific issue code. This approach is similar to that used by Shull (1997, 34). The advantage of using the Rohde system lies in the ability to not only distinguish foreign policy votes clearly from domestic votes, but also foreign policy from defense policy (Meernik and Oldmixon, 2004, 455), which is helpful in creating the two category distinction mentioned above.

As an additional note on the selection of roll-call votes to be analyzed, many studies incorporate or limit analysis to "key votes." *Congressional Quarterly* identifies "key votes" as a vote that is one or more of the following: (1) a matter of major controversy; (2) a test of presidential or political power; (3) a decision of potentially great impact on the nation and lives of Americans (Edwards 1985, 673). The limitation of using "Key Votes" is the small number available each year. Furthermore, the president

does not express an opinion on all “Key Votes” which reduces the number even more. This small ‘n’ does create potential problems, such as the possibility of distorted success rates, although it does allow researchers to avoid “characterizing executive-legislative relations on the basis of a series of trivial roll calls” (Sigelman 1979, 1199).

However, it is important to remember that this analysis focuses on those votes where the president clearly expressed a preference regarding the outcome, as determined by *Congressional Quarterly Almanac*. This is important for two reasons: (1) the goal of the research is to explain fluctuations in congressional support for the president’s position which would be difficult to measure without information on the president’s preferences and (2) this allows the research to focus on the most important roll-call votes on these issues. Scholars who previously researched on similar topics in the field generally agree that “when the chief foreign policymaker expresses a preference, we can generally assume the outcome will have important consequences for U.S. foreign policy” (Meernik and Oldmoxin, 2004, 455). This qualification, in conjunction with careful analysis of each roll-call studied, will help create a more comprehensive understanding of each roll-call in the broader foreign policy picture. With such a narrowly focused analysis, reduction of the number of votes to “key votes,” rather than incorporation of all, is a larger methodological sacrifice toward the goal of the chapter.

After the roll-call votes are identified, it is determined whether a “yea” or “nay” vote is in support of the president’s position. Roll-calls missing legislator votes and votes of ‘present’ are excluded from the analysis, as they express no explicit support or opposition to the president’s position. Independent variables included in the analysis are

party identification, ideology, and presidential popularity. Party identification is a three category variable labeled as 'Republican,' 'Democrat,' or 'Other.'

Ideology is based on Poole and Rosenthal W-Nominate Scores from the 107<sup>th</sup> and 108<sup>th</sup> Congress.<sup>1</sup> These scholars use a nominal three-step estimation procedure, called NOMINATE, to produce a measure of each member's general political orientation based on individual positions in a "spatial" dimension (Poole and Rosenthal 1997). These scores are preferred over interest group ideology scores, because while interest group ideology scores are based on a few observations selected by potentially biased groups, NOMINATE data is based on Nonunanimous roll calls and contains no political bias (Krutz, 2005, 320). While the DW-NOMINATE scores look at the position of each legislator as compared across time, the W-NOMINATE scores are useful for looking at the legislators in comparison with one another "in space" (Krutz, 2005, 320) and will therefore be more relevant for the analysis at hand. For presidential popularity, presidential approval ratings from Gallup poll data on the percentage of the public approving of the president's job performance in the month prior to the congressional roll-call votes is used.<sup>2</sup>

### **Analysis**

In all, 45 presidential support votes were analyzed in the House and 34 votes in the Senate for years 2001-2004. Of the 45 votes considered for the House, 15 were categorized as defense, 11 as foreign affairs, 4 as foreign aid, 12 as trade, 6 as war powers related, and 1 as other. For the Senate, 10 votes were considered pertaining to

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<sup>1</sup> NOMINATE data are available from Poole and Rosenthal at <http://hss.cmu.edu/departments/sds>.

<sup>2</sup> Gallup poll data are available at <http://roperweb.ropercenter.uconn.edu/>.

defense, 7 as foreign affairs, 15 as trade, 8 as war powers, and 2 as other. Overall, the president was supported by the House of Representatives on a total of 31 foreign policy votes, or 68.9 percent of the time, and on 28 foreign policy votes in the Senate, or 82.4 percent of the time. Tables I and II provide descriptive statistics on the measures used in the model.

**Table I**  
**Descriptive Statistics for House of Representatives, 2001-2004**

107 <sup>th</sup> House of Representatives					108 <sup>th</sup> House of Representatives				
Variable	Mean	Std. Dev.	Min	Max	Variable	Mean	Std. Dev.	Min	Max
Pres. Popularity	65.57	8.489	53	82	Pres. Popularity	56.17	6.863	49	69
Pres. Victory/Defeat	.71	.463	0	1	Pres. Victory/Defeat	.67	.482	0	1
Party Identification	.52	.518	0	2	Party Identification	.53	.504	0	2
Ideology	.149	.611	-.989	.984	Ideology	.0732	.601	-.997	.927

N = 45

**Table II**  
**Descriptive Statistics for Senate, 2001-2004**

107 <sup>th</sup> Senate					108 <sup>th</sup> Senate				
Variable	Mean	Std. Dev.	Min	Max	Variable	Mean	Std. Dev.	Min	Max
Pres. Popularity	63.53	11.42	49	90	Pres. Popularity	63.53	11.42	49	90
Pres. Victory/Defeat	.82	.387	0	1	Pres. Victory/Defeat	.82	.387	0	1
Party Identification	.52	.541	0	2	Party Identification	.53	.521	0	2
Ideology	-.056	.683	-1.00	.968	Ideology	.019	.781	-1.00	.999

N = 34

The descriptive measures show that the ideology of the House was slightly more liberal during the 108<sup>th</sup> Congress, while the Senate ideology grew slightly more conservative in the second session examined. These findings on the ideological orientation of each chamber could suggest that ideology may play a strong role in presidential support when

comparing both sessions of each chamber, which may also help explain the higher level of foreign policy support from the Senate.

Prior to analyzing the individual votes and foreign policy categories, correlation tests were used to determine if a relationship between presidential popularity and policy victory for the president in either house was significant. Pearson correlation tests revealed no significant relationship between presidential popularity and victory or defeat for either chamber of Congress during all four years. This finding is particularly interesting given the rally-round-the-flag tendencies of the American public following events such as September 11<sup>th</sup>. What momentum the president gained following the terrorist attack may have been “short-lived” or shortly overruled by normal ideological and partisan policy preferences, as suggested by Campbell (2003).

Following correlation tests of popularity and legislative victory, logit analysis was used to generate the estimates for the voting model. Logistic regression is designed to analyze the relationship between an interval-level independent variable and a binary dependent variable, and is therefore appropriate for this form of voting analysis. In the cases at hand, logistic regression will provide R-square type measures, giving an idea of the strength of the relationship between party identification and ideology of each congressional member, and the likelihood of support for the president’s position on foreign policy roll call votes. As a precaution, Pearson correlation tests were used to determine if multicollinearity was significant between the variables of Ideology and Party Identification. The results indicated that slight multicollinearity developed from 2003-2004 in the Senate, and in 2004 in the House of Representatives. The strengthening ideological positions of the congressional members could have resulted from the



upcoming 2004 elections and growing congressional confidence as a result of President Bush's slowly falling poll numbers, according to Gallup polling results. However, the level of significance was between 90-95 percent, and therefore not viewed as dramatically altering the results of the analysis. The model used for testing support in both houses appears to have moderate predictive success for all four years of each session examined. In the House, the model correctly predicted all but two of the votes examined, or 95 percent. One potential explanation for why some of the models had weaker predictive power is imbalance of the voting record. Logistic regression becomes more unstable under conditions when the vote is 75-25 or higher and tends to have better predictive success with closer votes.

Those votes not fitting the model were roll-call 334 and 381 of the House of Representatives 108<sup>th</sup> congressional session. Roll-call 334, a bill allowing for appropriations for the Department of Defense for the fiscal year 2004, was defeated July 8, 2003 by a vote of 57-358. Although the president was against this initial vote, the bill was later passed on roll-call 335 and signed into law by the president in September of 2003. The other roll-call in question, number 381, made appropriations for foreign operations, export financing, and related programs. Again, in line with the presidential position, the bill was defeated July 15, 2004 by a vote of 131-287. However, following this vote, the bill was passed in the House on roll-call 390 and eventually signed into law by the president in December of 2004.

For the Senate chamber, the model had varied success for each year analyzed. In the first session of the 107<sup>th</sup> Senate and the second session of the 108<sup>th</sup> Senate the model was not a successful predictor for any of the foreign policy votes analyzed, while in the

second session of the 107<sup>th</sup> and first session of the 108<sup>th</sup> the model proved moderately accurate, with the exception of only two votes. Again, this may be attributed to the number of votes that were nearly unanimous and the effect this has on predictive success of the model. Table III displays the votes that the political identification and ideology were unable to correctly predict and the categories applicable to each.

**Table III**  
**Votes Not Predicted by Internal Congress Model, 2001-2004**

107 <sup>th</sup> Senate				108 <sup>th</sup> Senate			
	Cat.	Pres. Pos.	Vote		Cat.	Pres. Pos.	Vote
Roll Call				Roll Call			
276 International Law	Other	Y	(34-58)	43 Arms Treaty	ForAf	Y	(95-0)
281 Use of Force	WP	Y	(98-0)	142 NATO Treaty	ForAf	Y	(96-0)
291 Vietnam	Trade	Y	(88-12)	98 Base Closings	Def	N	(47-49)
				156 Australia	Trade	Y	(80-16)
				159 Morocco	Trade	Y	(85-13)
				216 Intelligence Overhaul	Def	Y	(89-2)

N = 9

Although ideology and party identification were unable to predict success of the presidential position, it is interesting that the president was supported on all but one of the above votes. This would suggest that the president's foreign policy success in the Senate, to some degree, is not always reliant on partisan support. This supposition is further supported by the overwhelming majority of votes the president earned on seven of the nine votes listed above.

While the above data has allowed this research to examine the overall policy success of the president, the main intention is to compare war powers foreign policy initiatives to those of trade, foreign aid, and normal foreign affairs. Table IV indicates the success of the president and support received relative to each categorical division.

**Table IV**  
**Foreign Policy Votes by Category, 2001-2004**

107 <sup>th</sup> -108 <sup>th</sup> House of Representatives				107 <sup>th</sup> -108 <sup>th</sup> Senate			
Category	N	Victory	Defeat	Category	N	Victory	Defeat
Foreign Affairs	11	6	5	Foreign Affairs	7	4	3
Trade	12	10	2	Trade	15	14	1
Foreign Aid	4	3	1	Foreign Aid	-	-	-
Defense	17	12	5	Defense	10	8	2
War Powers	5	4	1	War Powers	6	4	2
Other	1	-	1	Other	2	2	-

House of Representatives, N = 45; Senate, N = 34. Categorical voting totals do not necessarily add up to the N of votes examined for each chamber, because some votes were considered to fall within more than one category. For example, CQ Almanac qualifies roll-call votes pertaining to the use of force against Iraq as “defense” votes, where for the purposes of this analysis that vote is also considered a “war powers” issue.

Of the 45 votes considered for the House, 17 were categorized as defense, 11 as foreign affairs, 4 as foreign aid, 12 as trade, 5 as war powers related, and 1 as other. For the Senate, out of 34 votes 10 were considered pertaining to defense, 7 as foreign affairs, 15 as trade, 6 as war powers, and 2 as other. Again, those votes classified as relating to “war powers” involve authorization for presidential deployment of troops abroad, funding of those troops and issues where the president has declared his authority based upon constitutional powers as Commander-in-Chief of the armed forces. Of those votes classified as “war powers,” the president was supported on 4 votes in the House, or 80 percent of the time, and 4 votes in the Senate, or 67 percent of the time. These percentages indicate slightly higher support from the House and lower support from the Senate on war powers issues than on general matters of foreign policy. Overall we see generally high support for the president on just about every foreign policy issue.

Furthermore, of the cumulative 11 war powers related votes in both houses, the ideology and party identification model successfully predicted voting behavior on all

with the exception of one: roll-call 281 authorizing the use of force against suspected terrorists following September 11<sup>th</sup>. Based upon the evidence of this model and success rates above, it could be concluded that on legislative matters of war powers, the president does not enjoy an overwhelming amount of support unless it is from his own party or ideological support-base in Congress.

However, closer examination of the votes shows that bills, such as roll call 334 on defense spending, can potentially include large amounts of pork and several amendments. This type of bill illustrates one difficulty that comes from coding issues in an analysis such as this, in that it does not allow for closer inspection of the actual interplay between the two branches. Although Bush's formal position was defeated, he was in fact awarded with a larger defense budget than he requested. In this regard, Congress's actions were arguably not a "defeat" for the president.

As noted early, this methodology also did not incorporate key votes, which presents some limitations to the findings presented here. For instance, President Bush clearly won support on roll-call 281 in the House of Representatives, which authorized the use of military force against terrorists following the events of September 11<sup>th</sup>. This vote may have been Congress's most important vote in the Bush presidency, which authorized the global war on terrorism that continues into his second term and will likely continue into the next president's administration. A victory on a vote to go to war compared to a victory on a vote loaded with amendments and pork imply different things about the president's powers and leadership vis-à-vis Congress as Commander-in-Chief.

## **Conclusion**

The purpose of this chapter has been to account for the level of support given by Congress to the foreign policies pursued or supported by the President. While Congress may not be a preeminent figure in the making of foreign policy, it can apparently play an important role. It sets the foreign aid budget, determines the level of contributions by the United States to international organizations, and has the power to issue legislation that could affect the president's ability to deploy troops. These results show that the proclivity of Congress to support legislation on war issues is driven somewhat by partisan and ideological support for the president by members of Congress. The central test of this analysis has been whether or not the president is able to achieve congressional support for his foreign policy positions, with particular interest paid to war powers legislation in comparison to other types of foreign policy. Congressional support for the presidential position during the first term of President George W. Bush was largely dependent on the ideological alignment of Congress, as well as a consensus among congressional members that national security was threatened. At the same time, President Bush was arguably "victorious" on a majority of foreign policy votes. The votes may have been affected by partisanship and ideology but at the end of the vote count the president's position was still supported. As illustrated above, it could even be further argued that his "defeats" in some circumstances were not actually "defeats" in the traditional sense.

It could also be speculated that September 11<sup>th</sup> has changed the foreign policy dynamic between the President and Congress. Congress wholeheartedly supported Bush's efforts to fight Al-Qaeda and overthrow the Taliban in Afghanistan, even against a "backdrop of depressed economic indicators" (Meernik and OldMixon, 2004, 464). However, congressional support for war in Iraq was less unified, appearing at its

strongest during the period approaching elections. Other researchers believe the president's dwindling support, especially following the deployment to Iraq, indicates a reemergence of normal partisan policy preferences, with respect to changing presidential popularity and election year anxieties. The advantage in conducting voting analysis, such as the approach used here, is that it allows us to examine exactly what type of internal support and external pressure affects the legislative relationship between the two branches.

One potential area for this research to continue is to examine congressional voting behavior at the individual level. Given that members tend to be primarily concerned with the preferences of their constituencies, economic factors such as unemployment at the local level, as well as political factors such as incumbency, percent urban and rural of home districts, and perhaps even racial composition of districts may affect the level of support for presidential policy at the national level. The addition of these variables may also create a fuller model and increase the predictive success of the logistic regression. It is also important to examine to what extent congressional opposition alters the foreign policy agenda of the president. Does the president continue to push his agenda through or modify it to gain congressional support?

## Chapter Three

### Haiti

Early in February 2004, Haiti erupted into violent armed conflict between supporters of President Jean-Bertrand Aristide's administration and opposition groups. The insurgents gradually gained control of a significant portion of the country, which led to Aristide's eventual resignation and flight from the country on February 29, 2004. That same day, on behalf of Haiti's acting president Boniface Alexandre, Haiti's representative to the United Nations, requested U.N. assistance in the form of foreign military support. The U.N. Security Council responded by adopting Resolution 1529, which authorized the deployment of a multinational interim force for not more than three months to act as a stabilizing and "peacekeeping" force.

On February 25, 2004, in his letter to congressional leaders, President Bush reported to Congress "consistent with the War Powers Resolution" that on February 23 he deployed a "combat equipped" security force of about "55 U.S. military personnel from the U.S. Joint Forces Command" to Port-au-Prince, Haiti to augment the U.S. Embassy security forces there and to protect American citizens and property that might be threatened by the armed rebellion in Haiti (Bush, February 25, 2004: 284). Eventually the United States would lead the deployment of more than three thousand troops from Canada, Chile, France, and the U.S. in the multinational interim force (MIF) Haitian intervention.

As discussed previously, the existing literature on war powers includes large-scale studies from the first president to present administration (Fisher 2004; Hendrickson 2002a; Grimmet 2005). Those that have examined the presidency of George W. Bush focus primarily on the war on terror and the war in Iraq (Schonberg 2004; Aberbach 2004;

Fisher 2003b). This chapter focuses on Bush's deployment of troops to Haiti and the circumstances surrounding his decision. None of the research on war powers thus far has explored his use of force in Haiti, making it an excellent case for original analysis. What was the war powers interplay? What justification was offered for putting troops at risk in a situation that presented no immediate threat to national security, in contrast to situations where force was used against Al Qaeda or Iraq? How do we explain war powers in this context and how does this examination of the use of war powers in the Bush administration fit into the broader literature? Each of these questions will be explored in this case study of the Bush administration's decision to use force in Haiti. The chapter begins with a short background on the situation in Haiti prior to the intervention, and continues with an analysis of the war powers interplay. The findings suggest that the interplay generally followed previously established patterns identified in other cases when American presidents chose to deploy troops abroad. Congress could have asserted its war powers in this context, but chose instead to defer.

### **Crisis in Haiti**

Although Haiti has been plagued by a series of political coups and undemocratic leaders that have contributed to its long-term political instability, the current controversy in Haiti began following an electoral crisis in May 2000. During the Senate election, the Provisional Electoral Council (CEP) used a controversial and slightly flawed method to determine the winning candidates, and thus avoided a run-off election. This decision gave the Lavalas Family (FL) a large portion of representation. This controversial vote count, in combination with the CEP's failure to investigate supposed irregularities and fraud,



undercut the parliament's credibility. The Organization of American States (OAS), the Caribbean Community (CARICOM), and the United States conducted diplomatic missions on behalf of the international community, in an effort to delay Parliament's seating until those election issues had been resolved.

As a result of the failure of those diplomatic attempts, a majority of the opposition parties, under the banner of alliance called the Democratic Convergence, worked to annul the elections and hold new ones under a new CEP. In November 2000, those elections took place for a new President and nine new Senators. All major opposition parties boycotted those elections, in which Jean-Bertrand Aristide and his FL party won each of the vacancies. Aristide was sworn in as President on February 7, 2001 and despite the electoral controversies, this was the first time in the history of Haiti a "full-term president" peacefully transferred power to an incoming president.

The OAS continued to mediate negotiations between the FL and Democratic Convergence parties, but this effort was suspended in July 2001 without resolution. Following the end of the July negotiations, the police facilities in Port-au-Prince were attacked, which led to government crackdown on opposition parties. In December, another attack targeted the National Palace in Port-au-Prince, which provoked pro-government groups to attack the homes of opposition leaders. The negotiations were indefinitely suspended.

Protest strikes and attacks on opposition demonstrations by government-supported gangs between November 2002 and February 2003 created even deeper divisions. The opposition called for Aristide's removal and sought the support of international intervention. As a result, international groups began calling on Haiti's government to act

to address the political stalemate, growing violence, and deterioration with respect to human rights. The OAS Permanent Council adopted Resolution 822, September 4, 2002, which committed Haiti's government to a series of steps leading to "free and fair" elections in 2003 (Organization of American States Permanent Council 2002). The United States continued to support the Clinton Administration's ban on direct aid, holding up nearly \$500 million of loans by the World Bank and Inter-American Development Bank (Padgett 2004).

Political instability continued to grow in the fall, as Aristide ignored the OAS mandates and resolutions. Aristide agreed to resolve the political crisis by cooperating with plans developed by CARICOM leaders at the Summit of the Americas in January 2004, but implemented none of the provisions until an international delegation came to Haiti on February 21, 2004 and demanded a specific implementation timetable (Padgett 2004; Prest 2005). Meanwhile, heavily armed groups violently opposed to Aristide continued to gain control of the country. By February 28, the rebel army led by Guy Phillippe, a former police chief, advanced within miles of the capital.

### **Presidential Prerogative**

The violence in Haiti began to threaten the security of the U.S. embassy and other U.S. interests, so by February 23, 2004 the President deployed a security force of "55 U.S. military personnel from the U.S. Joint Forces Command" to "augment the Embassy security forces". In doing so, President Bush cited his constitutional authority to conduct U.S. foreign relations, his powers as Commander in Chief and his powers as Chief Executive to justify the deployment of American troops. (Bush, February 25, 2004: 284)

Following this initial deployment, the situation in Haiti continued to deteriorate. On February 29, 2004, the President deployed 200 additional “combat-equipped” troops to Haiti, this time to prepare for the arrival of the United Nations multinational interim force (MIF), established under United Nations Security Council Resolution 1529 (2004). The U.S. troops were to eventually help lead the arriving MIF force. On March 2, 2004, the President issued another letter to Congress notifying them that additional forces were deployed to Haiti. The number of troops now totaled nearly 1,800 and the mention of possible additional deployments was included under the same authority cited in the previous two letters: authority to conduct U.S. foreign relations, authority as the Commander in Chief and as the Chief Executive (Bush February 25, 2004: 284; March 2, 2004: 317).

Although the President cited these sources for constitutional authority, their legal basis is questionable. It would appear from the language of the presidential letters that the President has taken the constitutional authority upon himself to deploy these troops, even as part of the United Nations mission. One could infer that the use of the term “combat-equipped” to classify the deploying troops is a nod to the language of the War Powers Resolution, which notes in that any troops deployed in situations in which they were “combat” equipped requires congressional approval. However, there is no reference to required congressional approval or authority in President Bush’s letters.

Many scholars argue this interpretation of presidential authority is contrary to the original understanding of not only U.S. deployment of troops abroad and rules governing the use of force, but also participation in missions endorsed by international organizations (Fisher 1999; 2004; Schonberg 2004; Hendrickson 2002a, Adler, 1998). As previously

established in chapter one, Congress originally intended to play a significant role in the decision to commit troops to missions under the banner of the United Nations. During World War II, they understood the importance of an international organization that would promote international conflict resolution through peaceful means (Fisher 1999). In 1943, both houses of Congress supported resolutions for membership in such an organization, with certain provisions assuring congressional involvement in decisions to use force abroad (Hendrickson 2002a, 8).

Congress reinforced this understanding of their responsibilities, in decisions to participate in UN military operations, by passing the United Nations Participation Act in 1945. Section six of the Act states:

“The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter” (U.N. Participation Act 1945).

The President could commit armed forces to the United Nations only after Congress gave its explicit consent. In practice, however, Article 43 agreements with the United Nations have never been negotiated under the United Nations Participation Act. With the exception of participation in the Gulf War, Congress has allowed American participation in UN military operations without granting specific authorization. In this context, President Bush acted as presidents had before him: deploy first and notify later.

## **Congressional Response to Intervention**

In early February 2004, congressional leaders began to question President Bush's commitment to Haiti. Representative Barbara Lee (D-Ca.), a member of the House International Relations Committee (HIRC) sent a letter to U.S. Secretary of State Colin Powell asking for clarification of the Administration's Haiti policy. In connection with the Administration's rationale of "regime change" in Iraq to its possible actions in Haiti, Lee asked Powell, "How can we call for democracy in Iraq and not say very clearly that we support democratic elections as the only option in Haiti?" (quoted in Sanger and Marguis, 2004, A10) Representatives from the Congressional Black Caucus diligently wrote to the President, Secretary Powell, and other administration officials requesting a meeting with the White House to discuss the events unfolding in Haiti, urging the President to take action in support of Aristide's administration, claiming that "engagement from our government is imperative" (Cummings, 2004). Representatives Diane Watson (D-Ca.), Elijah Cummings (D-Md.), and Barbara Lee (D-Ca.) each pleaded with the President to extend his support of international democracy to Haiti. On February 24, 2004, Senator Bob Graham (D-Fl.) spoke of the "humanitarian tragedy" in Haiti, pleading with the White House to develop a "sense of urgency" and lead the international community in engagement, establishment of a police presence, foreign aid, and the development of a special diplomatic delegation (Congressional Record, February 24, 2004: S1510-S1514). On February 27, 2004 Senators Frank Lautenberg (D-N.J.) and Tom Harkin (D-Ia.) spoke of the United States' obligation after placing Aristide in power and our "moral imperative" stemming from our past relationships with our southern neighbor (Congressional Record, February 27, 2004: S1877-S1881). Overall, those congressional members speaking out on

the Haitian crisis supported United States intervention and assistance, in cooperation with international organizations.

As demonstrated by the presidential letters cited previously, the President did act. During the early morning hours of February 29, 2004, Aristide resigned and was escorted to the Central African Republic by U.S. officials, after being refused asylum in South Africa. Shortly after his departure from Haiti, Aristide made allegations that he had been driven from power by the United States; that his resignation was, in fact, forced, and he had been kidnapped and made to leave Haiti at gunpoint. Representative Maxine Waters (D-Ca.) claimed Aristide informed her personally that he had been kidnapped. Randall Robinson, former president of the research and policy group TransAfrica, said on CNN that he, too, had spoken to Aristide, and that Aristide said he and his party had been escorted out of Haiti by 20 G.I.'s "in full battle gear" who remained with them on the flight to Africa, where they were kept under a military guard" (Sanger and Marquis 2004, A10). Another member of the Congressional Black Caucus, Charles Rangel (D-Ny.), accused the administration of siding with the "coup people" (Economist Special Report 2004).

These accusations were formally declared in Congress and legislation was proposed to establish various investigative commissions. From March of 2004 until February of 2005, Representative Lee, in conjunction with a dozen other congressional members, sponsored bills that would "examine and evaluate the role of the United States Government in the February 2004 Coup d'Etat" in Haiti (Congressional Record, February 18, 2005: E282). Administration officials responded initially by calling the accusations "absolutely baseless" and "absurd" (Sanger and Marquis 2004, A10). They claimed that

Aristide volunteered to fly safely, under American protection. The Vice President made a statement on March 2, 2004:

“...the rebels were increasingly successful at undermining his authority and he made the choice to leave. He resigned the office of his own free will. He left on a civilian aircraft which we chartered for him. He left with his security detail and this was his decision to go” (Cheney 2004).

Furthermore, the Vice President indicated that Aristide’s claims of being coerced at gun point, surround by American men, were exaggerations. The Vice President stated: “No American armed men around him as – we didn’t coerce him to get on the airplane. We helped facilitate his departure when he indicated he was ready to go” (Cheney 2004).

In general, the evidence indicates that American forces did not “kidnap” Aristide. However, administration officials acknowledged that they made it clear to him that they could not protect him if he continued to cling to power. In an effort to make their case, the White House and State Department recounted the sequence of events of February 28-29, 2004, that ran from increasingly urgent interchanges between Aristide and the American Ambassador to Haiti, James B. Foley, to Aristide’s decision to sign his resignation and move to the airport under an escort of his own guards. Secretary Powell, who had originally been a vocal supporter of Aristide within the administration, said the former president was “re-writing” history. “He was not kidnapped,” Powell said. “We did not force him onto the airplane. He went onto the airplane willingly. And that’s the truth” (quoted in Sanger and Marquis 2004, A10).

Despite the storm of controversy swirling around the departure of Aristide, President Bush approached the United Nations Security Council on March 1, 2004, to

discuss plans for a multinational interim force. The President agreed, on behalf of the United States, that the U.S. would provide troops to pave the way for the U.N. force that included French, Canadian, Jamaican, Brazilian, Chilean, and Argentinian troops (U.N.S.R. 1529, 2004).

### **Analysis of War Powers Interplay**

At no time during the debate and discussion of the President's actions, did Congress question the President's independent authority to use force without prior approval from Congress to conduct the operation in Haiti. Furthermore, no objections were vocalized when the President approached the United Nations regarding a multinational interim force and agreed to commit troops for participation without prior approval from Congress. Some Congressional members disagreed with the results of the President's action and the removal of Aristide from power, but not the lack of congressional authority under which he acted.

There are at least two potential explanations for the interplay in this situation that are examined here: (1) the President, by precedent, solicits authority from the United Nations Security Council or approval from that body is all that is required in international uses of force; (2) domestic factors play into the specialized interests of individual congressional actors, thereby preventing the body from acting as a unified "whole" in support or against the President.

#### *Presidential Prerogative*

Perhaps Congress sees itself in the historical precedent of simply allowing the Commander in Chief to take the lead in matters of international cooperation and



diplomacy, including the use of force. As noted earlier, with the exception of participation in the Gulf War, Congress has allowed American participation in UN military operations without granting specific authorization. Immediately prior to the Bush administration, under the Clinton administration, U.S. participation in United Nations operations under presidential leadership increased dramatically (Fisher 1999).

Furthermore, President Bush and members of the administration reinforced the idea that the “international community” was involved with the U.S. troops, including France, Canada, Chile among those countries specifically named. In a speech on February 29, 2004, the President announced Aristide’s departure and justified his deployment of U.S. troops as part of a multinational force: “I have ordered the deployment of Marines, as the leading element of an interim international force, to help bring order and stability to Haiti. I have done so in working with the international community” (Bush, February 29, 2004).

In White House press briefings, White House Press Secretary Scott McClellan reinforced that idea that the president was acting in cooperation with the international community. In a press briefing on March 1, 2004 McClellan stated, “I would point out that our diplomatic efforts, working closely with international partners and through multilateral institutions -- like CARICOM and the Organization of American States and the United Nations -- helped preserve Haiti's constitutional government.” He continued reinforcing the idea that the United States was “working closely with our international partners” including the Caribbean Community, the Organization of American States, and the United Nations (Press briefing with Scott McClellan March 1, 2004).

In these same speeches and press briefings, the President and his administration made no mention of constitutional authority to deploy troops, and at no point discussed congressional authorization. Based on these examples issued directly from the White House, the President appeared to justify his authorization for deployment on the basis that the mission included international sanctioning and participation. It appears the President and his administration used international authority to reinforce the idea that their actions were legal in the case of Haiti, in lieu of congressional authorization.

Yet, the original debates over the ratification of the UN Participation Act, discussed previously, demonstrate that Congress did not intend for the international decisions to replace the authority of its own. Furthermore, Congress has made efforts in the past to reassert itself in the decision-making process. Despite President Clinton's efforts to increase involvement and cooperation through the United Nations, Congress still continued to assert its role in foreign policy decision-making (Hendrickson 2002a; Fisher 1999).

Even as recent as the 1994 interventions in Haiti, several congressional leaders led debates on the President's authority to act unilaterally or without specific congressional authorization. A rich dialogue was exchanged regarding presidential war powers. Senator Robert Dole (R-Ks.) and Senator Judd Gregg (R-N.H.) proposed a sense-of-the-Senate measure that would have affirmed that United Nation authorization was not sufficient, as a matter of constitutional law, for presidential orders to use force. Senator Dole said, "Let us not set a dangerous precedent and abdicate our war powers to the United Nations...[L]et us debate whether invading Haiti is in the American national interest" (Congressional Record, August 1, 1994: S10). Senator Arlen Specter (R-Pa.) argued that the Dole-Gregg

amendment was not sufficient: "Under the Constitution the concurrence of the Senate is indispensable. Only the Congress can declare war and an invasion is an act of war" (Congressional Record, August 1, 1994: S10). This debate ensued for two months, specifically on the constitutional authority of the President to use force abroad. Finally, the House passed a sense-of-the-Congress resolution that the President should have sought prior congressional authorization before deploying forces (Congressional Record, October 25, 1994). This resolution was not legally binding in any way, and it did not declare that the President should have sought congressional approval based on constitutional grounds. In essence, Congress declined to approve or disapprove the Clinton intervention in Haiti.

For the more recent deployment, the issue of war powers has not, to date, been mentioned in either house, among the congressional members, or to media outlets, in an effort to check the current President's involvement in Haiti. The same level of dialogue that occurred in 1994 is nonexistent ten years later. In the 2004 case, a limited number of specific congressional caucus members lobbied the president behind closed doors and through generic speeches in Congress. They urged intervention through international channels without taking the legal and constitutional steps of gaining majority congressional support and passing the necessary legislation for authorization. Although previous Congresses dodged the issue of approval and constitutional powers, they still made formal attempts to let their preferences be known. To conclude that Congress has simply established a preference and precedent for deference to the President or UN Security Council decision would be incorrect. Moreover, President Bush spent months issuing rhetoric of a "coalition of the willing" and has arguably chosen not to act through the U.N. or N.A.T.O. At the same time, this evidence indicates that the president exercises

tremendous powers as commander in chief. With the exception of the small contingency of congressional members who supported the intervention, most remained silent on war powers.

### *Domestic Factors*

Some analysts suggest that domestic factors also play a large role in Congress' choice to abdicate or demonstrate its powers (Hendrickson, 2002). Evidence in this chapter suggests that this is also true in the case of intervention in 2004. Before Aristide departed Haiti in February of 2004, his government spent over \$1 million a year on lobbying teams and lawyers in Washington, D.C. (Padgett 2004). Countries of similar economic circumstances, such as Cambodia, annually spend less than one tenth of this amount on lobbyists. A large portion of the recipients of these lobbying funds include former Congressman Ron Dellums (D-Ca.), with close ties to the Congressional Black Caucus. Aristide's supporters claim that this lobbying was necessary, as a result of the loans from the World Bank and Inter-American Development Bank being held up by the Clinton and Bush administrations. On the other side, the Bush Administration expended the same amount to organizations such as the International Republican Institute (IRI) to promote democracy in Haiti (Padgett 2004). Members of Aristide's support groups claim this money went to opposition parties in Haiti. In either case, a degree of lobbying was conducted which likely affected congressional support of Aristide.

Furthermore, the timing of the Haitian intervention may have also affected the assertiveness of congressional members. Most of the events occurred in early 2004, during the presidential campaigns and election year. The crisis in Haiti was not a central topic of

debate, nor a concern of a majority of Americans. In a News Interest Index Poll conducted in March of 2004, nearly two thousand adults were interviewed on their degree of knowledge of the situation in Haiti and their preference for U.S. involvement (Pew Survey 2004). Results showed that most Americans knew little, if anything about the circumstances of Haiti and most were divided on whether they favored or opposed intervention (Pew Survey 2004). People were more concerned with the War in Iraq, the War on Terrorism, and the presidential election in November. With a lack of interest from most Americans, congressional members had bigger battles to fight with each other and the president. It is safe to assume that most of the attention was diverted away from Haiti by other domestic and foreign policy issues. This may explain the limited attention from Congress, which came only from specific groups such as the Congressional Black Caucus (CBC). Other congressional members may have felt their energy was best exercised on issues important to their constituents and reelection campaigns.

This also leads to consideration of the war on terrorism and Iraq as “domestic” political variables affecting war power interplay. One potential effect of these major issues is that they overshadowed other less salient issues of debate in Congress and in the media. While groups such as the CBC may have used the United States commitment to democracy as a platform for urging intervention, perhaps other congressional members or the President were concerned about overextending our presence in foreign countries. In addition, Haiti presented no immediate national security threat and may not have been viewed as a military or political priority, except to those who could construe the situation for partisan purposes.

## Conclusion

The 2004 deployment of troops to Haiti illustrates how presidential assertiveness, congressional deference, and domestic factors all contribute to the war powers interplay between the executive and legislative branches. President Bush provided numerous arguments for justifying his deployment to Haiti: his executive power to conduct foreign affairs, powers as Commander-in-Chief, and the cooperation and support of the United Nations mission. He informed Congress regularly of the deployment and progress in Haiti, but at no time acknowledged or requested congressional authority.

Although certain groups within Congress, such as the Congressional Black Caucus, appealed to the president to take action in Haiti either in support of Aristide or what was left of the democratic government, formal authority to deploy American forces was never issued. Other domestic political factors overshadowed the situation in Haiti or created an opportunity for partisan politics. The rebellious uprising in an already notoriously unstable country, on a small island located far from the Middle East was not enough to draw the majority of Congress' attention away from the War on Terrorism, War in Iraq, elections and other "major" issues occurring domestically at the time. It was not until after public accusations against the Bush administration were made by Aristide, that Congress was convinced the matter warranted any special commission to investigate the circumstance of Aristide's resignation, and this attention may have also been the result of partisan politics prior to an election. Prior to the allegations, it appeared Congress "washed its hands" of the situation in Haiti and was content to allow the president and the United Nations to resolve any issues.

While the analysis in chapter two provided a broad overview of the executive-legislative interplay on the variety of foreign policy issues considered in Congress, this case study has allowed a closer look at one specific example of war powers interaction that frequently arises in American foreign policy. Situations such as these, where no formal vote was issued on record in either house, illustrate the importance of supplementing quantitative methodology, as in chapter two. This case study has created a means of contextualizing war powers in this situation by looking at assertions of presidential dominance, coupled with domestic variables that favored intervention, which created a situation that once again made Congress comfortable with shirking and deferring their war powers responsibilities to the executive branch, and even international organizations such as the United Nations. This interplay is also interesting given that Bush himself noted that troops were “equipped for combat” and thus specifically met the standard of the war powers resolution calling for congressional authorization, and that the situation was clearly “violent” by all journalistic accounts. Perhaps domestic variables come into play once again with one party not wanting to challenge its strong commander-in-chief presidential candidate, and the other party not wanting to appear subversive of efforts to combat terrorism by creating hurdles to presidential and military responsiveness in crisis. As noted in chapter one, members of the president’s party took political advantage of opportunities to challenge the Democratic party’s commitment to national security and anti-terrorism policies.

In a broader sense, the interplay that occurred between President Bush and Congress over deployment to Haiti was not an entirely unique situation. Other authors studying these types of uses of force have also observed situations where Congress could

have asserted its war powers, but chose instead to defer. The more interesting aspects of the case of Haiti are the lack of mention of constitutional authority or war powers authority by Congress throughout the entire situation and the role that domestic factors played in enabling Congress's deference to the executive.



## Chapter Four

### Military Tribunals

On November 13, 2001 President Bush issued a military order outlining the detention, treatment, and trial of “certain non-citizens” in the war on terror. Section Four of the order gave the Secretary of Defense authority to subject individuals falling under the order to trial by military commission and described the procedures and guidelines for those commissions.

Salim Ahmed Hamdan, a citizen of Yemen who was captured during fighting in Afghanistan, challenged the order in federal court. Hamdan claimed the system of military commissions violates separation of power principles established by the Constitution because, he argues, only Congress is authorized to establish military commissions. Judge James Robertson of the U.S. District Court agreed with Hamdan, but was reversed on every point by the U.S. Court of Appeals. The case was accepted for the Supreme Court docket, accompanied by more amicus curiae briefs than every other case ever appealed. In the recent 5-3 decision, the Supreme Court decided that the military commission convened to try Hamdan lacked the power to proceed because its structure and procedures violate both the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions. More importantly, the court also noted that jurisprudence pertaining to military tribunal cases in no way authorizes “a sweeping mandate” for the President to invoke military commissions “whenever he deems them necessary” (*Hamdan v. Rumsfeld* 2006, 25-30).

Prior to the *Hamdan* case, President Bush’s Military Order provoked protest and commentary from civil libertarians, civil and human rights organizations, newspaper

editorialists, academics, members of Congress and members from both political parties (Anderson 2002). Some scholars claim the commissions offer only “ad hoc” justice and no guarantee for defendant’s rights (Koh 2002; Grossman 2001). Judge James Robertson and others challenge that the commissions violate the Geneva Convention and other federal laws. While both arguments present interesting challenges to the Military Order, this research focuses on Hamdan’s claim that the President has overstepped his executive authority, and the President’s interaction with Congress regarding these tribunals. Does the Military Order violate separation of power principles?

This chapter will examine the President’s claims of legal and constitutional authority to establish military tribunals in the November 13, 2001 Military Order, including his asserted powers as Commander in Chief of the Armed Forces, the Authorization for Use of Military Force Joint Resolution, and sections 821 and 836 of the Uniform Code of Military Justice. Following an analysis of the executive’s position, this chapter will then look at how Congress responded. How can the congressional-executive interplay regarding this war powers related issue be characterized in this case study? The analysis suggests that the President does not possess the necessary constitutional authority to establish or regulate military tribunals. While Congress initially chose to invoke constitutional principles vis-à-vis presidential claims of authority, in the end it once again deferred to another branch of government, which is likely best explained through an analysis of domestic political variables.

## Military Tribunals and War Powers

The questions noted above present a new framework for examining not only the legitimacy of military tribunals, but also presidential war powers under the Bush administration. As noted in previous chapters, studies of interplay between Congress and the Bush administration focus on the use of force as a platform for examining presidential war powers (Schonberg 2004; Fisher 2003; Aberbach 2004). Yet, presidential war powers extend beyond just the use of force. Recently, scholars have expanded their research into questions of the treatment and detainment of prisoners of the war on terror and those suspects in Guantanamo Bay, Cuba. A majority of the literature discussed in chapter one involves legal analysis of presidential war power based on Supreme Court precedent, social commentary regarding the implications for civil rights and liberties, and historical analysis of past presidents' use of tribunals.

To review briefly, a majority of the legal experts argue that the Military Order actually exceeds the scope of presidential powers and "imperils core constitutional values" (Orentlicher and Goldman 2002, 653; Belknap 2002). Others focus on case precedent and jurisdiction issues and frame cautionary arguments around the legal success of trials for courts-martial: "consider what legislative and executive measures will best enable such [tribunals] to perform [their] role fairly and effectively" (Everett 2001, 22). While this is only a relatively small sampling of the larger legal analysis literature, it demonstrates the lack of overwhelming support for one side of the argument in favor or against the president's authority to establish military tribunals.

As noted in chapter one, the most extensive research on military tribunals is Fisher's recently published historical analysis, *Military Tribunals and Presidential*

*Power*. In his examination of military tribunals from the American Revolution to the detainment of suspects at Guantanamo Bay, Cuba, Fisher (2005) argues presidential power during wartime has grown at the cost of legislative and judicial control. Not only do military tribunals affect the power relationships among the three branches, but “unchecked executive power always poses a threat to individual rights and liberties” (Fisher 2005, xii).

As comprehensive as Fisher’s analysis is, he does not extend his research past the question of detainment of suspected terrorists. This chapter will begin where Fisher’s work ends and evaluate the president’s authority to establish military tribunals through the challenge issued by Salim Hamdan. The central question is whether or not the president possesses the independent power to authorize the military tribunals and whether or not Congress chose to intervene or defer. Following the same structure as chapter three’s case study approach, this chapter will analyze both the presidential and congressional perspectives and then assess domestic considerations. What was the war powers interplay in this case and how does it compare to other studies of President Bush and Congress?

### **War Powers Analysis**

President Bush’s military order authorizes the creation of military tribunals to try individual noncitizens of the United States who are suspected to be members of an organization known as al Qaeda, or who have been engaged in international terrorism against the United States (Bush, November 13, 2001: 1637). The military order grants the President the power to determine “from time to time,” any noncitizen that may be

apprehended, tried, and punished by military tribunal (Bush, November 13, 2001: 1637). President Bush needs a “reason to believe that such individual” is or was a member of al Qaeda, or engaged in acts of terrorism, or aided such individuals, during “relevant times” in order to detain the suspected terrorist. These sections of Bush’s claims, as well as the general breadth of the president’s military order of November 13, 2001, have raised constitutional concerns among scholars and government officials.

### *Presidential Powers*

The first source of legal authority the President cites is his general power under Article II of the Constitution, as Commander in Chief of the Armed Forces. Under Article II, Section 2, of the United States Constitution, “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States” and Section 2 continues to outline the general foreign policy powers of the President. At no point does the language of Article II of the Constitution expressly grant the President power to create military tribunals. Supreme Court jurisprudence has long established that the President “can exercise no authority whatever but that which the Constitution of the country gives him”. The President “is elected...to perform those functions, and those only, which the constitution of his country, and the laws made pursuant to that Constitution confer” (Milligan 1866, 30). As there is no expressed constitutional grant under executive powers of Article II, the source of constitutional authority would have to come from a congressional statute or joint resolution.

One such statute cited in Bush's military order is the Authorization for Use of Military Force Joint Resolution, passed by Congress shortly after September 11<sup>th</sup>. However, the statute authorizes the President to use force against those persons, countries, or organizations involved in the September 11, 2001, attacks, and is "silent" on the authority or criterion of military commissions (Pedata 2002). Again, Bush's claim appears to be a rather extensive interpretation of his powers as commander in chief.

In the military order, the President also relies on sections 821 and 836 of the Uniform Code of Military Justice, enacted in 1950. Although the president does not explicitly incorporate the language of the statute, the section of the code that he relies on states:

"The provisions of this chapter conferring jurisdiction upon courts martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals" (10 U.S.C. 821).

In other words, Section 821 simply states that courts martial do not deprive military commissions or tribunals of jurisdiction when properly authorized by statute or by the law of war. Thus, the language of the Uniform code is not equivalent to authorization for the creation of military tribunals or commissions, and applies only to those individual who could potentially be subject to courts-martial.

Moreover, the second section cited by Bush, Section 836, delegates authority to the President to promulgate rules of court and procedures for courts-martial, military commissions, and other military tribunals or courts of inquiry (10 U.S.C. 836). While this

section is relevant in that it grants the President some authority to oversee the rules and procedures governing the established tribunals, it does not authorize the President Bush with creation and decision of who qualifies under the jurisdiction of the tribunals. These statutes, therefore, do not provide legal or constitutional support to the president's military order.

Based on a simple statutory and legal analysis, it is difficult to conclude that the president possesses independent power to establish tribunals. The question is then whether or not another branch of government does possess this power, and has the president violated that separation of powers? The aspect of the war powers interplay, pertaining to the violation of separation of powers violations by the military order, comes from the provision of the order that states the individual "shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States" (Bush, November 13, 2001: 1637). This section of the president's military order violates the powers of Congress under Article III, Section 2 of the Constitution. Under Article III, Section 2, the Constitution states:

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a States shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the *Congress* shall make." [Emphasis added]

Congress, not the President, has the power to subtract from the Supreme Court's appellate jurisdiction. Under the military order, the President is again usurping the constitutional power of Congress.

According to some statutory provisions, there are legal channels and formal procedures for the President to operate military tribunals, with congressional authorization. According to Article I, Section 8 of the U.S. Constitution, Congress has the power "to constitute Tribunals inferior to the Supreme Court" and to "define and punish...Offenses against the Law of Nations." In situations where the President has initiated the use of military tribunals, the court has upheld this action when supported by Congress through statute. Thus, from both a constitutional and legal analysis, nearly all of the evidence suggests that Bush's claims of executive authority on military tribunals extend far beyond the powers of the president. The Congressional Record and debate records in both houses will demonstrate, however, that in the current situation involving military tribunals, no authorization was given and Congress was actually divided over how to handle the issue.

#### *Congressional Response*

Several prominent members of Congress were caught unaware of the President's decision to use military tribunals (Fisher 2005). Senator Patrick Leahy (D-Vt.), chairman of the Judiciary Committee, said that he and other lawmakers had learned about the tribunals by reading newspaper articles: "We're really not being consulted at all, and it's hard to understand why". Representative Bob Barr (R-Ga.), a member of the House Judiciary Committee, remarked that he was "not aware that they're consulting at all".



Senator Ted Kennedy (D-Ma.), a member of both the Armed Services and Judiciary Committees, remarked at the Senate Judiciary hearings that he received “absolutely no indication” of tribunals being authorized (all quoted in Toner and Lewis, 2001, A1).

Those hearings, called for by Senator Arlen Specter (R-Pa.), explored why the President chose to bypass congressional support for his military order. Senator Leahy’s opening statement said that the administration, rather than “respect the checks and balances that make up our constitutional framework,” chose to “cut out Congress in determining the appropriate tribunal and procedures to try terrorists” (Senate Judiciary Committee Hearings 2001: 1) While expert witnesses testified both on behalf and against the President’s order, Attorney General John Ashcroft made some of the most interesting claims regarding presidential power. At the hearings, Ashcroft claimed that the President’s authority to establish military tribunals “arises out of his power as Commander-in-Chief. For centuries, Congress has recognized this authority, and the Supreme Court has never held that any Congress may limit it” (2001, 314). In other words, Ashcroft argued that the President has unilateral authority to establish military tribunals and according to Supreme Court precedent, Congress does not have the power to limit this authority. This claim runs against a majority of the legal record and history of military tribunals in this country. As discussed above, the President does not have unilateral authority to establish military tribunals, either constitutionally or statutorily, and the Supreme Court has never denied the importance of Congress’s role in this aspect of war powers.

Returning to the congressional debates, most constitutional scholars who testified urged Congress to step in and pass legislation to give the President’s military order

statutory support. Many were quoted in newspapers and on television, urging Congress to fulfill its constitutional obligations:

“I do not doubt that leaders of Al Qaeda could properly be tried by a military tribunal.... Under the Constitution, that is the duty of Congress. Its leaders have so far been afraid to challenge anything labeled antiterrorist, however dangerous. It is time they showed some courage, on behalf of our constitutional system”  
(Lewis 2001, 1).

Several hundred law professors and lawyers also wrote a letter to Senator Leahy, stating that the Bush military order “undermines the tradition of the Separation of Powers” and that Article I provides that “the Congress, not the President, has the power to ‘define and punish...Offenses against the Law of Nations” (Congressional Record, December 14, 2001: S13276). Even Ruth Wedgewood, a strong supporter of the Bush order, agreed that congressional input “will be useful to the administration in crafting rules of procedure and evidence” (2001, A18). After the hearing by the Senate Judiciary Committee, a majority of lawmakers recognized the need for legislation to “codify into law” the procedures for tribunals and specific ideas were proposed for statutes (Fisher 2005, 176).

Some lawmakers introduced bills to authorize the President to convene military tribunals for trying suspects (other than U.S. citizens and lawful resident aliens) outside the United States (see appendix B). Senator Leahy, Senator Specter, and Representative Dennis Kucinich (D-Oh.), in addition to several other Senators, each separately introduced legislation that would have supported the President’s military order. Not only would these bills have preserved the right to petition for habeas corpus, but most of them also included exemptions for U.S. citizens from military trial. However, Congress never

successfully acted on these bills or any other form of legislation to give the administration support or condemn the use of military tribunals (Bettelheim 2001, 2984).

Essentially, Congress reviewed and challenged presidential claims, but in the end still chose to avoid the issue. Although constitutional principles were raised, the findings thus far indicate that factors other than constitutional arguments may explain their behavior. As in the case of Haiti, it appears that other domestic political factors may better explain the interplay.

### *Domestic Factors*

The lack of unified action and unsuccessful attempts by Congress to challenge the president, even though there was bipartisan concern expressed, could partially be explained by public opinion polls at the time. The President's plan for military tribunals apparently enjoyed overwhelming support from the public. In a poll conducted by *Newsweek* magazine, with a margin of error of plus or minus 3 percentage points, pollsters discovered, "Americans are solidly behind the Bush Administration's plan to try terrorists in military tribunals" (Barrett 2001, 1). In that same survey, pollsters found that sixty-eight percent of Americans approved of the use of tribunals, while only twenty-two percent disapproved. Although those numbers must have rallied Bush and his administration, pollsters also discovered that the public's ideas about how military tribunals should operate differed substantially from those of the Administration. Thirty percent thought the proceedings should be conducted entirely in public, and another twenty-eight percent believed they should be mostly public. Twenty-seven percent of those interviewed thought military tribunal trials should be mostly in secret, while eleven

percent thought they should be entirely secret. Fifty-five percent of those surveyed believed the tribunals should have some international involvement, while only forty percent agreed with the Bush administration, that they should be run entirely by Americans. An overwhelming seventy-four percent majority said military commissions should be used to try foreign suspects captured elsewhere in the world, but fifty-seven percent opposed using them to try non-citizens who lived in this country for many years. A very substantial minority (forty-two percent) did not even want the commissions to consist entirely of military personnel, expressing the opinion that civilian federal judges should play some role in their proceedings (Barrett 2001, 2).

Assuming congressional actors pay attention to poll data, these findings could explain the behavior of some members of Congress. The overwhelming support for the use of military tribunals, exemplified in the public opinion polls, explains the general support for legislation affirming presidential authority asserted by the military order. However, debate over specific aspects of tribunals, jurisdiction of military trials, and the amount of secrecy involved led to a stalemate. Just as Americans were divided over the procedures, so were congressional leaders.

In addition to the above public opinion survey, other polls of presidential approval and public perception of the salience of the issue may have influenced congressional action. According to Gallup survey data, on the percentage of the public approving of the president's job performance, throughout 2001 and 2002 the president enjoyed fairly high post-September 11<sup>th</sup> public approval ratings.<sup>1</sup> Gallup poll results indicate that the president enjoyed approval ratings ranging from 82 percent to 53 percent from 2001 to 2002, and still as high as 69 percent in certain months from 2003 to 2004. In this sense,

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<sup>1</sup> Gallup poll data are available at <http://roperweb.ropercenter.uconn.edu/>

congressional members had a disincentive to act against a strongly supported executive, especially at the risk of losing midterm elections and constituency support.

Moreover, public surveys of issue importance in 2004, as noted in chapter three, revealed that the public was deeply concerned about national security, the war on terrorism, and later the War in Iraq, over other international and foreign policy issues (Pew Survey 2004). Many lawmakers saw little political advantage in picking a fight with a popular president, especially when polls show that most Americans are not losing sleep over the legal rights of accused terrorists. Senator Leahy (D-Vt.) of the Senate Judiciary Committee recognized the feeling among the American people and noted: "You're not going to be passing legislation in a situation like this. ....I'm not unaware of the polls" (Lancaster 2001, 1). As long as the public was concerned about the success of the war on terrorism, and a majority of people were in support of the president's decision to order the tribunals, Congress was in an excellent position to defer. Politically, it made little sense to challenge President Bush at a time when public support for the war on terrorism was so high, of which military tribunals were viewed as one component.

Another domestic political variable that may have relevance is the role of the courts in this case. Hamdan's case was initially heard by the District Court in early 2004 and followed by a series of appeals to the District of Columbia Circuit and eventually the Supreme Court. Once the courts chose to take up the issue, Congress could decide to refrain from their public "checks" on the president by now referring to the issue as a judicial/legal question for the courts to resolve. In any case, whether it was reliance on public opinion for guidance or the intervention of the third branch, the domestic factors addressed here allowed Congress to shirk its constitutional responsibilities. In sum, the

political incentives for challenging President Bush regarding his constitutional and legal claims were quite low. Despite the legal and constitutional scholars who stood firmly behind Congressional assertions of power, Congress ostensibly chose to follow public opinion, and allow President Bush great political latitude as commander in chief.

### **Conclusion**

After examining the language of the constitution and the statutory authority cited, it is difficult to conclude that the President's military order is constitutional. A clear consensus in Congress was lacking, despite the American public's willingness to support the president. President Bush's strategy for trying individuals suspected of terrorism, and those who have aided them, may have begun with good intentions, but it stretched the powers of the executive beyond their constitutional scope. By issuing the Military Order, President Bush exceeded his legal authority, as well as violated separation of powers principles.

Yet, the blame for this executive "power grab" does not lie wholly on the shoulders of the president. Congress had the power and the opportunity to support or condemn the order through legislative action. Unlike the case of Haiti discussed in chapter three, Congress actually had bipartisan support for challenging the president's authority. In a way, members of the Senate Judiciary Committee started the process and began invoking some principles. Yet, in the end Congress still chose to defer, as in the case of Haiti. Like the deployment to Haiti, the domestic political factors in this case all provided strong political disincentives for constitutional challenges to the president. Public opinion, despite running counter to a majority of legal scholars and many in Congress, was firmly behind President Bush.

In regard to Fisher's claims that in wartime executive power grows at the expense of the other two branches, this case study has shown somewhat of an alternative perspective. While Congress was still subject to the same domestic constraints as in the Haiti case, perhaps their deference rested on the idea that the operation and authority over military tribunals constituted a legal question. In this view, deference to the judicial process, followed by its binding decision, actually demonstrates the operation and muddled success of "checks and balances" in the American system of government, even in war time. In this case, the Supreme Court intervention in the Hamdan case has now taken some steps to restore some balance from executive assertion of power during war time.

## Conclusion

The events of September 11<sup>th</sup> resurrected questions about the balance of power between the executive and legislative branches of government. When President Bush characterized the war on terror as a “different kind of war,” he reopened the door for studies of interbranch struggles over foreign policy making, national security and war powers. This thesis has incorporated multiple methodological approaches to understand the war powers interplay between the president and Congress, in order to test what variables affect the dynamics between the branches in a post September 11<sup>th</sup> global environment.

While chapter one provided a comprehensive overview of the existing foreign policy and war powers research to date, it also highlighted many gaps in the existing literature. Few studies have been conducted on the current Bush administration and those that have been published focus primarily on the war on terror and war in Iraq. Such gaps have created a prime opportunity for conducting case studies on other examples of interbranch competition and cooperation, as in the case of the American troop deployment to Haiti in 2004. In addition, other authors have approached the study of military tribunals from a jurisprudential or civil libertarian perspective, rather than an evaluation of constitutional power and authority. When combined with chapter two’s quantitative approach to measuring President Bush’s legislative foreign policy and war power success, the thesis creates a more comprehensive study of executive-legislative interplay.

Chapter two analyzed the dynamics of the presidential-congressional relationship over foreign policy legislation under the Bush administration before and after



the terrorist attacks on September 11, 2001. Its purpose was to provide not only a broad overview of the executive-legislative interplay on the variety of foreign policy issues considered in Congress and the success of President Bush in achieving congressional support for his position, but also to create an alternate perspective of the dynamics between the two branches in forming policy pertaining to international issues and war powers. Overall, chapter two indicated that the roll-call votes may have been affected by partisanship and ideology but at the end of the vote count the president's position was still supported. It could even be further argued that the president's "defeats" in some circumstances were not actually "defeats" in the traditional sense. Thus, a roll call examination beside itself did not capture the full complexity of the executive-legislative interplay.

Moreover, additional limitations of logistical regression in this data pool were also identified previously in chapter two. The logit model in that chapter could perhaps be enhanced by the inclusion of additional domestic variables, as they proved to be significant factors in the case studies of chapters three and four. Possible additional variables to include in future studies are inflation and unemployment rates, or information about the congressional member's home district, such as partisan or urban demographics. Perhaps members from closely divided districts behave differently than those supported by an overwhelming partisan voting base.

In addition, future studies could use an index of presidential support scores, which would allow for the use of ordinary least squares regression. Instead of looking at whether senators voted with or against the president on each individual bill, the percentage of time that a senator votes with the president on a particular set of foreign

policy bills (appropriations, trade, use of force, etc.) could be examined. These studies could also include legislation and cases from the second term of President Bush, as this research only incorporated data through 2004. As the President moves to the end of his second term and the length of time since September 11<sup>th</sup> grows, the interplay between the legislative and executive branches may take on an entirely new dynamic. Another opportunity for further research also includes the comparison of domestic and foreign policy success of President Bush and whether he used high approval ratings to push his policy agenda in both areas following September 11<sup>th</sup>. Yet, given the identified limitations of this chapter, this thesis still provides some findings that lend credence to the notion of executive dominance in foreign policy making.

The limitations of chapter two leads to the utility of chapters three and four, which each provided structured, focused analyses of war powers cases between President Bush and Congress. Chapter three explored the Bush administration's decision to use force in Haiti. The findings suggested that the interplay generally followed previously established patterns identified in other cases when American presidents chose to deploy troops abroad. Congress could have asserted its war powers in this context, but chose instead to defer.

Chapter four examined the President's claims of legal and constitutional authority to establish military tribunals in the 2001 Military Order. Following an analysis of the executive's position, chapter four examined the congressional response and other possible variables affecting the war powers interplay. The findings suggested that the President does not possess the necessary constitutional authority to establish or regulate

military tribunals and although Congress initially chose to invoke constitutional principles, in the end it once again deferred to another branch of government.

The common finding among the chapters was the importance of domestic political factors. The evidence from the case studies and quantitative study conducted in this thesis supports Hendrickson's (2002a) finding that "congressional deference and presidential unilateralism in war powers involved many political variables that were specific to the time and conditions when force was used, which cannot be captured by viewing Congress's deference simply as an institutional norm" (181). Chapters three and four both illustrated the potential affects of public opinion polls or presidential approval ratings, congressional lobbying, and partisan political agendas on Congress's willingness to "check" presidential unilateralism.

More generally, this thesis provided support for the wider body of literature on presidential war powers during the Bush administration. President Bush's constitutional arguments for unilateral power as commander in chief have not differed greatly from previous presidents studied by Fisher (2004), Hendrickson (2002a), among others. Along the same lines, Congress continued to conduct business as usual, deferring to President Bush and allowing him to assume all the political risks associated with the failure and success of war powers issues.

Partisan politics and domestic political variables also continued to influence congressional deference. Those studying the effects of the war on terrorism observed the growing willingness of the American public to allow the president to assume unilateral executive control over war powers and that this shift has been deeply felt by Congress (Schonberg 2004; Lindsay 2003b; Kassop 2003). The case study of military tribunals in

chapter four supports this claim that Congress is likely to defer, rather than challenge a popularly supported president. If the public supports the president's action, Congress has little incentive to challenge him and risk losing constituency support. This is particularly true during elections, when those who were bold enough to question the president's policy publicly were chastised by Republicans for trying to "divide our country" and accused of "giving aid and comfort to our enemies" (Lindsay 2003b). Furthermore, the case study presented in chapter three demonstrates that if the public is unconcerned with a political or foreign policy issue, such as the deployment to Haiti, Congress is less likely to challenge or explore the constitutionality of the president's action. Instead, Congress remains focused on issues important to President Bush, such as the war on terror and war in Iraq.

In sum, arguments can be made for and against an assertive Congress when it comes to matters of foreign policy, but it is clear that presidential unilateralism poses a danger to the constitutional integrity and international image of the United States. Scholars have traced executive assertiveness and congressional acquiescence under most presidential administrations throughout history, especially since passage of the War Powers Resolution (WPR). This finding, which is supported again in this thesis, suggests that as a matter of policy, perhaps the WPR should be repealed because of its vague terminology and Congress's unwillingness to invoke its provisions. Furthermore, there is the issue of influence that public opinion generally has over congressional action. While there are important constitutional principles embedded in the notion of having an institution responsive to public will, there are also dangers involved with that institution allowing public opinion to dictate its every move. Under the Bush administration,

Congress had ample opportunity to constitutionally check the action of the president, but was unwilling to risk political capital. If this pattern continues and Congress's sense of responsibility over war powers erodes further, it does not bode well for the future of constitutional checks and balances in situations of conflict between the executive and legislative branches. The only way the executive will continue to gain power is if the legislative branch allows it to do so. As Justice Robert Jackson stated in *Youngstown Co. v Sawyer* (1952), "With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations" (343 U.S. at 655).

## Appendix A

**Table V**  
**Voting on Foreign Policy Issues in House of Representatives, 2001-2002**

Roll Call	B	Log Odds	Roll Call	B	Log Odds
Ideology	-5.838***	.003	Ideology	.708*	2.03
Party ID	.826	2.285	Party ID	.601	1.82
Constant	4.460***	86.474	Constant	-.947***	.388
Model Chi-Square: 68.869***, Nagelkerke R Square .320, 90.7% Correct			Model Chi-Square: 45.676***, Nagelkerke R Square .139, 64.8% Correct		
Ideology	3.112***	22.476	Ideology	-.901**	.406
Party ID	3.138***	23.067	Party ID	.115	1.122
Constant	-1.360***	.257	Constant	-.047	.954
Model Chi-Square: 445.505, Nagelkerke R Square .870, 94.6% Correct			Model Chi-Square: 24.511***, Nagelkerke R Square .075, 59.9% Correct		
Ideology	2.195***	8.981	Ideology	-1.009	.365
Party ID	1.086*	2.904	Party ID	1.298*	3.663
Constant	-1.199***	.302	Constant	1.239***	3.453
Model Chi-Square: 218.557***, Nagelkerke R Square .545, 82.3% Correct			Model Chi-Square: 3.076, Nagelkerke R Square .013, 86.2% Correct		
Ideology	3.755***	42.743	Ideology	-3.722***	.024
Party ID	.075	1.077	Party ID	.984	2.676
Constant	-.427	.658	Constant	2.644	14.068
Model Chi-Square: 304.601***, Nagelkerke R Square .866, 86.6% Correct			Model Chi-Square: 63.178***, Nagelkerke R Square .265, 87.1% Correct		
Ideology	1.511***	4.529	Ideology	-.106	.900
Party ID	.012	1.012	Party ID	.432	1.540
Constant	1.172	3.227	Constant	.576	1.778
Model Chi-Square: 58.662***, Nagelkerke R Square .191, 76.7% Correct			Model Chi-Square: 2.353, Nagelkerke R Square .008, 68.8% Correct		
Ideology	.820*	2.270	Ideology	1.565***	4.782
Party ID	1.213**	3.365	Party ID	.181	1.198
Constant	-.781**	.458	Constant	1.262***	3.531
Model Chi-Square: 102.623***, Nagelkerke R Square .295, 74.4% Correct			Model Chi-Square: 65.963***, Nagelkerke R Square .218, 78.9% Correct		
Ideology	3.366***	28.972	Ideology	1.174**	3.235
Party ID	3.419***	30.547	Party ID	1.064*	2.897
Constant	-1.335***	.263	Constant	.164	1.178
Model Chi-Square: 458.420***, Nagelkerke R Square .892, 95.4% Correct			Model Chi-Square: 117.854***, Nagelkerke R Square .332, 74.4% Correct		

Roll Call 461	B	Log Odds
Ideology	1.390**	4.015
Party ID	.862	2.369
Constant	.275	1.316

Model Chi-Square: 121.571\*\*\*, Nagelkerke R Square .342, 75.1% Correct

Roll Call 484	B	Log Odds
Ideology	2.236***	9.360
Party ID	1.059**	2.883
Constant	-.280	.756

Model Chi-Square: 232.455\*\*\*, Nagelkerke R Square .573, 84.6% Correct

Roll Call 546	B	Log Odds
Ideology	2.114***	8.284
Party ID	1.180**	3.255
Constant	-1.155***	.315

Model Chi-Square: 225.213\*\*\*, Nagelkerke R Square .557, 83.5 % Correct

Roll Call 601	B	Log Odds
Ideology	1.532***	4.630
Party ID	2.795***	16.359
Constant	-1.356***	.258

Model Chi-Square: 319.925\*\*\*, Nagelkerke R Square .707, 90.6% Correct

Roll Call 483	B	Log Odds
Ideology	2.356***	10.549
Party ID	2.309***	10.063
Constant	-2.371***	.093

Model Chi-Square: 287.496\*\*\*, Naglekerke R Square .686, 87.1% Correct

Roll Call 544	B	Log Odds
Ideology	1.649***	5.203
Party ID	1.350**	3.857
Constant	-1.294***	.274

Model Chi-Square: 189.478\*\*\*, Nagelkerke R Square .491, 80.5 % Correct

Roll Call 561	B	Log Odds
Ideology	-1.500**	.223
Party ID	-.671	.511
Constant	2.448***	11.560

Model Chi-Square: 56.926\*\*\*, Nagelkerke R Square .211, 82.1 % Correct

Roll Call 64	B	Log Odds
Ideology	5.419***	225.689
Party ID	-.358	.699
Constant	3.052***	21.148

Model Chi-Square: 203.947\*\*\*, Nagelkerke R Square .589, 90.0% Correct

**Table VI**  
**Voting on Foreign Policy Issues in House of Representatives, 2003-2004**

Roll Call 158	B	Log Odds
Ideology	-5.838***	.003
Party ID	.826	2.285
Constant	4.460***	86.474

Model Chi-Square: 68.869\*\*\*, Nagelkerke R Square .320, 90.7% Correct

Roll Call 216	B	Log Odds
Ideology	3.112***	22.476
Party ID	3.138***	23.067
Constant	-1.360***	.257

Model Chi-Square: 445.505\*\*\*, Nagelkerke R Square .870, 94.6 % Correct

Roll Call 329	B	Log Odds
Ideology	2.195***	8.981
Party ID	1.066*	2.904
Constant	-1.199***	.302

Model Chi-Square: 218.557\*\*\*, Nagelkerke R Square .545, 82.3 % Correct

Roll Call 362	B	Log Odds
Ideology	3.755***	42.743
Party ID	.075	1.077
Constant	-.427	.653

Model Chi-Square: 304.601\*\*\*, Nagelkerke R Square .682, 86.6 % Correct

Roll Call 375	B	Log Odds
Ideology	1.511888	4.529
Party ID	.012	1.012
Constant	1.172***	3.227

Model Chi-Square: 58.662\*\*\*, Nagelkerke R Square .191, 76.7 % Correct

Roll Call 413	B	Log Odds
Ideology	.820*	2.270
Party ID	1.213**	3.365
Constant	-.781**	.458

Model Chi-Square: 102.623\*\*\*, Nagelkerke R Square .295, 74.4% Correct

Roll Call 432	B	Log Odds
Ideology	3.366***	28.972
Party ID	3.419***	30.547
Constant	-1.335***	.263

Model Chi-Square: 458.420\*\*\*, Nagelkerke R Square .892, 95.4% Correct

Roll Call 200	B	Log Odds
Ideology	.708*	2.030
Party ID	.601	1.823
Constant	-.947***	.388

Model Chi-Square: 45.676\*\*\*, Nagelkerke R Square .139, 64.8% Correct

Roll Call 219	B	Log Odds
Ideology	-.901**	.406
Party ID	.115	1.122
Constant	-.047	.954

Model Chi-Square: 24.511\*\*\*, Nagelkerke R Square .075, 59.9 % Correct

Roll Call 334	B	Log Odds
Ideology	-1.009	.365
Party ID	1.298*	3.663
Constant	1.239***	3.453

Model Chi-Square: 3.076\*\*\*, Nagelkerke R Square .013, 86.2 % Correct

Roll Call 368	B	Log Odds
Ideology	-3.722***	.024
Party ID	.984	2.676
Constant	2.644***	14.068

Model Chi-Square: 63.178\*\*\*, Nagelkerke R Square .265, 87.1 % Correct

Roll Call 381	B	Log Odds
Ideology	-.106	.900
Party ID	.432	1.540
Constant	.576*	1.778

Model Chi-Square: 2.353, Nagelkerke R Square .008, 68.8% Correct

Roll Call 425	B	Log Odds
Ideology	1.565***	4.782
Party ID	.181	1.198
Constant	1.262***	3.531

Model Chi-Square: 65.963\*\*\*, Nagelkerke R Square .218, 78.8 % Correct

Roll Call 460	B	Log Odds
Ideology	1.174**	3.235
Party ID	1.064*	2.897
Constant	.164	1.178

Model Chi-Square: 117.854\*\*\*, Nagelkerke R Square .332, 74.4 % Correct



Roll Call 461	B	Log Odds
Ideology	1.390**	4.015
Party ID	.862	2.369
Constant	.275	1.316

Model Chi-Square: 121.571\*\*\*, Nagelkerke R Square .342, 75.1 % Correct

Roll Call 484	B	Log Odds
Ideology	2.236***	9.360
Party ID	1.059**	2.883
Constant	-.280	.756

Model Chi-Square: 232.455\*\*\*, Nagelkerke R Square .573, 84.6 % Correct

Roll Call 546	B	Log Odds
Ideology	2.114***	8.284
Party ID	1.180**	3.255
Constant	-1.155***	.315

Model Chi-Square: 225.213\*\*\*, Nagelkerke R Square .557, 83.5 % Correct

Roll Call 601	B	Log Odds
Ideology	2.640***	14.020
Party ID	4.431***	84.010
Constant	-1.520***	.219

Model Chi-Square: 468.242\*\*\*, Nagelkerke R Square .893, 96.0 % Correct

Roll Call 483	B	Log Odds
Ideology	2.356***	10.549
Party ID	2.309***	10.063
Constant	-2.371***	.093

Model Chi-Square: 287.496\*\*\*, Nagelkerke R Square .686, 87.1 % Correct

Roll Call 544	B	Log Odds
Ideology	1.649***	5.203
Party ID	1.350**	3.857
Constant	-1.294***	.274

Model Chi-Square: 189.478\*\*\*, Nagelkerke R Square .491, 80.5% Correct

Roll Call 561	B	Log Odds
Ideology	1.532**	4.630
Party ID	2.795***	16.359
Constant	-1.356***	.258

Model Chi-Square: 319.925\*\*\*, Nagelkerke R Square .707, 90.6% Correct

Roll Call 64	B	Log Odds
Ideology	3.574***	35.643
Party ID	.100	1.106
Constant	1.548***	4.701

Model Chi-Square: 206.397\*\*\*, Nagelkerke R Square .557, 86.4 % Correct

**Table VII**  
**Voting on Foreign Policy Issues in the Senate, 2001-2002**

Roll Call	B	Log Odds
Ideology	-3.116*	.044
Party ID	8.879***	7177.139
Constant	2.761**	15.814
Model Chi-Square: 102.362***, Nagelkerke R Square .874, 92.7 % Correct		
Ideology	-3.572	.028
Party ID	9.801***	18059.542
Constant	4.680**	107.768
Model Chi-Square: 95.656***, Nagelkerke R Square .847, 92.7 % Correct		
Ideology	17.764	51839106
Party ID	9.961***	21193.657
Constant	6.344**	569.064
Model Chi-Square: 79.039***, Nagelkerke R Square .776, 87.9 % Correct		
Ideology	-2.485**	.083
Party ID	4.439***	84.675
Constant	.732	2.079
Model Chi-Square: 49.335***, Nagelkerke R Square .533, 81.8 % Correct		
Ideology	-.418	.658
Party ID	-4.093**	.017
Constant	.076	1.079
Model Chi-Square: 86.424***, Nagelkerke R Square .792, 92.7 % Correct		
Ideology	-6.217**	.002
Party ID	10.415***	33352.326
Constant	7.887***	2663.310
Model Chi-Square: 58.863***, Nagelkerke R Square .674, 89.0 % Correct		
Ideology	1.333	3.794
Party ID	-2.495*	.083
Constant	1.586*	4.882
Model Chi-Square: 9.657**, Nagelkerke R Square .177, 88.0 % Correct		
Ideology	-.874	.417
Party ID	5.626***	277.615
Constant	2.404**	11.067
Model Chi-Square: 81.507***, Nagelkerke R Square .764, 90.8 % Correct		
Ideology	1.382	3.982
Party ID	11.243**	76377.012
Constant	3.455**	31.660
Model Chi-Square: 121.394***, Nagelkerke R Square .948, 99.0 % Correct		
Ideology	.082	1.085
Party ID	4.561***	95.691
Constant	.912	2.490
Model Chi-Square: 88.159***, Nagelkerke R Square .792, 93.9 % Correct		
Ideology	-.180	.835
Party ID	2.074**	7.957
Constant	1.359	3.891
Model Chi-Square: 25.445***, Nagelkerke R Square .327, 79.2 % Correct		
Ideology	-.383	.682
Party ID	3.261**	26.080
Constant	1.812**	6.124
Model Chi-Square: 46.090***, Nagelkerke R Square .523, 82.7 % Correct		
Ideology	-2.994	.050
Party ID	6.093**	442.865
Constant	6.318***	554.343
Model Chi-Square: 19.610***, Nagelkerke R Square .394, 91.9 % Correct		
Ideology	-.461	.630
Party ID	-.126	.882
Constant	-.311	.733
Model Chi-Square: 2.299, Nagelkerke R Square .033, 63.2 % Correct		

**Table VIII**  
**Voting on Foreign Policy Issues in the Senate, 2003-2004**

Roll Call 216	B	Log Odds
Ideology	14.058	1273918.9
Party ID	5.289	198.15
Constant	16.060	9435242.2

Model Chi-Square: 2.864, Nagelkerke R Square .272, 98.9% Correct

Roll Call 177	B	Log Odds
Ideology	4.208***	67.247
Party ID	.734	2.084
Constant	-.100	.905

Model Chi-Square: 109.178\*\*\*, Nagelkerke R Square .887, 97.0% Correct

Roll Call 189	B	Log Odds
Ideology	10.812**	49602.906
Party ID	-7.721*	.000
Constant	4.999**	148.327

Model Chi-Square: 109.309\*\*\*, Nagelkerke R Square .909, 94.8% Correct

Roll Call 205	B	Log Odds
Ideology	-.237	.789
Party ID	.727	2.069
Constant	-.146	.864

Model Chi-Square: 1.173, Nagelkerke R Square .016, 55.8% Correct

Roll Call 318	B	Log Odds
Ideology	1.770**	5.871
Party ID	-.780	.459
Constant	1.256**	3.511

Model Chi-Square: 19.619\*\*, Nagelkerke R Square .253, 77.6% Correct

Roll Call 380	B	Log Odds
Ideology	3.383***	29.448
Party ID	.343	1.409
Constant	.693	1.999

Model Chi-Square: 81.554\*\*\*, Nagelkerke R Square .772, 91.7% Correct

Roll Call 392	B	Log Odds
Ideology	3.930**	50.895
Party ID	-.189	.828
Constant	.133	1.143

Model Chi-Square: 93.755\*\*\*, Nagelkerke R Square .817, 93.9% Correct

Roll Call 159	B	Log Odds
Ideology	.583	1.792
Party ID	-.089	.915
Constant	1.965	7.137

Model Chi-Square: 1.859, Nagelkerke R Square .035, 86.7% Correct

Roll Call 186	B	Log Odds
Ideology	11.371**	86810.271
Party ID	-6.129	.002
Constant	3.125	22.755

Model Chi-Square: 116.967\*\*\*, Nagelkerke R Square .951, 96.8% Correct

Roll Call 192	B	Log Odds
Ideology	12.190***	196763.51
Party ID	-11.104**	.000
Constant	5.268**	194.083

Model Chi-Square: 105.547\*\*\*, Nagelkerke R Square .874, 96.0% Correct

Roll Call 267	B	Log Odds
Ideology	18.032**	67778668
Party ID	-14.008**	.000
Constant	3.150	23.339

Model Chi-Square: 106.255\*\*\*, Nagelkerke R Square .891, 91.8% Correct

Roll Call 319	B	Log Odds
Ideology	3.532**	34.176
Party ID	-3.342	.035
Constant	2.607	13.556

Model Chi-Square: 26.116\*\*\*, Nagelkerke R Square .328, 79.4% Correct

Roll Call 389	B	Log Odds
Ideology	3.328**	27.892
Party ID	-.517	.596
Constant	-.226	.798

Model Chi-Square: 71.017\*\*\*, Nagelkerke R Square .688, 88.8% Correct

Roll Call 405	B	Log Odds
Ideology	1.260**	3.524
Party ID	.455	1.576
Constant	-.986*	.373

Model Chi-Square: 25.315\*\*\*, Nagelkerke R Square .314, 74.2% Correct

Roll Call 67	B	Log Odds
Ideology	10.096**	24250.190
Party ID	3.009	20.259
Constant	-7.221	.001

Model Chi-Square: 117.586\*\*\*, Nagelkerke R Square .928, 96.0% Correct

Roll Call 98	B	Log Odds
Ideology	-.142	.867
Party ID	.183	1.200
Constant	-.053	.949

Model Chi-Square: .063, Nagelkerke R Square .001, 44.9% Correct

Roll Call 156	B	Log Odds
Ideology	1.494*	4.456
Party ID	.349	1.417
Constant	1.923**	6.839

Model Chi-Square: 16.087\*\*\*, Nagelkerke R Square .260, 83.3% Correct

## Appendix B

- December 12, 2001, By Ms. Harman (for herself and Ms. Lofgren)  
H.R. 3468—A bill to authorize the President to convene military tribunals for the trial outside the United States of persons other than United States citizens and lawful resident aliens who are apprehended in connection with the September 11, 2001, terrorist attacks against the United States; to the Committees on Armed Services; the Judiciary. (H10054)
- December 20, 2001, By Mr. Barr of Georgia.  
H.R. 3564—A bill to authorize the limited use of military tribunals absent a war declared by Congress in cases arising out of acts of international terrorism committed in the United States; to the Committees on the Judiciary; Armed Services. (H10964)
- January 23, 2002, By Mrs. Tauscher and Mr. Frost.  
H.R. 3468—A bill to authorize the President to convene military tribunals for the trial outside the United States of persons other than United States citizens and lawful resident aliens who are apprehended in connection with the September 11, 2001, terrorist attacks against the United States; to the Committees on Armed Services; the Judiciary. (H37)
- February 13, 2002, By Mr. Leahy (for himself and Mr. Durbin)  
S. 1941—A bill to authorize the President to establish military tribunals to try the terrorists responsible for the September 11, 2001 attacks against the United States, and for other purposes; to the Committee on Armed Services. (S743)
- March 20, 2002, By Mrs. Davis (for herself, Mr. Conyers, Mr. Kucinich, Mr. Scott, Mr. Delahunt, Mr. Evans, Mr. Reyes, and Ms. Brown)  
H.R. 4035—A bill to authorize the President to establish military tribunals to try the terrorists responsible for the September 11, 2001 attacks against the United States, and for other purposes; to the Committees on Armed Services; the Judiciary. (H1088)
- July 9, 2002, By Mr. Schiff (for himself, Mr. Conyers, and Mr. Frank)  
H.R. 5071—A bill to authorize the President to establish military tribunals to try the terrorists responsible for the September 11, 2001 attacks against the United States, and for other purposes; to the Committees on Armed Services; the Judiciary. (H4424)

Information on bill dates and sponsors was obtained from the Congressional Record online, <http://www.gpoaccess.gov/crecord/> accessed November 1, 2005.

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