

ONE

Introduction

FEW ASPECTS OF U.S. foreign policy are more contentious or controversial than the respective roles and responsibilities of Congress and the executive in the foreign policy process. Despite the voluminous efforts of scholars to understand and explain the perpetual conflict and confusing processes that drive executive-legislative relations over foreign policy, the debate persists.¹ For foreign policy practitioners, however, executive-legislative relations are too pervasive and too important to be an academic exercise. The success of their plans and initiatives often depends on their ability to navigate their way through the executive-legislative minefield.

As history and the Constitution make clear, executive-legislative conflict over foreign policy is inevitable, sometimes even desirable, for it can provide a degree of checks and balances over ill-conceived or dangerous policies. Policymakers, however, have good reason to be concerned about the state of the executive-legislative relationship. While the benefits of these checks and balances are real, the fatigue, frustration, and mistrust that so often characterize executive-legislative relations can be devastating to the foreign policy process. Small issues can explode into big ones over a single misstep, resulting in funding cuts, legal prohibitions, and declining public support. Big issues can succeed or fail depending on how congressional support is developed and maintained. When things go wrong, the impact on U.S. foreign policy is real—frayed relations with critical allies, mixed signals that confuse friend and foe alike, and diminished U.S. global standing.

The challenges of the post-cold war era seem to have exacerbated the anxiety and tension over executive-legislative relations and prompted concerns about U.S. global leadership. The end of the cold war has removed a mantle of gravity and secrecy that insulated U.S. foreign policy and helped to justify and sustain U.S. involvement overseas. Moreover, the lack of a unifying threat has helped to create an impression that the “stakes” involved in foreign policy and defense issues have declined. The power of a globalized economy has realigned the political forces of support for a free trade and internationalist foreign policy and torn down the last vestiges of a wall between foreign and domestic policy. Meanwhile, rapidly expanding access to information is encouraging the spread of “grass-roots diplomacy”—that is, the increasing involvement of players outside the traditional East Coast elite that controlled foreign policy in decades past.²

In this complex environment, scholars, pundits, and policymakers look to the public and high-profile battles between Congress and the president as bellwethers of the future of U.S. foreign policy. When Congress supports the president’s agenda, as it did with the North American Free Trade Agreement (NAFTA), World Trade Organization (WTO), and North Atlantic Treaty Organization (NATO) expansion, supporters hail the new collaborative spirit and bipartisanship, while opponents accuse Congress of forgoing its deliberative responsibilities and rubber stamping an executive agenda. Similarly, the refusal of Congress to approve fast-track trade authority, the Comprehensive Test Ban Treaty (CTBT), or (for many years) payment of United Nations’ arrears is viewed by many as the demise of an internationalist foreign policy and a weakening of executive authority.³ In the days following the Senate’s rejection of the test ban treaty, the president’s national security adviser, Samuel Berger, went so far as to accuse Congress of pursuing “a new isolationism” and a “survivalist’s foreign policy.”⁴ Increasingly, policymakers wring their hands, and pundits wag their fingers at a process that seems to grow increasingly complex, politicized, and hostile with each passing legislative season.

The emphasis on institutional conflict and high-profile legislation is understandable. First and foremost, these issues are important. No one can dispute that events such as the approval of the North American Free Trade Agreement or the defeat of the Comprehensive Test Ban Treaty have enormous impact on American foreign policy and credibility. It is also true, however, that the popular media only concentrate on

executive-legislative relations in times of crisis or conflict. As a result, many observers are simply not aware of the full depth and breadth of executive-legislative relations. Furthermore, political scientists, in their search for more quantitative and statistical means of evaluating executive-legislative relations, have often focused on those congressional actions that constitute institutional views, namely, recorded votes and official legislative actions. These are times when institutional action and interbranch conflict are most evident.

Legislation can shape the landscape of executive-legislative relations in dramatic ways, especially when it appears to signify a major shift in the foreign policy powers. For many policymakers, legislation such as the Lend-Lease Act of 1941, the 1964 Gulf of Tonkin Resolution, or the 1975 Arms Export Control Act all marked critical junctures in U.S. foreign policy and represent significant shifts in the balance of power between Congress and the executive. This is the legislation of which legend is made. Legislative and executive-legislative crises affect not only the substance of U.S. foreign policy but also the views and values of the individuals involved. Policymakers recount their involvement in the battles over the Turkish embargo in 1974, aid to the Nicaraguan rebels during the mid-1980s, or important free trade legislation of the 1990s like war stories. The perceptions and impressions of these events die hard, if ever.

Big votes and sweeping legislation tend to grab the headlines and frame the debate about the state of executive-legislative relations, but they only tell part of the story. A focus on these high-profile events tends to produce a formal, institutionalized portrait of Congress that bears little resemblance to the practical, day-to-day reality of most policymakers. In reality, the executive-legislative dynamic is not nearly so dramatic or so easily explained. In between these highs and lows, the majority of foreign policy churns on below the noise and largely out of the public eye. Trying to evaluate the state of executive-legislative relations according to these headline-grabbing events is like trying to measure an ocean by counting waves. Dramatic clashes over high-profile issues—“waves”—are important, but they do not tell all, or even most, of the story. It is in the “ocean”—the day-to-day interactions over unexceptional issues—where most foreign policy is shaped, debated, and made.

Why should we care about these more obscure issues and interactions? After all, some might argue that these are mundane, bureaucratic interactions over secondary issues—not the fundamental clashes that shape and redefine the balance of power between the branches or significantly alter

the course of U.S. foreign policy. The ocean, however, does matter. First, many foreign policy issues never receive public attention and media scrutiny or trigger broader institutional clashes, yet their impact on important elements of U.S. foreign policy or key bilateral relationships is considerable. Working these issues is the time-consuming, energy-intensive business of foreign policy professionals in both branches.

Second, the way that conflicts are handled down in the policy “trenches” has an enormous influence on whether they evolve into broader, high-profile institutional conflicts. As in all dynamic relationships, conflict between the executive and legislative branches tends to escalate as a result of early misunderstandings and miscalculations. While some high-profile conflicts may be inevitable, many are not preordained and can be minimized or even prevented if they are handled more effectively in earlier stages.

Finally, even large, high-profile conflicts are built on a base of routine and informal interactions. These issues ebb and flow, popping onto the national radar screen as the stakes mount and actions intensify, only to fall back again as the moment of crisis passes. Often, the fate of these high-profile battles can be determined as much by how the issue is handled in the trenches as by what happens to it once it hits the political stratosphere.

The Informal Universe, Issues, and Individuals

For the most part, policymakers struggle within porous, fragmented institutions where policy is driven more by like-minded individuals than by disciplined organizations, conflict is as much intrainstitutional as it is interinstitutional, and issue loyalties often outweigh partisan ties or institutional allegiances. In this environment, relations between the branches are characterized as much by collaboration and negotiation as by confrontation and conflict, a reality understood by a few insiders but often misunderstood by a majority of the foreign policy community. This book identifies several keys to understanding these institutional dynamics and their impact on U.S. foreign policy.

The Informal Universe

It is impossible to understand how much of U.S. foreign policy is shaped and debated without acknowledging the power of the informal

universe. Much of the interaction between Congress and the executive occurs outside of the formal legislative process and official channels of communication. In fact, so rich is this informal interaction that often policy is influenced and changed before more formal processes are even initiated. Votes, hearings, and legislation—the traditional business of Congress—only tell part of the story. Use of the media, informal procedures, commitments, and relationships—the essential elements of the informal universe—are crucial to the foreign policy process.

By using the informal universe, issue leaders can dramatically expand the manner and extent of their policy influence by shaping the issues or leveraging executive branch behavior. Members of Congress (especially in the Senate) use informal and procedural powers to advance or obstruct the legislative process. The importance of the informal universe, however, is not limited to the legislative branch. The executive branch relies heavily on unofficial processes to vet ideas, ascertain congressional hostility, or request assistance. Sometimes, even formal legislative action is little more than a ratification of the informal negotiations and agreements that have preceded it. In other cases, Congress and the president have established informal patterns and routines, which, though not legislatively binding, carry considerable force of practice and precedent.

Both branches of government also use both public and private communications in hopes of shaping policy decisions, even when their direct impact on policy may be limited. Letters, opinion pieces, talk show appearances, floor statements, press releases, and personal phone calls are part of the daily dialogue between the branches. The informal universe has always been a critical element of executive-legislative relations, but given the pressures of near instantaneous communications, an ever-shortening news cycle, and an increasingly cumbersome legislative process, its role can only increase.

Institutional Weakness and Individualized Power

Another essential element of the executive-legislative dynamic over most foreign policy is the idiosyncratic and personalized nature of the process. The historic institutional battles between Congress and the executive over the control of U.S. foreign policy belie the power that individuals are able to grasp and exercise. Today, institutional fragmentation and ideological polarization sharply limit strong institutional

leadership over foreign policy, while the expansion of informal and procedural powers enhances the power of individuals.

Such individualism on the part of members of Congress is not new, but several ongoing trends have steadily exacerbated it. First, during the past several decades, institutional reforms have redistributed power and weakened the committees that used to dominate congressional involvement in foreign affairs. The days when the views of a few powerful committee chairs could dictate an institutional response are long gone. Second, partisan cleavages and ideological polarization seriously complicate efforts to build a majority in favor of a traditional internationalist foreign policy agenda and often render “party discipline” almost irrelevant to the foreign policy process, especially on those issues that remain largely below the surface and out of the public eye. As a result, members of Congress and their staffs face few constraints from institutional structures or partisan dictates as they pursue many of their individual foreign policy interests. Finally, the informal universe inherently favors individual power. As a result, growing procedural and informal powers, combined with a crowded legislative calendar and an unwieldy legislative process, have greatly enhanced the individualized nature of executive-legislative relations over foreign policy.

Issue Leaders

Individualized power explains much about “how” Congress influences foreign policy, but it fails to explain “who” is inclined to do so. In the absence of strong institutional roles or partisan loyalties, foreign policy leadership is determined more frequently by issue leaders than by office holders. Any member of Congress with the personal drive and interest to champion an issue can become an issue leader. Leaders can include key office holders, such as committee or subcommittee chairs, but such positions, while often enhancing the individual’s leverage over the executive, are not required if the member is adept at manipulating the informal universe.

The importance of issue leaders is not an entirely new phenomenon. Individuals in Congress have long used informal and individual powers to champion or oppose issues. Several factors, however, seem to be increasing the prevalence and importance of leaders. First, the end of the cold war and dissolution of the Soviet Union have eliminated an analytical and budgetary framework that provided structure, urgency, and pri-

ority to U.S. foreign policy. As the “stakes” connected with congressional involvement in foreign policy have declined, so too have the disincentives associated with policy entrepreneurship and single-issue advocacy.

In addition, the American public remains profoundly disinterested in foreign policy.⁵ Given the lack of political salience associated with foreign policy, declining interest in foreign affairs is more evident in Congress and, some would say, even in the presidency. As a result, fewer members are focusing on foreign affairs, but those few who do are playing a disproportionate role. Finally, in the 1990s U.S. foreign policy has grown more complex, and the distinctions between foreign and domestic policy have steadily evaporated, bringing a greater number of issues and players into the foreign policy mix. Increasingly, foreign policy issue leaders may champion their foreign policy concerns and interests from their positions on the banking, finance, judiciary, or environment and natural resource committees, which have far more cachet with constituents and voters.

Cross-Institutional Linkages

At the formal, institutional level, conflict dominates executive-legislative relations over foreign policy. For most foreign policy issues, however, a different and more complex relationship emerges. Congress and the executive are neither as hostile nor as separate as they appear. The executive and legislative branches are intertwined not merely by the powers they share but also by the nature of the institutions and the individuals who inhabit them.

Although at one level these institutions are highly adversarial, the individuals that compose them are closely linked into informal relationships and networks. Huge quantities of information move informally—back-channel—between these institutions every day. When operating constructively, these relationships and networks provide the avenue for preventing or solving problems through informal consultation and collaboration. At times, however, these same networks allow controversy and debate from within the executive branch to “spill over” to Congress, as disaffected parties seek another audience for their views or concerns. In almost all cases, congressional issue leaders rely on sympathetic elements of the executive bureaucracy for advice, information, and even advocacy of their position or concern within the interagency process.

Issue Clusters

Institutional linkages, however, cannot be viewed in isolation. These informal relationships and networks are not solely the domain of the federal government. Rather Congress and the executive branch coexist with interest groups, nongovernmental organizations (NGOs), and even state and local governments as “issue clusters” to advocate for certain policies and interests. It is not uncommon for clusters of collaborators from Congress, the executive, and nongovernmental entities to team up against similar issue clusters with opposing views. These different entities rely on one another for information, advice, and early warning about opposing interests. In many foreign policy debates the conflict lies less between Congress and the president than between two different issue clusters with competing visions for U.S. foreign policy. This set of complex and crosscutting relationships defines “reality” for most policymakers.

Studying the Ocean

Studying these executive-legislative relationships at the sometimes mundane, day-to-day level poses several challenges. Informal power does not leave much of a paper trail or lend itself to statistical analysis. Moreover, much of the informal collaboration between Congress and the executive is off the record. In fact, the relationships that allow such collaboration are often unacknowledged or off-line. Public recognition of these relationships could result in lost contacts or sources, accusations of institutional disloyalty, or even punitive action by that person’s home institution. Therefore, while institutional conflict between Congress and the executive over foreign policy tends to be more public and documentable, more collaborative interactions tend to be informal and secretive. As a result, descriptions of informal and procedural dynamics are unavoidably dependent on anecdotal information and descriptive cases.

This book relies extensively on three case studies and numerous other examples to illustrate the institutional dynamics that drive much of today’s foreign policy process. The first one describes a little-known but high-impact controversy involving the transfer of three naval frigates to Turkey. This case is a typical example of how individual power and informal agreements can drive policy and generate controversy (largely

outside of the legislative process), while never really becoming a public or high-profile institutional dispute. The second case—the battle to obtain congressional approval to loosen proliferation-related sanctions on Pakistan—shows how both Congress and the executive can operate in the ocean even when official actions and formal legislation are required. While this controversy contained several waves, including a fairly high-profile vote and considerable media attention during its later phases, this issue was handled and debated largely within a community of foreign policy professionals whose issue loyalties far outweighed partisan or institutional allegiances.

The third case describes the highly acrimonious battle to secure Senate ratification of the Chemical Weapons Convention. A classic wave, the ratification of the Chemical Weapons Convention ultimately became a high-profile, politicized contest between the president and a deeply divided Congress. The sixty-seven votes required for ratification combined with the potent procedural powers of the Senate posed a daunting challenge to ratification of the treaty. As the election season approached, high-profile attention to the treaty increased the stakes, and political intensity associated with the treaty rose dramatically. Despite its high-profile, institutional characteristics, however, informal power, intimate cross-institutional relationships, and powerful issue clusters still played a vital role, especially during those times that the issue fell out of the headlines and back into the hands of the issue leaders driving the process.

These examples typify the important and frustrating issues that absorb the attention of both senior and midlevel policymakers on a routine basis—the bread-and-butter issues of executive-legislative relations on foreign policy. Each in its own way illustrates the depth and variety of congressional power and executive-legislative interactions over foreign policy. While all three cases deal primarily with security issues, they all differ significantly from one another in visibility, intensity, legislative requirements, and manner of congressional influence. Despite these differences, the five keys to understanding how Congress and the executive interact over foreign policy—the informal universe, individualized power, issue leaders, institutional linkages, and issue clusters—are evident throughout.