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Author(s): Kenneth E. Sharpe

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The Post-Vietnam Formula under Siege: The Imperial Presidency and Central America

KENNETH E. SHARPE

The Iran-contra affair made public an abuse of executive authority that began in 1981. The deeper issues raised by the trading of arms for hostages and the diversion of profits to the contras, however, harken back to the Vietnam period. The impact of the Vietnam war on our constitutional democracy, which culminated in the Watergate scandal and Richard Nixon's resignation, served as a warning of the dangers of an imperial presidency. This article evaluates the lessons learned, the reforms instituted in the aftermath of Vietnam, and indicates what it is necessary to do now.

Different people drew different lessons from the Vietnam-Watergate scandals. Some blamed the abuse of executive power on the character flaws of the President and his closest advisers, and saw the solution as their removal from office. Others saw the problem as weak laws and sought legislation to strengthen Congress's power to check executive abuses and to legislate foreign and domestic policy. Reforms that I loosely call the post-Vietnam-Watergate formula were enacted to ensure that presidential abuse of power would be less likely to again endanger constitutional democracy in the United States. Others, like Senator J. William Fulbright, supported legislative action but argued that this was not enough. The problem, they argued, was political, not legal. Congress lacked the will to enforce its constitutional authority in foreign policy. An exercise of that will required a challenge to the direction of foreign policy, and the president, drawing on his often self-

KENNETH E. SHARPE is a professor of political science at Swarthmore College and co-editor (with Morris Blachman and William LeoGrande) of *Confronting Revolution: Security through Diplomacy in Central America*.

proclaimed authority as commander in chief, was often able to take foreign policy steps that created a *fait accompli* and made the exercise of that will even harder. As long as a condition of permanent cold-war crisis prevailed, it would be difficult to defend the authority of Congress against usurpation by the president and the national security bureaucracy he managed.

The Reagan administration's conduct of Central American policy provided the first sustained test of the post-Vietnam-Watergate formula. It demonstrated the continued willingness of the executive branch to abuse its authority in foreign policy and suggested the limits of legislative reform when not backed by a strong congressional will.

THE IMPERIAL PRESIDENCY AND THE POST-VIETNAM-WATERGATE FORMULA

In no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department. . . . [T]he trust and the temptation would be too great for any one man. . . . War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. . . . The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace. [James Madison]¹

The Constitution leaves fundamental issues to be settled by practice, precedent, and judicial review. There has been continual dispute over the balance of power in foreign policy making. One of the major conflicts has been over efforts to reconcile the war-declaring power of Congress and the war-making power of the president. The decision to declare war was given to Congress for the reasons Madison outlines above. Yet the Founding Fathers understood that this restriction would not impede the executive from repelling attacks against the country in the absence of a formal declaration of war. Over the decades presidents drew on their constitutional authority as commander in chief to claim increasingly unchecked authority in the case of such "defensive" wars. But what did it mean to repel an attack? Was it just to defend American borders from actual invasion? Did it include preventive wars to stop a possible attack? And who was to determine how likely that possibility was? Was an attack on U.S. citizens or property outside the United States the kind of attack a president could by himself decide to repel? What was the distinction between a "defensive" war and a "preventive war"? Were such wars justified only in areas immediately bordering the United States? Or any place in the hemisphere? Or the world?

The system of checks and balances in the foreign policy arena was in Edwin

¹ Cited in Christopher H. Pyle and Richard M. Pious, *The President, Congress and the Constitution* (New York: The Free Press, 1984), 287.

S. Corwin's words "an invitation to struggle for the privilege of directing American foreign policy."² Over more than two centuries of struggle a pattern has emerged: the executive has enlarged its foreign policy powers at the expense of Congress; and Congress has reacted to reassert its constitutional prerogatives when the dangers to its institutional authority have become clear. The long-term effect of such conflicts, however, has been the gradual enlargement of executive power.

The shift in the balance toward the executive began to take on alarming proportions in the cold-war decades that followed World War II. The executive developed a large independent peacetime national security apparatus whose centerpiece was the National Security Council (NSC) created in 1947. Also critical was the establishment of the Defense Department (which integrated all the services) and the giving of legislative authority to a Joint Chiefs of Staff system and to the Central Intelligence Agency (CIA).

As the security apparatus grew and cold-war tensions mounted, the executive branch became increasingly unaccountable to Congress, the press, and the public in the making of foreign policy. Congress generally acquiesced. The rough consensus over foreign policy goals and the seeming imperatives of national security muted fundamental criticism of the shift of power to the executive. The executive branch increasingly bypassed the treaty-making authority of Congress through the use of secret executive agreements. The CIA developed into an apparatus that not only gathered intelligence but secretly carried out foreign policy, often using covert operations to overthrow foreign governments and assassinate foreign leaders. The president, the Pentagon, the CIA, the NSC, and even the State Department felt less obliged to give Congress and the public information about foreign policy issues.

President Lyndon B. Johnson's commitment of half a million U.S. troops to Vietnam under the Tonkin Gulf Resolution demonstrated how far Congress had abdicated its constitutional prerogative. In 1969 President Richard M. Nixon took the executive interpretation of war powers even further than Johnson by authorizing the bombing of Cambodia. The next year, in the face of clear congressional sentiment to terminate the war in Indochina, he authorized a U.S. invasion of Cambodia, claiming authority as commander in chief and invoking the need to protect U.S. troops. A few years later the Watergate revelations showed that the problem of executive secrecy and abuse of power went even further, putting, Henry Steele Commager wrote, other fundamental principles at risk.

By countenancing burglary, wiretapping, *agents provocateurs*, the use of the Federal Bureau of Investigation, the Central Intelligence Agency and even the Internal Revenue Service to punish "enemies," Mr. Nixon sought to substitute his own fiat for law.

By attempting to impose, for the first time in our history, prior censorship of the press, by threatening hostile television stations with deprivation of their licenses . . . Mr. Nixon presented the most dangerous threat to the Bill of Rights in the whole of our history.

² Edward S. Corwin, *The President: Office and Powers* (New York: New York University Press, 1940), 200.

By corrupting presidential elections through the solicitation of illegal contributions, by a systematic campaign of mendacity, trickery and character assassination against opponents . . . Mr. Nixon gravely endangered the integrity of our republican system of government.³

The reaction was growing support for impeachment and an attempt to strengthen constitutional democracy. A set of three related commitments—a post-Vietnam formula—were embodied in new laws, procedures, and institutional arrangements. One commitment was to get access to information about executive activities, a necessary condition for checks and balances to work. A second was to restore congressional legislative authority in foreign policy and strengthen congressional checks on potential abuses of authority at home and abroad. A third commitment was to limit the possibilities for political repression and violations of civil liberties and civil rights, about which I have written elsewhere.⁴ This article will focus on the first two commitments.

Access to information. The conflict between secrecy and disclosure has had a long history. The recurrent pattern was demonstrated in 1798 when Benjamin Franklin Bache of the Philadelphia *Aurora* published a secret dispatch from the French to the secretary of state in order to show that the French wanted peace and the John Adams administration wanted war. He was arrested for seditious libel, and Congress was spurred to pass the Sedition Act. The issue then and for later generations was not the government's right to secrecy; *The Federalist* No. 64 argued that executive secrecy was vital in diplomatic negotiation and in "the business of intelligence." Rather it was whether or not the suppressed information was really vital or was suppressed in order to prevent an informed citizenry from making its own decisions and to protect the government from public opposition. When Congress passed the Espionage Act in 1917, it sought to prevent its misuse by overzealous presidents when it rejected a provision that would have made it a crime to publish information that "might" be used by the enemy. Instead it demanded proof that the person disclosing information had "reason to believe" it could be used "to the injury of the United States or to the advantage of any foreign nation."⁵ Congress's power to gain access to information through investigation was strengthened by a 1927 Supreme Court decision stating that a legislative body "cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislative is intended to affect or change. . . ."⁶ But the problem of the balance between secrecy and disclosure deepened during and after World War II with the development and expansion of a classification system for information, a specialized national security bureaucracy with a vested interest in secrecy, and the widespread fear of Communist agents and subversion.

³ Henry Steele Commager, *The Defeat of America* (New York: Simon and Schuster, 1974), 155–156.

⁴ Morris Blachman and Kenneth Sharpe, "De-Democratizing Foreign Policy: Dismantling the Post-Vietnam Formula," *Third World Quarterly* 8 (October 1986).

⁵ Cited in Arthur Schlesinger, *The Imperial Presidency* (Boston: Houghton Mifflin, 1973), 338.

⁶ McGrain v. Daugherty, 273 U.S. 135, 175 (1927).

Only a few members of Congress were willing to take up the battle of disclosure versus secrecy during this time. But Congress was shaken out of its lethargy by Vietnam and Watergate.

One legislative response was to require certain critical information. The 1973 War Powers Resolution demanded that the president inform Congress in writing within forty-eight hours of introducing troops (in the absence of a declaration of war) into areas of hostilities or where imminent involvement in hostilities was likely. The reasons for introducing the troops, the legal authority justifying the introduction, and the scope and duration of the commitment had to be specified.

The 1974 Hughes-Ryan Amendment (amended again in 1980) required that the president report in "a timely fashion" all CIA covert operations other than intelligence gathering to appropriate committees. And legislation in 1976 and 1977 created Select Intelligence Committees in the Senate and House respectively. This allowed some oversight and control by the Congress, and there were mechanisms under certain circumstances for public disclosure of the classified information given to the committees.

The ability of the president to make secret executive agreements was limited by the Case-Zablocki Act of 1972, which required all executive agreements to be reported to Congress. In 1974 Congress also required that arms sales be so reported. If the president declared a national emergency, Congress required him to inform it of the specific laws under which he proposed to act, to file with Congress all executive agency rules and regulations, and to account for expenditures. Congress also strengthened the Freedom of Information Act in 1974 to provide for judicial review of decisions by executive agencies to keep all parts of a document classified.

Perhaps more important than the specific statutes was the general commitment Congress made to watch presidential actions more carefully and to use its existing powers as leverage to demand that foreign policy decisions be shared. The greater size and foreign policy expertise of staff members were also important. Such staff provided independent sources of information and allowed concerned members of Congress to use existing mechanisms better to provide oversight of foreign policy.

Restoring Shared Control. The new commitment to get access to information was aimed at allowing Congress increased participation in the making of foreign policy and a greater ability to check executive excesses. Constitutionally, much of the necessary power was already in the hands of Congress: the authority to declare war, to advise and consent on treaties and appointments, and the ultimate "check" through its power of the purse. But Congress was concerned about the various mechanisms or precedents that had developed to allow the president to circumvent congressional control. Of particular concern was an old problem in the struggle over foreign policy—the ability of the president to create situations that *forced congressional acquiescence* and created an antecedent, a *fait accompli*, which limited Congress's will and ability to use its existing powers. Alexander Hamilton had recognized that "the executive in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the

legislative decision,” a situation which Madison feared could create a dangerous shift in the congressional balance.⁷

In 1846 President James Polk sent U.S. troops into an area contested by Mexico and Texas. When they were predictably attacked by Mexican soldiers, he forced Congress's hand. In 1907 Theodore Roosevelt sent the fleet around the world in the face of strong congressional opposition, but Congress had to give the funds for fuel and supplies to bring it back. During and after World War II, congressional acquiescence allowed a dangerous growth of the president's prerogative as commander in chief. Corwin wrote after the war:

there is Presidential initiative *and* Presidential initiative—that type which, recognizing that Congress has powers—great powers—in the premises, seeks to win its collaboration; and that type which, invoking the “Commander-in-Chief” clause proceeds to stake out Congress's course by a series of *faits accomplis*.⁸

In the cold-war years this kind of initiative, in which the president presented Congress with a *fait accompli*, grew more and more common. Presidents involved the United States in full-scale war by first committing troops to foreign lands (Truman in Korea, Kennedy and Johnson in Vietnam) and then arguing that the troops could not be abandoned or that commitments made had to be honored to protect American credibility. Presidents increasingly made secret executive agreements that bound the United States to certain foreign policies without congressional debate and authorization. Presidents ordered covert operations that involved the United States in policies that Congress could disown only at the risk of seeming to undermine national security. By the late 1960s the president had an unprecedented ability to create an antecedent state of things; and the argument that Congress had to stand by presidential commitments had a much more important place in U.S. foreign policy than in the past.

Congress attempted to hold the president accountable by insisting on full consultation and shared decision making *before* the policy die was cast. Some of this was handled legislatively. For example the War Powers Act aimed to “insure that the collective judgement of both the Congress and the President will apply” to the decision to send U.S. troops into hostilities by insisting that the president consult with Congress “in every possible instance” *before* the troops are introduced.⁹ The Senate Foreign Relations Committee described the resolution as “an invitation to the executive to reconsider its excesses, and to the legislature to reconsider its omissions, in the making of foreign policy.”¹⁰

Congress also established procedures by which the new access to information

⁷ Cited in Schlesinger, *The Imperial Presidency*, 19.

⁸ Edward S. Corwin, *Total War and the Constitution* (New York: Knopf, 1947), 33.

⁹ The War Powers Resolution, Public Law 93-148, 93rd Congress, 1st sess., J.J. Res. 542, 7 November 1973; reprinted in Pat M. Holt, *The War Powers Resolution, The Role of Congress in U.S. Armed Intervention* (Washington, D.C.: The American Enterprise Institute, 1978), 43-48.

¹⁰ Cited in Holt, *The War Powers Resolution*, 4.

could be used to insist on participation or to stop the president. For example, the Senate and House Intelligence Oversight Committees could try to dissuade the CIA from continuing covert operations by using their control of authorizations for intelligence activities, or by revealing such operations, or by taking the issue to the House or Senate to pass legislation specifically forbidding or cutting appropriations for the activity. The Clark Amendment in 1976 (abolished in 1985), for example, prohibited assistance for military or paramilitary operations in Angola. Similarly, Congress could block or force the modification of executive agreements by denying funds to implement them.

Perhaps the strongest measure was the provision of the War Powers Resolution that required the unauthorized use of troops to stop automatically. The resolution recognized that a president might have to act without congressional authorization in emergencies, but did not want such extraordinary circumstances to become an ordinary route for circumventing Congress. The War Powers Resolution required the president to terminate any unauthorized use of troops within sixty days unless Congress took affirmative action to approve it. The sixty days starts upon submission of the required report to Congress—a wrinkle that puts the starting of the clock in the hands of the president.

The new formula that emerged after Vietnam and Watergate represented concern both about the *process* of foreign-policy decision making and about the *content* of foreign policy. There was an awareness in Congress, and later in the Carter administration, that Third World turmoil was often caused by local conditions of poverty and repression, and that a “North-South” perspective was more realistic than an “East-West” perspective. Critics of the Vietnam policy were wary of sending U.S. troops to fight in Third World countries where the goals were not clearly defined and the conflict was unpopular at home. Many were opposed to supporting corrupt, repressive regimes and sought instead to condition foreign military and economic aid on a regime’s human rights performance.

These new commitments to both process and content allowed Congress to take a more aggressive role in shaping Central American policy than it had in shaping early Vietnam policy. In the Carter administration this was most visible in the compromises and policy changes the administration was forced to accept in order to get congressional approval of the Panama Canal treaties and of economic assistance to the new Sandinista regime in Nicaragua. But a much more serious and sustained test came when the Reagan administration took office. Its willingness to aid repressive regimes facing domestic turmoil troubled many in Congress, and its emphasis on a military strategy in Central America raised the spectre of the involvement of U.S. troops in “another Vietnam.” Moderates in Congress were particularly worried that the commitments being made to El Salvador (and later to Honduras and to the Nicaraguan exile army) would eventually draw in U.S. troops. They did not count on the War Powers Resolution alone; they understood that presidential initiatives could make it difficult to oppose the President if he sent troops. They wanted to participate from the very beginning in shaping policy.

CENTRAL AMERICA: A TEST CASE FOR THE POST-VIETNAM FORMULA

The post-Vietnam formula, like the Constitution itself, was open to interpretation. Would Congress share in shaping the overall direction of foreign policy, in the “takeoffs” as well as the “crash landings”?¹¹ Would Congress be able to prevent the executive from creating a crisis – an antecedent state of things – over which it could not easily exert its constitutional authority? Could Congress expect the executive to be forthright and candid in providing information about what it was doing and why? Would the executive respect congressional statutes and stay within the bounds of the law?

El Salvador

From 1981 until 1984, Congress attempted to participate in shaping El Salvador policy by making military aid conditional on certain requirements. The president had to certify that the Salvadoran government was “making a concerted . . . effort to comply with internationally recognized human rights,” was “achieving substantial control over all elements of its armed forces, so as to bring an end . . . to indiscriminate torture and murder,” was “making continued progress in . . . land reform,” and was “committed to the holding of free elections.”¹²

The conditionality requirement was weak: once the president certified, aid was automatically released. But the requirement made clear the broad opposition in Congress to aid for a repressive, reactionary regime; and it underlined the widespread belief that real reform was the only way to stop revolution. Presidential certification every six months also forced a certain public accountability, and the congressional hearings around each certification provided for careful scrutiny of administration facts and stimulated through media coverage public debate and education.

The administration, however, provided false and misleading information in order to certify that the conditions required for aid existed, despite overwhelming evidence to the contrary. Further, it refused to put serious pressure on the Salvadoran military to end its human rights abuses. To pick but one example, it repeatedly denied the well substantiated charges (confirmed by its own internal documents) that thousands of civilian noncombatants were being killed by government forces and “death squads” organized or aided by top military officials.¹³ When Congress

¹¹ Senator Arthur Vandenberg had advised President Truman: “Let us in on the takeoffs if you want us in on the crash landings.” Cited in James Sundquist, *The Decline and Resurgence of Congress* (Washington, D.C.: Brookings Institution, 1981), 300.

¹² U.S. House of Representatives, 97th Cong., 1st sess., International Security and Development Cooperation Act of 1981, Section 728(b).

¹³ See Jim Leach et. al., *U.S. Policy in Central America: Against the Law?* (Washington, D.C.: Arms Control and Foreign Policy Caucus, 11 September 1984), 9–13; The Central America Crisis Monitoring Team, *In Contempt of Congress, The Reagan Record of Deceit and Illegality on Central America* (Washington, D.C.: Institute for Policy Studies, 1985), 32–37.

renewed the certification requirement in November 1983, Reagan pocket vetoed the bill while Congress was not in session and, therefore, had no opportunity to override it. The congressional response to such efforts to undercut or eliminate certification was weak. A majority would not support strengthening such legislation, and there was only limited willingness to use the power of the purse to cut aid even when the certification conditions were being violated.

The Reagan administration sought to avoid further scrutiny and opposition by refusing to comply with the requirement of the War Powers Resolution that the president report to Congress within forty-eight hours of when U.S. troops are introduced "into hostilities or into a situation where imminent involvement in hostilities is clearly indicated by the circumstances." While such reporting had also been avoided by Ford and Carter, neither had presented such systematically false information about the actual situation of U.S. troops. The Reagan administration maintained "we are not putting our people in a situation where there is any imminent danger of hostilities."¹⁴ But in fact, U.S. military personnel were stationed in brigade headquarters throughout zones of conflict, traveled to the site of combat, came under fire on at least eight separate occasions by early 1985, flew reconnaissance missions over Salvadoran battlefields, and participated in naval interdiction activities in the Gulf of Fonseca.¹⁵ Congressional critics pointed to the evidence, but they were unable to generate widespread concern.

Congress's ultimate leverage in the foreign policy process is in the power of the purse. From 1981 until mid-1984 a majority in Congress often did seek to limit military appropriations to El Salvador. The President, however, used a number of mechanisms to increase vastly military assistance outside the regular or supplemental appropriations process. In March 1981, for example, he used his defense drawdown authority to tap special funds earmarked for military emergencies and increased congressionally authorized military aid to El Salvador by \$20 million. Congress had only appropriated \$5.5 million. He then used his authority to reprogram budgetary allocations to send another \$5 million in military aid and \$44.9 million in economic support funds. For fiscal year (FY) 1982, Congress only appropriated \$27 million and turned down an administration supplemental request for another \$35 million. But in February 1982, the White House, claiming that the guerrilla destruction of aircraft at the Ilopango air base created an emergency situation, used its special defense drawdown authority to dispatch \$55 million to El Salvador—over twice the amount Congress had authorized.

In each case the President was obeying the letter but not the spirit of the law. The special funds he drew on for military aid were put aside by Congress for use in emergency situations at presidential discretion. Although there was no emer-

¹⁴ Langhorne Motley, before the House Subcommittee on Western Hemisphere Affairs, 2 May 1984; cited in Central America Crisis Monitoring Team, *In Contempt of Congress*, 39.

¹⁵ Jim Leach, George Miller, Mark O. Hatfield, *U.S. Aid to El Salvador: An Evaluation of the Past, A Proposal for the Future* (Washington, D.C.: Arms Control and Foreign Policy Caucus, February 1985), 6, 24.

gency in these cases, the President defined them as such in order to circumvent a congressional debate on supplemental appropriations that he was likely to lose. Similarly, reprogramming — which requires only that the appropriations committees be informed of executive budget reallocations and not object within fifteen days — was designed to give the bureaucracy flexibility in reallocating funds among budget categories, not to provide a way to circumvent congressional debate on controversial aid authorizations. Yet the large volume of often legitimate reprogram requests makes it nearly impossible for the committees to quickly evaluate how funds are being allocated.¹⁶ House leaders eventually grew critical of such circumventions. In 1983, the Appropriations Committee cut the reprogramming request for \$60 million down to \$30 million. House leaders warned the President not to continue to use his special drawdown authority to fund unauthorized military aid to El Salvador.

The administration tried another tack. In early 1984 it came to Congress with a request for an emergency supplemental appropriation for \$93 million; Congress approved \$61.75. Secretary of State George Shultz claimed that the Salvadorans were “running out of supplies right now” and other officials stated that “without these funds, the El Salvadoran Armed Forces will either go back to the barracks or collapse.”¹⁷ It turned out there was no emergency; \$32 million of military aid already in the pipeline could have been diverted if necessary, and much of the emergency supplemental aid was used to expand the army by building new units.¹⁸

The 1984 and 1985 elections in El Salvador radically changed the character of congressional-executive relations. The election of José Napoleón Duarte, a recognized reformer, reinforced the administration's definition of the government as centrist and reformist. Many moderates grew reluctant to oppose aid, despite evidence that the military, not Duarte, was still the real power in El Salvador and that military corruption and repression were continuing. Congress approved the administration's aid requests. This aid, and particularly the aggressive air mobile tactics it provided, enabled the Salvadoran military severely to limit the guerrillas' offensive capabilities. This, in turn, reassured Congress that the aid was not making U.S. military intervention more likely. The administration continued to provide misleading and false information about the economic and political situation in El Salvador, the growing isolation of Duarte from his own supporters, and above all the repression by the military. There was some decline in politically-targeted death squad killings, but the White House denied the documented killing and forced

¹⁶ Initially the committees treated all such requests as routine and trusted the executive to use this budgetary discretion reasonably. The first full analysis of the reprogramming abuses was not done until the Senate Democratic Policy Committee Special Report, “Foreign Aid to Central America FY 1981–1987,” 18 February 1987.

¹⁷ Leach et al., *U.S. Aid to El Salvador*, 4.

¹⁸ *Ibid.*, 4–5.

displacement of civilians by air and ground operations. Congress made few attempts to scrutinize administration claims publicly.¹⁹

Honduras

Administration attempts to avoid congressional scrutiny and debate by circumventing the normal appropriations process and tightly guarding information were even more serious in the case of aid to Honduras. During U.S. maneuvers in Honduras, for example, the Defense Department used funds out of a budget category called Operations and Maintenance (which is supposed to function as petty cash, not major military financing) to train and equip Honduran forces and to build permanent basing facilities. In 1984 the House Committee on Appropriations protested:

the Comptroller General found that funds appropriated for operation and maintenance of our armed forces were used for military construction projects, security assistance activities, and civic action and humanitarian assistance. The Committee believes such diversion of funding from properly appropriated purposes is unwarranted and directs that the Department of Defense take such steps as necessary to prevent recurrence of such improprieties in the future.²⁰

Furthermore, the maneuvers, which began in August 1981, turned out to be nearly continuous and thus had the effect of permanently stationing 700 to 1000 U.S. military personnel in Honduras and thousands more on ships off the coast—all without congressional consultation or authorization. As the character of these activities became public, some in Congress raised their voices.²¹

Although the issue was generally fought on narrow legal grounds, the larger concern involved the circumvention of Congress on foreign policy decisions of major importance. The administration was in effect using the maneuvers to put military pressure on the Sandinistas and to turn Honduras into a forward basing area for possible use against Nicaragua and perhaps El Salvador. In doing so, it was not only militarizing Honduras, but putting U.S. military personnel geographically close to such areas of high conflict as the Nicaraguan border. Had the administration presented this larger plan to Congress for funding in 1982, it would have been brought under great scrutiny given the concern over war powers. The presence of fifty-five advisers in El Salvador was frequently scrutinized and became an informal limit. When Congress tried to bring such activities under its

¹⁹ See, for example, Kenneth E. Sharpe, "El Salvador Revisited," *World Policy Journal* 3 (Summer 1986): 473–494.

²⁰ H.R. Rep. No. 1086, 98th Cong., 2d sess. 40–41 (1984).

²¹ Representative Ronald Dellums (D. Calif.) and Senator James Sasser (D. Tenn.), for example. See Philip L. Shepherd, "Honduras" in Morris J. Blachman, William M. LeoGrande and Kenneth Sharpe, *Confronting Revolution: Security Through Diplomacy in Central America* (New York: Pantheon Books, 1986), 133.

scrutiny in 1984 by requiring prior notification as to “the complete U.S. construction plan for the region,” the administration supplied as little information as possible.²² A January 1986 follow-up report by the General Accounting Office showed some compliance with congressional requirements but documented a series of new accounting procedures and mechanisms that allowed further circumvention.²³

Nicaragua

U.S. policy making toward Nicaragua illustrates graphically how emerging patterns of congressional-executive relations are undermining the intent of the post-Vietnam formula. If one began the examination of congressional participation in Nicaragua policy in 1985 or 1986, it would seem that the administration had at least respected the important procedural commitments of the post-Vietnam formula. The White House came to Congress and asked for money to aid Nicaraguan exiles fighting to overthrow the Sandinista regime. After long public debate, in 1985 Congress approved \$27 million in nonlethal military support and logistical supplies, and in 1986, \$100 million (70 percent military). But the story began much earlier. Indeed, if the President had come to Congress in 1981 and asked for funds to *create* an exile army to pressure or overthrow the Sandinistas, it would have been very difficult to have secured congressional authorization. What happened in the Nicaraguan case was the creation of an antecedent state of things that made it difficult (although not impossible) for Congress to say no by 1985. The mechanisms by which the administration got the funding that created this situation demonstrate even more clearly than the Honduras and El Salvador cases how secrecy, distortion, and circumvention were used by the executive to avoid accountability, consultation, and debate.

On 23 November 1981 President Reagan signed National Security Decision Directive 17 and a secret finding that was submitted to the House and Senate Intelligence Committees informing them that \$19.95 million in CIA funds would be used to support 500 contras who would infiltrate Nicaragua to interdict purported arms flows to Salvadoran rebels. By so informing these congressional committees, the administration was carefully responding to the letter of the law. These committees did not protest, because the interdiction rationale made sense to members concerned to contain a leftist revolution supported by the Nicaraguans.

While some in the administration may have initially supported the program simply to interdict arms, major actors such as the exiles the CIA was funding, CIA operatives in the field, and hardliners in the administration had a very different purpose—to overthrow the Sandinista regime. This view became even more prevalent as the operation grew in 1982 and 1983. The so-called hard and soft liners,

²² Leach, et. al., *U.S. Policy in Central America*, 31–32.

²³ Comptroller General of the United States, Report B-213137, “DOD Use of Operations and Maintenance Appropriations in Honduras,” submitted to Representative Bill Alexander, 30 January 1986.

mostly in the State Department, did not approve of attempts to overthrow the Nicaraguan government, but saw building up the contras as a way of creating a credible threat with which to pressure the Sandinistas to bargain over security issues and ultimately over the internal character of their regime. But the broad purposes of Nicaragua policy were not presented to the congressional committees for scrutiny and debate. It was only in the following years, as congressional opposition built, that the administration quietly introduced the pressure logic. The President's public position until the 1985 congressional debates was that "we are not doing anything to overthrow the government of Nicaragua."²⁴

An effort to misinform or deceive Congress was always an important element of administration policy. But secret wars are never secret from the people being warred on and are not long secret from Congress and the American public. As early as 4 December 1981, articles began to appear in the American press about the covert U.S. action. They were soon followed by information from Florida about training camps for the contras and then by reports from the field about contra activities. As the press revealed the scope and character of contra activities, the House Intelligence Committee sought to limit American aid to its original purpose. In December 1982, Representative Edward Boland (D. Mass.), chairman of the committee, introduced language (the Boland Amendment) into the Continuing Resolution for fiscal year 1983 prohibiting the use of funds "for the purpose of overthrowing the government of Nicaragua."²⁵

The administration's response was to *expand* contra operations to include sabotage raids on such targets as oil supplies and port facilities. While acknowledging that the aim of the contras might be to overthrow the Nicaraguan government, the administration insisted that it was within the law because *its* purpose in giving the aid was arms interdiction, not overthrow.²⁶ The Democratic leadership in the House grew angry, and in 1983 the House Intelligence Committee voted to cut off all funds.

The Republican-controlled Senate Intelligence Committee refused to go along with a total cutoff, and a cap of \$24 million was put on contra aid for fiscal year 1984. But the administration circumvented congressional spending limits: certain expenses like the mining of Nicaragua's harbors were charged to other accounts; an airfield for the contras was built in Aguacate, Honduras, as a part of a Defense Department exercise and then made available to the contras as a logistics and transportation center; and the Defense Department donated aircraft to transport sup-

²⁴ Doyle McManus and Robert Toth, "The Contras: How U.S. Got Entangled," *Los Angeles Times*, 4 March 1985.

²⁵ The language he introduced was the same as the language his Intelligence Committee had already introduced in its confidential statements to the administration shortly before the congressional debates. Boland publicly introduced his amendment to block other legislation that would have cut funds off completely. It was meant to warn the administration that its expansion of the program would not be tolerated; the committee was not yet ready to support the cutoff of all funds.

²⁶ Leach, et. al., *U.S. Policy in Central America*, 4.

plies to contra bases and transferred ships, planes, and guns to the CIA at little or no charge.²⁷

Some members of the House and Senate Intelligence Committees were particularly disturbed in 1984 when they discovered that the administration had violated the reporting requirements of the 1980 Intelligence Oversight Act by failing to inform the committees of the decision to mine Nicaraguan harbors. In September 1984, Congress learned of a CIA manual entitled "Psychological Operations in Guerrilla Warfare." Its explicit instructions for "neutralizing" Sandinista officials and "creating martyrs" for the contra cause underlined reports from the press and human rights organization about contra terror. In October 1984, the House Intelligence Committee forced the Senate committee, in conference, to accept the Boland Amendment, now carefully worded to avoid administration circumvention:

During the fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.²⁸

It was agreed that aid could only be restored by a majority vote in both houses after February 1985.

Again the administration circumvented the law. The National Security Council helped organize and advise a *private* aid network to fund the contras. According to some administration officials, the plan was approved both by National Security Adviser Robert C. McFarlane and the President. Marine Lt. Col. Oliver North, a member of the National Security Council staff, was put in charge. North helped reorganize and coordinate operations of the two main rebel groups, gave tactical advice, helped the contras raise millions in private and secret public funds, and arranged for supplies and contributions to reach the contras.

While there was consternation among contra aid critics and Congress threatened to hold hearings, nothing was done to sanction North and little could be done to undo his work. The White House, in the words of Representative Michael Barnes (D. Md.), stonewalled, refusing, for example, to release requested documents on its management of the private network and circumvention of the Boland Amendment. It was not until the Iran-contra affair broke in late 1986 that Congress and the press began to uncover the full details of the National Security

²⁷ See, for example, *ibid.*, 5–6. In September 1984, for example, the Defense Department was discovered transferring three Cessna OA2 noncombat aircraft to a top secret Joint Chiefs of Staff operation code named "Elephant Herd." The planes were officially declared "excess" and dropped from the air force's inventory roster. Having officially disappeared, they were then flown to the New York State National Guard, and next to a CIA contractor who fitted the aircraft with rocket pods for combat. They were then delivered, via intermediaries, to the contras. Blaine Harden and Joe Pichirallo, "CIA Said to Supply Planes to Nicaraguan Rebels," *Washington Post*, 15 September 1984.

²⁸ Jonathan Fuerbringer, "U.S. Aide's Ties to Contras Challenged," *New York Times*, 5 September 1985.

Council's involvement in circumventing Congress. It became clear that millions of dollars in profits made on secret arms sales to Iran were diverted to supply the contras; that the NSC had been involved in secretly raising millions for the contras from foreign governments (Saudi Arabia, Brunei); and that National Security Adviser Admiral John Poindexter and a top official at the State Department (Elliot Abrams, assistant secretary of state for Latin America) and the CIA (including Director William Casey) were also involved. It was further revealed that the contra operation was the centerpiece of an even larger covert effort labelled "Project Democracy" authorized by President Reagan in the January 1983 National Security Decision Directive No.77; and that North and private individuals had set up "the enterprise," an extra-government agency (described by North as an "off-the-shelf, self-sustaining, stand-alone entity") to finance and carry out intelligence operations all over the world outside normal government control.²⁹

Between 1984 and 1986, as the NSC was circumventing the congressional ban, the CIA was also secretly giving the Nicaraguan rebels aid. More than \$1.5 million went for "political" operations to finance "security," a radio station, and to seek political and financial support in Europe and Venezuela. The CIA also helped carry out the elaborate contra supply operation run by the NSC (dramatically revealed after a plane was shot down in October 1986 and American mercenary Eugene Hasenfus was captured by the Nicaraguans and put on trial) and actively tried to reorganize and strengthen contra activities in Costa Rica.

Although full details did not emerge until late 1986 and early 1987, by early 1985 there was enough information for Congress to demand that future funding of the "covert" war be openly debated and legislated through normal channels. This debate was different from the one on El Salvador, because Congress viewed rollback much more critically than containment. U.S. involvement in overthrowing a foreign government raised both moral issues and fears of dragging U.S. troops into a quagmire.

When forced to fight openly for aid, the administration's strategy was to insist that there was no alternative to the contras—and that even the negotiations insisted upon by moderates needed the force of the contras to back them up. There were two elements to this strategy. One was a somewhat successful administration effort to impose its definition of reality on the situation. The internal character of the regime in Nicaragua was presented as so abhorrent and the security threat as so great that any opponent of Reagan administration efforts could be delegitimized as soft on both security and communism. The administration did not hesitate to lie and distort reality in order to create the image it wanted.³⁰ As

²⁹ John Tower, Edmund Muskie, and Brent Scowcroft, *The Tower Commission Report* (New York: Bantam Books and Time Books, 1987), appendix C, 450–479; Joel Brinkley, "Iran Sales Linked to Wide Program of Covert Policies," *New York Times*, 15 February 1987; Fox Butterfield, "North Says Casey Proposed Using Arms Profit for Fund Kept Secret from President," *New York Times*, 11 July 1987; Elizabeth Drew, "Letter from Washington," *New Yorker*, 31 August 1987, 71–89.

³⁰ See, for example, Americas Watch, *Human Rights in Nicaragua, Reagan, Rhetoric and Reality* (New York: Americas Watch, July 1985); Joel Brinkley, "Nicaraguan Army: 'War Machine' or De-

ideology and distorted information replaced fact, rational debate about the means and ends of U.S. policy toward Nicaragua became increasingly difficult. The more the Democrats accepted the purpose of policy as getting the Sandinista regime out of power (as opposed to negotiating security issues, for example), the more difficult it became to offer an alternative other than the contras.

The second element of administration strategy was systematically to scuttle all efforts at negotiated settlements—the efforts of the Contadora countries (Mexico, Venezuela, Colombia, and Panama) for example—that recognized the legitimacy of the Nicaraguan government.³¹ By destroying all other alternatives, the contras were made to seem the only alternative.

Important to both elements of this whole strategy, however, was the fact that the contras already existed: this *fait accompli*, brought about covertly, was what gave the administration its leverage in the important votes in 1985 and 1986.

When contra aid came before Congress in April 1985, the House narrowly defeated the administration request. But on 12 June, seventy-three Democrats abandoned the House leadership and joined 175 Republicans in supporting a compromise package that banned lethal military aid and restricted CIA involvement in disbursing the aid. A number of the Democrats were conservative southerners who felt that voting against the aid would make them vulnerable to charges that they were “soft on communism.” Alluding to this issue, majority leader Jim Wright (D. Tex.), who himself opposed the aid, said that “to some degree” the country was going through an era reminiscent of McCarthyism. “Nobody wants to be portrayed as friendly toward Communism.”³²

Many moderate Democrats and Republicans reversed their votes because they felt ill at ease at turning down the President’s request in April without providing an alternative. “A good many of our guys,” said Wright “don’t believe in waging war to overthrow the Government of Nicaragua, but they feel some responsibility to those doing the fighting.”³³ This was how the administration had defined the issue, and it was reinforced shortly after the April vote when Nicaraguan President Daniel Ortega flew to Moscow to ask for more aid. Representative Steward B. McKinney (R. Conn.), who reversed his vote, explained, “There are those of us here who have to recognize the fact that the contra movement against an oppressive dictatorial society does exist. We cannot walk away from it.”³⁴ Others believed that the contras could provide leverage for a negotiated political settlement, which the President claimed he sought. Representative Bill Richardson (D. N.M.),

fender of a Besieged Nation?” *New York Times*, 30 March 1985; and Central America Crisis Monitoring Team, *In Contempt of Congress*, 11–29; and Blachman and Sharpe, “De-democratising Foreign Policy.”

³¹ See William M. LeoGrande, “Rollback or Containment?” *International Security* 2 (Fall 1986): 89–120.

³² Steven V. Roberts, “House Reverses Earlier Ban on Aid to Nicaragua Rebels; Passes \$27 Million Package,” *New York Times*, 13 June 1985.

³³ Steven V. Roberts, “House Gets Compromise on Rebel Aid,” *New York Times*, 9 May 1985.

³⁴ Steven V. Roberts, “A Consensus on Rebel Aid,” *New York Times*, 14 June 1985.

who switched his vote, said, "I think the President of the United States for the first time is saying that he is for negotiations and meaning it."³⁵

By the time the crucial vote for \$100 million in contra aid came up in the House in March 1986 (it was defeated 222–210) and in June (it passed 221–209) the hook of commitment had already been sunk. While the majority of Democrats (about 183) opposed any aid, the thirty or so crucial swing votes accepted administration arguments that the contras could not be abandoned and that they were a useful tool for pressing negotiations.

In both June 1985 and June 1986, the arguments that swayed middle-of-the-roaders would not have made sense if a huge contra army had not already been created and if other alternatives had not been undermined or defined out of existence. Administration policies had created the very "antecedent state of things" that the post-Vietnam formula had sought to avoid by insisting that important foreign policy decisions be shared from the beginning by Congress and the president. This situation had been created by the kind of circumvention, secrecy, and deception the post-Vietnam formula had sought to check.

The efforts to win continued funding in late 1987 were still undecided as this article goes to press. The Iran-contra scandal seriously weakened the administration's credibility and angered Congress at the way in which lying, distortion and law breaking had been used to circumvent congressional authority. The peace plan proposed by President Oscar Arias of Costa Rica was signed by the five central American countries in August of 1987 (despite administration opposition) thus creating, at least temporarily, an alternative. The administration's arguments were the same as they had always been — and a crucial element was still the already existing state of things, but one to which Congress had now committed itself. "The Congress of the United States has made a moral commitment to these men," President Reagan argued in a speech to the Organization of American States. "It cannot just walk away."³⁶

THE POST-VIETNAM-WATERGATE FORMULA RECONSIDERED

It took the shock of the Iran-contra scandal — the administration's trading of arms for hostages and the diversion of the profits to fund the contras — to finally move Congress into action against years of executive abuse of authority. Why did the post-Vietnam legislation itself fail to reestablish congressional balance and check such abuses? The implicit answer given by the congressional committees investigating the scandal was that the problem must have been either bad people or bad laws. Is "this unseemly chapter in our history" the result of "well-intentioned, patriotic zealots" asked Senator Daniel K. Inouye (D. Hawaii, chairman of the Senate committee), or are we here today because of the inadequacy of our laws and our Constitution?"³⁷

³⁵ Ibid.

³⁶ "Reagan on Contras: 'Strive and Struggle,'" *New York Times*, 8 October 1987.

³⁷ "Closing Remarks by Leaders of Panels: A Litany of Mistakes," *New York Times*, 4 August 1987.

There is no question that individual character contributed to the violations and abuses. And better laws (tightening the War Powers Act, tougher regulations for CIA oversight, legally limiting the NSC staff to an advisory role) could help tame such individual abuses. But the problem is not simply one of laws. Arthur Schlesinger noted in 1973 that the president, like Gulliver, could break loose of even a thousand small legal strings. "The effective means of controlling the Presidency lay less in law than in politics. For the American President rules by influence; and the withdrawal of consent, by Congress, by the press, by public opinion, could bring any President down."³⁸

This conclusion is apt today. When Congress, the press, and the public were willing to exercise political power, the post-Vietnam formula often worked. It helped Congress get access to information needed to participate in the making of foreign policy, and it ultimately helped cut off the private funding network in the aftermath of the Iran-contra revelations. But more often than not, Congress was unwilling to exercise its potential power. It did not demand to participate in ways that would have limited the president's ability to create an antecedent state of things or to break and circumvent the law.

Mistrust of executive information led members of Congress to use existing institutional mechanisms of oversight (requests for GAO reports on contra corruption, committee hearings on misuses of military maneuver and construction funds, etc.) and to create new mechanisms to generate and crosscheck information (the certification procedures on El Salvador). A number of reporters did investigative reports that in turn were used by members of Congress. Further, the requirement that the intelligence committees be informed of covert operations proved very important. Although information on the covert war was publicly available through the press almost immediately after it began, these committees provided an institutional locus for information gathering and accountability. Their recognition that the scope was expanding beyond arms interdiction, and later that serious actions had *not* been reported as the law demanded, led first to committee restrictions on aid, then to support of restrictive legislation on the floor of the House, and finally to a cutoff of funds.

But it is important to note that the public outcry and initial opposition in Congress to the covert war were stimulated by press coverage. The intelligence committees did not initially take leadership: they could have objected to the covert aid, warned the President that they would bring their objections to the floor for debate, and then, if the President still insisted, actively led a floor fight. Instead, these committees allowed themselves to be used by the President to create an antecedent state of things that then limited later debate on the contra war and on other major war-making operations carried out in Afghanistan, Cambodia, and Angola.

What of the post-Vietnam commitment to *restore constitutional checks and balances* in foreign policy? Congress only sometimes insisted on full consultation

³⁸ Schlesinger, *The Imperial Presidency*, 409–410.

and participation and rarely reacted forcefully to presidential efforts to break or evade the law. Congressional efforts to make the formula work were important in forcing a reluctant President to allow congressional participation in the making of policy toward El Salvador from 1981 to 1984. Congress ruled out the sending of U.S. troops to quell a leftist revolution. And until the Duarte election, Congress used the power of the purse to restrict funding. Congress, however, was unwilling to confront forcefully the actions of the executive that broke the letter of the law, violated its spirit, or circumvented the constitutional prerogatives of Congress. Congress did not blow the whistle on the certification charades or reprogramming circumventions in El Salvador. What happened in Honduras was worse, exactly what the post-Vietnam formula was designed to prevent: the creation of conditions, an antecedent state of things, which committed the United States to a foreign policy without the participation of Congress. But even when Congress discovered that the circumventions and legal violations were creating a *fait accompli*, it did little more than slap the hand of the executive, warn that such actions must not be done again, and put some restrictions on the use of funds. It did not authorize dismantling the bases, nor did it seriously interfere with the use of maneuvers to build infrastructure in Honduras or permanently station U.S. troops there.

The greatest violation of the spirit of the War Powers Act was in the Nicaraguan case. Not only did the contra effort pose an immediate danger of creating an antecedent state of things that could draw in U.S. troops, it also established a dangerous precedent for the conduct of foreign policy. Using covert action as a central instrument of American foreign policy, where the only congressional checks were intelligence committees whose oversight function was never meant to cover generalized war, meant that crucial foreign policies were initiated and conducted in a highly secret, unaccountable way. Misrepresenting the size and mission of the contras (arms interdiction) and failing to meet reporting requirements (the mining, the terror manual) made things worse. When Congress cut off funds, the White House circumvented Congress's power of the purse by helping to organize a private funding network and managing it for over two years.

An important foreign policy commitment was established with minimum scrutiny and public debate. Congress by and large acquiesced and failed to act, even when information was brought to it that private funding was circumventing its decisions and that high members of the National Security Council were helping to coordinate this effort. The few members who protested were unable to get enough support to investigate publicly, let alone stop such executive actions. The President, acting as commander in chief, took incremental actions that slowly created an antecedent state of things. Congress lacked the political will to block the small steps, even though legally it could have done much more. Gradually, commitment by accretion made it more difficult for Congress to share control of policy making.

CONCLUSION

The failure of the post-Vietnam formula to check executive abuse of authority

was not simply due to the character of the legislation. Senator Fulbright's 1972 observation is just as true today: "It is not a lack of power which has prevented the Congress from ending the war in Indochina, but a lack of will."³⁹ We need to explain why Congress has not been more vociferous and forceful in using the institutional mechanisms and authority it has to prevent executive disregard for the commitments of the post-Vietnam formula. There are a number of explanations given in the general literature on Congress and foreign policy: the fragmentation of the foreign policy process within Congress, the president's ability to shape and present information, and the difficulty of rallying congressional opposition to small encroachments of its authority.

There is some truth in all of these explanations, but there is also a more fundamental problem. On the one hand, Congress faces a hard-to-control national security apparatus dedicated to maintaining U.S. hegemony and largely unchallenged by the post-Vietnam reforms. The powerful intelligence and security agencies created after World War II embodied norms of secrecy, speed, unity, and efficiency that were antithetical to constitutional democracy. On the other hand, there is no "anti-imperial" political coalition strong enough to force Congress to check the executive and to enforce legislation against the security bureaucracy.

A coalition to reform substantively the security apparatus must challenge the foreign policy that justifies the existence of the apparatus itself. Arthur Schlesinger has argued:

The Imperial Presidency was essentially the creation of foreign policy. A combination of doctrines and emotions—belief in permanent and universal crisis, fear of communism, faith in the duty and the right of the United States to intervene swiftly in every part of the world—had brought about the unprecedented centralization of decisions over war and peace in the Presidency.⁴⁰

While the post-Vietnam commitment did include a reluctance to commit troops and some tolerance for leftist regimes, moderates and conservatives still shared the same underlying strategic vision—revolutionary regimes of the left were antithetical to U.S. global interests. The U.S. still had the right and responsibility to maintain its hegemony and to minimize the chances of leftist outbreaks and takeovers. The difference between moderates and conservatives was over means, not ends. Moderates saw local repression and poverty as the causes of revolution and argued for human rights and economic development—a position similar to the old Alliance for Progress. Conservatives saw Soviet-backed intervention and subversion as the causes of revolution. They argued for primarily military responses to Third World revolutions. And no one argued for substantial change in the national security apparatus that planned and administered so much of foreign policy.⁴¹

³⁹ Senator J. William Fulbright, *The Crippled Giant, American Foreign Policy and its Domestic Consequences*, (New York: Vintage Books, 1972), 194.

⁴⁰ Schlesinger, *The Imperial Presidency*, 208.

⁴¹ For a detailed discussion see Blachman, et al., *Confronting Revolution*, chaps. 12 and 13.

When the Reagan administration came into office it inherited the existing security bureaucracy and brought back the conservative version of the strategic vision. It emphasized not simply the containment but rollback of leftist governments ("The Reagan Doctrine"). In this context, the New Right and the Reagan administration could draw on a continued fear of communism and fears of declining U.S. power and hegemony once again to define debate in terms of cold-war assumptions. Such assumptions made it difficult for many of the middle-of-the-road swing voters in Congress to resist the President's persistent demands for a proxy army strategy against Nicaragua. Especially after he created an antecedent state of things, they found themselves trapped between their opposition to communism and their opposition to U.S. troop commitments, between "no more Cubas" and "no more Vietnams." Accepting the end of undermining the Sandinistas and seeing no alternative means except the contras, they were open to persuasion.

If cold-war assumptions make it difficult to challenge the executive on specific issues, they make it extremely hard even to put the restructuring of the national security bureaucracy on the political agenda, let alone to challenge its organization and vision against a well-organized and entrenched right. As long as moderates and conservatives both share the assumption that the United States has the right and responsibility to keep (or get) leftist revolutionary regimes out of power, they are trapped into supporting a chronic cold war and the means necessary to carry it out—a largely unaccountable and uncontrollable imperial president and the security apparatus he manages. As long as cold-war assumptions guide policy, Schlesinger argued, there will be a demand "for concentration of authority, secrecy, speed and discretion in the Presidency."⁴² And "in a country chronically at war, as America has been for the last three decades" wrote Senator J. William Fulbright in 1972, "even the most energetic and ingenious means of reasserting Congressional prerogative will of themselves prove insufficient to the maintenance of constitutional government."^{43*}

⁴² Schlesinger, *The Imperial Presidency*, 298.

⁴³ Fulbright, *The Crippled Giant*, 241.

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