

“The Hamlet of Nations”: The Reagan Administration and the Battle for American Foreign Policy

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*“The Constitution diffuses power the better to secure liberty... It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress.”¹ – Justice Robert Jackson in *Youngstown Co. v. Sawyer*, 1952*

*“In a world that is ever more compressed and interdependent, it is essential the congressional role in foreign affairs be understood and respected. For it is Congress that makes laws, and in countless ways its laws will and should shape the Nation’s course... It is not for the President alone to determine the whole content of the Nation’s foreign policy”² – Justice Anthony M. Kennedy in *Zivotofsky v. Kerry*, 2015*

¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 Federal Reporter 579 (Supreme Court of the United States 1952), 635.

² *Zivotofsky v. Kerry*, 576 Federal Reporter 1 (Supreme Court of the United States 2015), 18.

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Introduction: Reagan's Vision

“I certainly hope none of this discussion will be made public in any way,” National Security Advisor Robert McFarlane told attendees at a 1984 National Security Planning Group (NSPG) meeting.³ President Ronald Reagan seconded McFarlane's call for discretion: if this discussion is made public, he warned, “we'll all be hanging by our thumbs in front of the White House until we find out who did it.”

The discussion McFarlane and Reagan wanted to keep secret concerned Reagan's policy in Nicaragua, where the president hoped to provide the Contras, a rebel group, with enough aid to overthrow the country's pro-Soviet Sandinista government. At first Cold War standard-fare, by 1984 the Reagan administration's support for the Contras was in peril: through the 1982 Boland Amendment, Congress had restricted funding and aid to the Contras. By October 1984, a second Boland Amendment further turned the screws on the administration, prohibiting aid to the Contras entirely.

The Reagan administration's June 25, 1984, NSPG meeting was an attempt to develop contingency plans for how to maintain support for the Contras if funding for them ran out, as it would in October. Administration officials floated several options. One involved obtaining funding from third-party nations, a course of action Secretary of State George Shultz warned would be “an impeachable offense.”⁴

Eight years later, Reagan found himself under the scrutiny of Lawrence Walsh, the Independent Counsel investigating what had become one of the most infamous scandals in

³ “National Security Planning Group Meeting, June 25, 1984,” “The Reagan Files,” Jason Saltoun-Ebin, accessed February 6, 2024, <https://www.thereaganfiles.com/19840625-nspg-91-central.pdf>

⁴ “National Security Planning Group Meeting, June 25, 1984,” “The Reagan Files,” Jason Saltoun-Ebin, accessed February 6, 2024, <https://www.thereaganfiles.com/19840625-nspg-91-central.pdf>

American history: the Iran-Contra Affair. As Walsh interviewed Reagan, the ex-president told him that “he could explain to the American people a violation of the statute [the Boland Amendment] but could not explain letting the hostages [held by Iran-linked Hezbollah] be killed for fear of violating a statute.”⁵ To Reagan and his allies, the Iran-Contra investigation “represented yet another effort by a Democratic Congress to ‘micromanage’ a Republican president’s foreign policy” and punish the president for policy differences.⁶ Outrage over Iran-Contra, proponents of this view held, would lead to limits on presidential power that were not only “unconstitutional and unwise,” but also “unconscionably meddling.”⁷

To Walsh, Reagan’s position “presented an outright constitutional confrontation with Congress.”⁸ In his view, the Iran-Contra revelations had unveiled an administration rife with officials willing to break legitimate laws to advance their policy goals. Yet, Walsh’s understanding of the Iran-Contra Affair as a sui generis occurrence brought about by the behavior of a few individuals was incomplete. Even before Walsh had submitted his final report on the Iran-Contra Affair to Congress, scholars like Harold Koh were arguing that the Iran-Contra Affair “should be understood not as a case of bad people violating good laws... but of seriously misguided people violating serious ineffective national security laws.”⁹ In other words, the Iran-Contra Affair had revealed systemic flaws in American national security governance.

⁵ Lawrence E. Walsh, *Iran-Contra: The Final Report* (New York: Times Books, 1994), 454.

⁶ Harold Hongju Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair* (New Haven: Yale University Press, 1990), 2.

⁷ United States Congress House Select Committee to Investigate Covert Arms Transactions with Iran and United States Congress Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, *Report of the Congressional Committees Investigating the Iran-Contra Affair: With Supplemental, Minority, and Additional Views* (U.S. House of Representatives Select Committee to Investigate Covert Arms Transactions with Iran, U.S. Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, 1987), 583.

⁸ Walsh, *Iran-Contra: The Final Report*, 454.

⁹ Koh, *The National Security Constitution*, 2-3.

Yet, these flaws had not appeared suddenly. Instead, they had been uncovered over the course of a longstanding Reagan administration project: the administration's efforts to reconstitute the foreign policy powers of the president. The story of this project, which I call the "Reagan Restoration," shows that the Iran-Contra Affair, so-often the focus of Reagan-era histories, was only one episode in the Reagan administration's campaign to expand executive foreign policymaking powers.

In January 1977, Richard Allen, a future U.S. National Security Advisor, flew to California to meet with Ronald Reagan, an ex-governor who had recently lost a Republican presidential primary. As the two ate lunch in the shadow of the Cold War, Reagan made a remarkable statement: "A lot of very complex things are very simple if you think them through... My theory of the Cold War is we win and they lose."¹⁰ This was an astounding comment to make at a time when the U.S. foreign policy consensus was that the Soviet Union could only be contained. In an era of détente where America reeled from a demoralizing defeat in Vietnam and the shocking revelations of the Pentagon Papers, Reagan's words appeared a Cold War anachronism. Yet, when he became president four years later, Reagan would reimagine U.S. foreign policy, ending détente in order to rattle a Soviet Union he saw as a Potemkin village whose military power obfuscated a struggling economy and increasingly uninspired populace. National Security Decision Directive (NSDD) 32, a Reagan-approved strategy document, turned his epigrammatic "we win they lose" into fundamental guidelines for U.S. foreign policy. Per NSDD 32, Reagan's administration would "deter [or defeat] military attack by the USSR and its allies against the U.S., its allies, and other important countries across the spectrum of conflict,"

¹⁰ William Inboden, *The Peacemaker: Ronald Reagan, the Cold War, and the World on the Brink* (New York, United States: Penguin Publishing Group, 2022), 34.

“contain and reverse the expansion of Soviet control... throughout the world and increase the costs of Soviet support and use of... subversive forces,” “foster... restraint in Soviet military spending [and] discourage Soviet adventurism... by forcing the USSR to bear the brunt of its economic shortcomings,” and strengthen the U.S military.¹¹

Implementing these policies would require a profound shift from years of détente. Confronting the USSR in remote corners of the world across “the spectrum of conflict” would require Americans to overcome “Vietnam Syndrome” and intervene in Third World power struggles, often on behalf of parties with checkered human rights records.¹² The Reagan administration was under no illusions as to how difficult such an undertaking would be. Indeed, a 1983 CIA memorandum sent to Secretary of State Shultz, Secretary of Defense Caspar Weinberger, and UN Ambassador Jeane Kirkpatrick noted that “in virtually every instance, the US reaction [to the Soviet offensive in the Third World] has been principally through covert action—out of fear (or realism) that overt US involvement was not sustainable politically at home... The Vietnam Syndrome is a reality; the Congress will not support or allow the use of US combat forces in the Third World.”¹³ Increasing the costs of Soviet support to communist insurgencies in Africa, South America, and Asia would also not come cheap—or even require costs that Congress was not willing to pay.

This thesis will argue that in order to fundamentally transform American foreign policy, Reagan and his advisors decided that it was necessary to overcome congressional and public

¹¹ “National Security Decision Directive Number 32: U.S. National Security Strategy” (Federation of American Scientists, May 20, 1982), Federation of American Scientists Intelligence Resource Program, <https://irp.fas.org/offdocs/nsdd/nsdd-32.pdf>.

¹² George C. Herring, “The ‘Vietnam Syndrome’ and American Foreign Policy,” *The Virginia Quarterly Review* 57, no. 4 (1981): 594–612.

¹³ “Meeting the Soviet Challenge in the Third World” (Central Intelligence Agency, April 8, 1983), Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/readingroom/docs/CIA-RDP85M00363R001102430021-2.pdf>.

opposition. In other words, the road to implementing NSDD 32 ran through a Congress where Reagan's Republicans were a perennial minority in the House and never controlled more than fifty-five seats in the Senate. In part because the Democrats had political incentives to play up concerns that the powers of the American presidency were in the "uncertain hands of a trigger-happy cowboy," they often opposed Reagan's foreign policy ventures, arguing that they were reckless.¹⁴ As Peter Rodman, chairman of the Policy Planning Council, wrote to Shultz in a 1984 memorandum, "the Democrats will claim that the public still wants Congress to act as a brake on the President... unless there are stunning Republican gains in Congress, we will probably face undiminished Congressional opposition on the whole range of controversial issues like Central America, arms control, arms sales to Arab countries, and [the] War Powers [Act of 1973]."¹⁵ Thus, throughout large parts of its time in office, the Reagan administration faced strong congressional opposition to its foreign policy.

To the Reagan administration, the threat of congressional opposition seemed more potent given Congress's recent rise in foreign policymaking power. Indeed, the 1970s had marked a rare moment of congressional ascendance vis-à-vis the executive branch. Over a hundred years earlier, Alexis de Tocqueville had famously written that "it is chiefly in its foreign relations that the executive power of a nation is called upon to exert its skill and its vigor." Nineteenth-century America's almost uniquely peaceful place in the world, however, meant that its executives were hardly called upon to conduct foreign policy: "the President of the United States is in the possession of almost royal prerogatives, which he has no opportunity of exercising," Tocqueville

¹⁴ Walter Isaacson, "Ready for the Grand Tour," *Time Magazine*, June 7, 1982.

¹⁵ "Information Memorandum from the Chairman of the Policy Planning Council to Secretary of State Shultz", July 3, 1984, in *Foreign Relations of the United States, 1981-1988*, vol. I, Foundations of Foreign Policy, eds. Kristin L. Ahlberg and Kathleen B. Rasmussen (Washington D.C.: Government Publishing Office, 2022), Document 198.

had said.¹⁶ This changed in the 20th century. As Arthur J. Schlesinger Jr. argued in 1973, “the Cold War at last gave presidents the opportunity for sustained exercise of these almost royal prerogatives.”¹⁷ To Schlesinger, “the image of the President acting by himself in foreign affairs, imposing his own sense of reality and necessity on a waiting government and people, became the new orthodoxy.”¹⁸

Yet, even as Schlesinger wrote, the so-called “imperial presidency” which he had excoriated was losing its royal luster. After the Vietnam War and the implosion of the Nixon presidency, Congress had passed the War Powers Resolution of 1973 (WPR) and a web of restrictions on executive action: The 1972 Case-Zablocki Act required the president to notify Congress of concluded international agreements, the 1977 International Emergency Powers Act limited the president’s emergency economic powers, the Hughes-Ryan amendment to the Foreign Assistance Act of 1974 required the president to notify a congressional committee whenever the CIA conducted a covert operation, and the Foreign Intelligence Surveillance Act of 1978 further increased congressional oversight of the intelligence community.¹⁹ In 1974, in keeping with the political zeitgeist of the time, President Gerald Ford testified before a House subcommittee, becoming only the second president to have done so.²⁰ Ford’s successor, Jimmy Carter, was similarly reluctant to flout Congress. Two months after taking office, Carter told Walter Cronkite that the WPR had marked “a reduction, obviously, in the authority that the President has had

¹⁶ Alexis de Tocqueville, *Democracy in America*, ed. Henry Reeve, New ed (London: Longman, Green, Longman, and Roberts, 1862), 132.

¹⁷ Arthur M. Schlesinger, *The Imperial Presidency*, 1st Mariner Books ed (Boston: Houghton Mifflin, 2004), x.

¹⁸ Schlesinger, *The Imperial Presidency*, 206.

¹⁹ Koh, *The National Security Constitution*, 46.

²⁰ David E. Rosenbaum, “Ford Defends Pardon Before House Panel and Says There Was ‘No Deal’ With Nixon,” *The New York Times*, October 18, 1974.

prior to the Vietnam War. But I think it's an appropriate reduction."²¹ Testifying before Congress in support of the Foreign Intelligence Surveillance Act, Griffin Bell, Carter's Attorney General, best encapsulated the record of the Ford and Carter presidencies: "We have had two presidents in a row who are willing to cede power, and I think that is good."²²

Consequently, when Reagan took office in 1981, the presidency seemed less imperial than it had been in over a decade. This presented a quandary to Reagan and his staff, who wished to transform American foreign policy and make decisions that they knew could face strong public and congressional opposition. For example, in a famous 1984 speech to the National Press Club, Secretary of Defense Weinberger bemoaned that "the centrality of decision-making authority in the executive branch has been compromised by the legislative branch to an extent that actively interferes with that process."²³ Similarly, Secretary of State Shultz lamented that the U.S. was the "Hamlet of nations, worrying endlessly over whether and how to respond" to foreign policy crises.²⁴

This thesis will argue that in order to overcome what it saw as almost inevitable congressional opposition to its foreign policy, the Reagan administration set out to reassert presidential authority over foreign policy and war-making. Motivated by the pragmatic considerations its foreign policy required—and spurred on by an ideological belief in strong

²¹ "'Ask President Carter' - Remarks During a Telephone Call-in Program on the CBS Radio Network," The American Presidency Project, March 4, 1977, <https://www.presidency.ucsb.edu/documents/ask-president-carter-remarks-during-telephone-call-program-the-cbs-radio-network>.

²² David J. Barron, *Waging War: The Clash Between Presidents and Congress, 1776 to ISIS* (Riverside: Simon & Schuster, 2016), 370.

²³ Richard Halloran, "Excerpts from Address of Weinberger," The New York Times, November 29, 1984, sec. World, <https://www.nytimes.com/1984/11/29/world/excerpts-from-address-of-weinberger.html>.

²⁴ Inboden, *The Peacemaker*, 275.

presidential powers—the Reagan administration sought to undermine the War Powers Act and assert its power to unilaterally make foreign policy decisions.

The Imperial Presidency Strikes Back

The broader political and ideological context of the 1970s made restoring presidential power a priority for the Reagan administration. Taking office at the nadir of the imperial presidency, the Reagan administration was the vanguard of a broader conservative movement to restore executive authority. As scholars like Stephen Skowronek have argued, the conservative insurgents of the Reagan Revolution created a new “construction of presidential power”: the “unitary executive” theory.²⁵ The peculiar feature of this conception of presidential power was its realization that the Reagan Revolution would inevitably stall; without the prospect of a “final victory on the horizon” and in anticipation of institutional resistance to their program, conservative proponents of the unitary executive sought to empower presidents to triumph in a world of perpetual political division.²⁶

This conservative-led expansion of presidential powers was not strictly partisan. For example, during the Carter presidency, conservatives continued to advocate for a stronger executive. As Jide Nzelibe has argued, in the context of foreign policymaking powers, expansions of presidential authority enable hawkish Republican presidents to advance their priorities while not providing more dovish Democratic administrations the same latitude; put differently, dovish presidents do not take advantage of expanded war powers the way their

²⁵ Stephen Skowronek, “The Conservative Insurgency and Presidential Power: A Developmental Perspective on the Unitary Executive,” *Harvard Law Review* 122, no. 8 (2009), 2073.

²⁶ Skowronek, “The Conservative Insurgency and Presidential Power: A Developmental Perspective on the Unitary Executive,” 2097.

hawkish counterparts do.²⁷ Thus, even during the Carter presidency, conservative challengers to Congress's powers continued to make their case. Consider President Ford. Prior to taking office, Ford, the House Minority Leader, had been a "legislative institutionalist" and was popular among his peers in Congress.²⁸ Yet, by the time of his loss to Carter in 1976, "Ford and his allies had come to believe that Congress was out of control." Even as Carter struggled through his own congressional imbroglios, Ford continued to argue for a restoration of presidential powers. Only two days after Reagan's victory over Carter, Ford argued that the country suffered not from "an imperial presidency, but an imperiled presidency" that struggles to "operate effectively."²⁹

Thus, as the Reagan administration entered office, the broader conservative movement was coalescing around a movement for a reinvigorated presidency. During the 1970s, neither Reagan, Shultz, nor Weinberger had called for an increase in presidential powers. Yet, as the prospect that its grand strategy would be vitiated by congressional opposition loomed, the Reagan administration took up the call for a stronger executive.

This began to happen as early as the fall of 1980. After reading a memo by Richard Cheney, then fresh off his tenure as President Ford's Chief of Staff, James Baker, Reagan's Chief of Staff, wrote that the Reagan administration needed to "restore power and auth[ority] to [the] exec[utive] Branch... [and show] strong ldr'ship [sic]. Get rid of [the] War Powers Act—restore independent rights. [This is a] central theme we ought to push," Baker urged.³⁰

²⁷ Jide Nzelibe, "Partisan Conflicts Over Presidential Authority," *William and Mary Law Review* 53 (2011-2012), no. 2 Constitutional Transformations: The State, the Citizen, and Changing Role Of Government Symposium (November 2011): 420.

²⁸ Philip A. Wallach, *Why Congress* (New York, NY: Oxford University Press, 2023), 121-122.

²⁹ Gerald R. Ford and Richard Nixon, "Nation: Two Ex-Presidents Assess the Job," *Time Magazine*, November 10, 1980, <https://content.time.com/time/subscriber/article/0,33009,949031,00.html>.

³⁰ Notes from a meeting with Richard Cheney, Box 66, Folder 11, Personal Notes: 1980, James A. Baker III papers, Princeton University, Princeton, New Jersey.

The Reagan Restoration

This thesis tells the story of how, throughout its time in office, the Reagan administration first articulated and then worked to implement a capacious conception of presidential foreign policymaking powers. The narrative is developed through two case studies: the Reagan administration's 1982 deployment of the Marines to Lebanon and its 1987 reflagging operations in the Persian Gulf. These case studies are illustrative for several reasons. First, both are cases in which the Reagan administration unilaterally deployed American forces abroad for a sustained period of time. In both cases, as public and congressional opposition to the administration's policy mounted, the Reagan administration was forced to defend the legitimacy of its policy in both legal and practical terms. Put differently, the crises in both Lebanon and the Persian Gulf were moments of struggle between a Reagan administration asserting its foreign policymaking prerogatives and a Congress seeking to defend its own authority.

Yet, the contrasts between the two crises reveal just as much as their similarities. In Lebanon, the Reagan administration ran up against the limits of its power. Between the deployment of the Marines in 1982 and their withdrawal in 1984, Congress meaningfully constrained the administration's policy: in late 1983, as the American position in Lebanon came to seem increasingly untenable, it was congressional hostility to Reagan's policy that forced him to withdraw the Marines. Ultimately, its experience in Lebanon perturbed the Reagan administration, which blamed congressional opposition for the collapse of its policy in the country. Post-Lebanon, the Reagan administration would mount a particularly forceful and public assertion of its war powers to ensure that what happened in Lebanon could not happen again.

In the Persian Gulf, the Reagan administration implemented the lessons it had learned in Lebanon. Three years after the Marines' withdrawal and under the shadow of the Iran-Contra Affair, the Reagan administration boldly challenged Congress's authority to shape American policy in the Persian Gulf. Unlike in Lebanon, the administration succeeded, retaining unilateral control over the reflagging operation. Thus, in the Persian Gulf, the Reagan administration's efforts to reconstitute presidential war powers reached a crescendo: years after its chastening in Lebanon, the Reagan administration had at least partially restored the imperial presidency.

Contribution

Over its eight years in office, the Reagan administration's assertion of presidential leadership led to repeated clashes with Congress. These clashes were particularly significant in the context of foreign policy. Indeed, the Reagan administration repeatedly battled Congress not only over the substance of its foreign policy, but its authority to conduct it as it saw fit. This thesis will explore how and why the Reagan administration challenged congressional attempts to shape its foreign policy—and how Congress responded. The focus will be on executive-legislative conflicts over the scope of presidential war powers and foreign policy decision-making. Related areas of contestation—such as conflicts over the power to negotiate trade deals or the power to run U.S. intelligence operations—are left for future research.

This thesis promises to be constructive for several reasons. First, in describing the Reagan administration's understanding of presidential foreign policymaking powers, it will shed light on an understanding that remains influential today. This is particularly worthwhile given the recent prominence of presidential war powers in public discourse, specifically over U.S. involvement in the ongoing war in Ukraine, the Senate's repeal of its Iraq War authorization, and

Operation Prosperity Guardian. Thus, this thesis will advance scholarship on the current state of presidential war powers, or at least its roots in the 1980s.

Secondly, by analyzing the relationship between the Reagan administration's foreign policy and its interpretation of presidential foreign policymaking powers, it will show where the Reagan administration's understanding of its executive powers came from. This will help illustrate whether the administration's constitutional views were instrumental or ideological—whether they were merely an attempt to justify its foreign policy or a more meaningful commentary on the constitutional role of the president. Finally and perhaps most importantly, in describing the Reagan administration's clashes with Congress, this thesis will show the extent to which constitutional restraints—specifically congressional checks and balances—limited the Reagan administration. Put in other words, it will show whether constitutional limits were a meaningful constraint on Reagan's foreign policy. In doing so, this thesis will contribute to the scholarly debate over the effectiveness of constitutional limits on war powers and, more broadly, the feasibility of subjecting foreign policy to substantive legal limits.

Historiography

The Reagan administration's understanding of executive powers has generally been considered by scholars from two points of view. First, legal scholars assess whether this view of presidential powers was compliant with both Article II limits on presidential war making authority and the War Powers Act of 1973. These legal scholars fall along a spectrum ranging from “executive unilateralism,” the belief that the president has independent constitutional power to declare war unless Congress prohibits it, to “congressional primacy,” the view that Congress has exclusive war making power. At the former end of the spectrum are scholars like John Yoo, who writes that “the Constitution generally does not establish a fixed process for foreign

relations decision making” and that “the president need not receive a declaration of war [from Congress] before engaging... armed forces in hostilities.”³¹ On the opposite side of the spectrum, scholars like John Hart Ely argue that “all wars, big or small, ‘declared’ in so many words or not... had [and have] to be legislatively authorized.”³² Scholars like Ely tend to see the WPR and congressional attempts to enforce it as a proper reassertion of congressional authority while scholars like Yoo see the WPR as an unconstitutional attempt to usurp presidential powers.

While legal scholars debate the legal propriety of the Reagan administration’s actions and their underlying understanding of presidential war powers, historians debate where Reagan’s presidency fits in Schlesinger’s account of the rise of the imperial presidency. Conventionally, the Reagan administration, which challenged the constitutionality of the WPR and staged unilateral military interventions on several occasions, is seen as a turning point in presidential history: Reagan brought the imperial presidency back into vogue after a period in which Congress had reigned in presidential authority. As Charlie Savage writes, upon entering office, the Reagan administration began “the most aggressive push for a muscular presidency since Watergate.”³³ Challenging this conventional understanding of the Reagan administration are critics of the imperial presidency thesis. For example, in 1981, Louis W. Koenig argued that “the notion of an imperial presidency both contributes to a weakening of today’s presidency and misstates its true condition... Congress in its countermoves against a presumed imperial presidency has been anything but the supine body that Schlesinger describes.”³⁴ Other scholars,

³¹ John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11*, electronic resource (Chicago: University of Chicago Press, 2005), <http://www.columbia.edu/cgi-bin/cul/resolve?clio10417087.001>, 8.

³² John Hart Ely, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath* (Princeton University Press, 1993), <https://doi.org/10.2307/j.ctv15r57x5>, 1.

³³ Charlie Savage, *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy*, 1st ed (New York: Little, Brown, 2007), 42.

³⁴ Louis W. Koenig, “Reassessing the ‘Imperial Presidency,’” *Proceedings of the Academy of Political Science* 34, no. 2 (1981): <https://doi.org/10.2307/1173789>, 43.

including Michael Patrick Hulme, have shown that contrary to the imperial presidency thesis's predictions, "questions of war powers have consistently featured prominently... in executive branch decision-making," including during the Reagan administration.³⁵ Similarly, political partisans like Oliver L. North, an NSC staff member in the Reagan administration who was at the center of the Iran-Contra Affair, have argued that "instead of strengthening the office of the presidency, [Reagan] actually weakened it. He just wasn't forceful enough when it came to fighting for the constitutional prerogatives of the Executive Branch," specifically failing to challenge the War Powers Resolution and an "imperial Congress."³⁶

This thesis will draw on both the legal and imperial presidency schools of historiography on the Reagan administration. It will analyze the administration's legal views, confrontations with Congress, and stated or implicit positions on executive powers, with the goal of finding where these legal views, negotiating positions, and understanding of presidential powers came from. In doing so, this thesis will bring the two schools of historiography together. Just as the Reagan administration's legal positions legitimized the unilateral nature of its foreign policy, its view that it needed to be free from congressional constraints on its foreign policy shaped its legal stances. Thus, in uncovering the roots of the Reagan administration's understanding of its executive powers, this thesis will elucidate the origins of its legal views, help place the administration in the broader story of the rise of the imperial presidency, and connect the imperial presidency thesis to the work of legal scholars.

³⁵ Michael Patrick Hulme, "In the Shadow of Congress" (Ph.D., United States -- California, University of California, San Diego, 2023), <https://www.proquest.com/docview/2832994948/abstract/495A753B1BBF467DPQ/1>, xv.

³⁶ Oliver North and William Novak, *Under Fire: An American Story*, 1st ed (New York, NY: HarperCollins, 1991), 173-4.

Chapter 1: “A Gulliver tied down by Lilliputians”

*“The initiation of isolated or infrequent acts of violence against United States Armed Forces does not necessarily constitute actual or imminent involvement in hostilities, even if casualties to those forces result. I think it reasonable to recognize the inherent risk and imprudence of setting any precise formula for making such determinations...”*³⁷ – Ronald Reagan, 1983

Before his inauguration in March 1913, Woodrow Wilson had told a friend that “it would be an irony of fate if [his] administration had to deal chiefly with foreign affairs.”³⁸ Before entering office, Ronald Reagan would have had good reason to say the same—at least about the Middle East. While foreign policy was a top priority for Reagan, his strategic outlook focused on Europe and Asia, regions he expected verities about opposing communism, promoting democracy and free markets, and the importance of allies to apply.³⁹ It is an irony of fate then, that some of the Reagan administration’s most substantial foreign policy challenges emanated from the Middle East, a region where the U.S. had no treaty allies, there was only one communist regime, and Cold War truisms proved woefully inadequate. Although, throughout his entire term in office, Reagan never stepped foot in the Middle East, he would twice deploy American forces there.

The first of these deployments came in Lebanon. Between 1982 and 1984, the Reagan administration deployed Marines to deescalate the 1982 Lebanon War and negotiate a peace between Syria, the Palestine Liberation Organization (PLO), and Israel. Ostensibly a peacekeeping mission, Reagan’s intervention in Lebanon failed to stabilize the war-torn country and eventually led to disaster and a humiliating withdrawal.

³⁷ Ronald Reagan, “Statement on Signing the Multinational Force in Lebanon Resolution,” Ronald Reagan Presidential Library & Museum, October 12, 1983, <https://www.reaganlibrary.gov/archives/speech/statement-signing-multinational-force-lebanon-resolution>.

³⁸ John Milton Cooper Jr., “‘An Irony Of Fate’: Woodrow Wilson’s Pre-World War I Diplomacy,” *Diplomatic History* 3, no. 4 (October 1, 1979): <https://doi.org/10.1111/j.1467-7709.1979.tb00326.x>, 425.

³⁹ Inboden, *The Peacemaker*; 169.

Throughout the Lebanon Crisis, the Reagan administration sought to assert its foreign policymaking power vis-à-vis Congress. Indeed, Reagan's deployment of the Marines in Lebanon pitted him against a skeptical Congress eager to assert its own constitutional prerogatives. Between 1982 and 1984, Reagan would encounter increasingly insistent congressional pressure to share foreign policymaking power, particularly by invoking the WPR. Yet, even as the American position in Lebanon deteriorated and the danger the Marines faced grew, the Reagan administration continued to defend a narrow interpretation of the WPR and its right to unilaterally control U.S. foreign policy in Lebanon. The Reagan administration's efforts to defend its Lebanon policy should thus be seen as the beginning of its efforts to restore presidential foreign policymaking power. In effect, the Lebanon Crisis became a proving ground for whether the Reagan administration's broad conception of executive power could survive congressional opposition. The success or failure of the administration's efforts to implement its conception of presidential war-making powers in Lebanon would not only shape the outcome of its Lebanon strategy, but also define the limits of Reagan's presidential powers.

On August 25, 1982, U.S. Marines were deployed to Beirut. Their mission, to "have PLO members evacuated from the Beirut area [and] occupy and secure the port of Beirut" was expected to last no more than 30 days.⁴⁰ No mention of potential combat was made: the Marines were expected to be a peacekeeping force and were given strict rules of engagement to prevent them from exchanging fire with other armies in Lebanon.

⁴⁰ David Locke Hall, *The Reagan Wars: A Constitutional Perspective on War Powers and the Presidency* (Boulder: Westview Press, 1991), 137.

On December 20, 1983, a Department of Defense report urged the National Security Council to “undertake a reexamination of alternative means of achieving U.S. objectives in Lebanon.”⁴¹ While carefully worded, the Long Report, written in the wake of a terrorist attack on a Marine barracks that had killed 241 servicemembers, said what had become increasingly obvious: the Marines’ deployment in Lebanon had become a debacle.

The blame for the Lebanon failure rested with the Reagan administration. “If there is to be blame, it properly rests here in this office and with this President,” President Reagan said.⁴² Yet, the Reagan administration’s failure in Lebanon was more than a strategic failure—it was also a political one. Throughout the Marines’ deployment in Lebanon, the Reagan administration and Congress had battled over whether the Marines should be there, what they should be doing, and who had the power to decide. In the administration’s view, this battle had enormous stakes. In question was not only the fate of its policy in Lebanon, but the viability of its broad vision of presidential powers. Thus, as war raged in Lebanon, a parallel contest took place between Reagan and Congress. Its outcome would answer a longstanding question: who decides America’s foreign policy?

During the Lebanon crisis, at least at first, the Reagan administration did. The tone was set in August 1982, when Reagan unilaterally deployed Marines to Lebanon and was met with minimal congressional opposition.⁴³ In a letter to Congress announcing the deployment, Reagan emphasized “that there is no intention or expectation that the U.S. armed forces will become

⁴¹ “Report of the DOD Commission on Beirut International Airport Terrorist Act, October 20, 1983” (Washington, D.C.: GPO, December 20, 1983), <https://babel.hathitrust.org/cgi/pt?id=umn.31951d006579424&seq=1>, 8.

⁴² Philip Taubman, “Navy Secretary Said to Favor Reprimands in Beirut Blast,” *The New York Times*, January 10, 1984, sec. World.

⁴³ Hall, *The Reagan Wars*, 147.

involved in hostilities.”⁴⁴ This language reflected Reagan’s optimism about the deployment of the Marines. As the Long Report stated, “the environment into which the USMNF actually deployed in September 1982, while not necessarily benign was, for the most part, not hostile.”⁴⁵ While Reagan’s view that the Marines would not encounter opposition was plausible, it was also legally convenient. Per the WPR, the President is required to consult with Congress before introducing U.S. forces into situations where “imminent involvement in hostilities is clearly indicated by the circumstances.”⁴⁶ By claiming that the Marines in Lebanon were not being put into such a situation, Reagan avoided triggering the War Powers Act. Indeed, Reagan was careful to note that his letter to Congress was not being sent “pursuant to” or “under” the WPR—instead, it was merely “consistent” with it. Thus, besides making the WPR irrelevant to the Marines’ deployment, his letter subtly undermined its legitimacy.

Reagan’s letter to Congress announcing the deployment of Marines to Lebanon was ripe for criticism: it not only understated the risk that the Marines would face combat but also seemed designed to avoid congressional scrutiny under the WPR. Yet, Reagan’s statement drew no such scrutiny. In the month after Reagan sent his letter, only Senator Charles H. Percy (R-IL) devoted a speech to the troop deployment: he “fully supported” the President’s decision.⁴⁷ This lack of congressional action allowed the Reagan administration to continue ducking oversight under the WPR. Under Section 4(a)(2) of the WPR, the president is required to submit a report to Congress whenever U.S. forces “equipped for combat” are introduced into foreign territory.⁴⁸ Similarly,

⁴⁴ *Weekly Compilation of Presidential Documents*, vol. 18, 26 (Washington, D.C: Office of the Federal Register, July 5, 1982), <https://hdl.handle.net/2027/uc1.b5130233?urlappend=%3Bseq=1>, 1066.

⁴⁵ “Report of the DOD Commission on Beirut International Airport Terrorist Act, October 20, 1983,” 39.

⁴⁶ War Powers Resolution. 50 U.S.C. § 1543 (1973).

⁴⁷ Senator Percy, speaking on Lebanon’s President-Elect, 97th Cong., 2nd sess., *Congressional Record* 128 (September 8, 1982): https://www.govinfo.gov/app/details/GPO-CRECB-1982-pt17_S_22799.

⁴⁸ War Powers Resolution. 50 U.S.C. § 1543 (1973).

under WPR Section 4(a)(1), the president must submit a report to Congress when he introduces troops into imminent hostilities. Whether a report is filed under section 4(a)(1) or 4(a)(2) is crucial: under the WPR, troops deployed pursuant to 4(a)(1) must be withdrawn within sixty days absent congressional authorization. There is no such requirement for troops deployed under 4(a)(2).

Reagan's original letter to Congress had deliberately stated that the Marines in Lebanon were not deployed under 4(a)(1). Congress's lack of reaction to this legal maneuver allowed Reagan to avoid the time constraints of the WPR. As a September 25 memorandum addressed to Reagan and signed by Shultz and Weinberger noted, Reagan's "report on the first introduction of forces into Beirut in August did not indicate the basis [either in Section 4(a)(1) or 4(a)(2)] for its submission and there was no adverse congressional reaction. We believe the same course should be followed in this case."⁴⁹ Reagan's took Shultz and Weinberger's advice, making his September 29 report to Congress just as legally vague as his August one and avoiding the WPR's time limits. Thus, Congress's failure to pressure the Reagan administration into stating the legal basis for the deployment of Marines in Lebanon allowed Reagan to deploy the Marines indefinitely without being subject to meaningful congressional oversight.

It was not until December 15 that Congress finally reacted to Reagan's unilateralism. In a letter to President Reagan, the Senate Committee on Foreign relations wrote that it "disagreed" with Reagan's assessment of the risk that U.S. troops would see combat in Lebanon and thus "with [his] interpretation of the War Powers Resolution in this case."⁵⁰ While taking care to note that its members supported the Marines' deployment, the committee reaffirmed the applicability

⁴⁹ Hall, *The Reagan Wars*, 159.

⁵⁰ *American Foreign Policy Current Documents 1982*, vol. 398, Department and Foreign Service Series (Washington, D.C: GPO, 1985), <https://hdl.handle.net/2027/osu.32435018768234?urlappend=%3Bseq=5>, 883.

of the War Powers Resolution and warned Reagan that it “reserves the ability to direct the removal of [U.S. forces] at any time.” This relatively tepid letter, which merely asked the Reagan administration to grant Congress a larger role in shaping policy in Lebanon, was written in response to the rapidly deteriorating situation facing the Marines. Following the assassination of Lebanese President-elect Bashir Gemayel on September 14, Israeli forces occupied West Beirut. Three days later, Lebanese militiamen massacred civilians at two refugee camps as retaliation for President Gemayel’s assassination.⁵¹ In response, twelve hundred Marines were placed near Beirut International Airport in order to separate Israeli forces from the city. In this environment, Reagan’s assertion that the Marines would not be involved in combat seemed increasingly implausible.

As the turmoil in Lebanon escalated and U.S. forces encountered increasingly greater danger, Congress finally felt pressure to act. In January 1983, stray Israeli rounds landed on U.S. positions; in a separate incident, Captain Charles B. Johnson heatedly confronted an Israeli tank column and ordered it to stop, telling the Israelis that they would have to kill him if they wanted to continue.⁵² Furthermore, public opinion turned against the Reagan administration’s handling of the Lebanon Crisis. As the *New York Times* noted, in August 1982 approval for Reagan’s foreign policy was 56 percent negative and 38 percent positive. The previous month, it had been 43 percent negative and 65 percent positive. Democratic pollster Patrick H. Caddell attributed Reagan’s polling drop to “his inability to curb the violence in Lebanon.”⁵³ Sensing the Reagan

⁵¹ Caspar W. Weinberger, *Fighting for Peace: Seven Critical Years in the Pentagon* (New York, NY: Warner Books, 1990), 219.

⁵² Benis M. Frank, *U.S. Marines in Lebanon, 1982-1984* (Washington, D.C: History and Museums Division, Headquarters, U.S. Marine Corps: U.S. G.P.O, 1987), 45.

⁵³ Steven R. Weisman, “Aides Fear Mideast Is Hurting Reagan,” *The New York Times*, August 16, 1982, sec. U.S.

administration's political weakness over Lebanon and watching with alarm as the situation in Lebanon continued to deteriorate, Congress moved to assert its foreign policymaking power.

Between February and March 1983, the Senate Budget Committee met to consider the annual Department of Defense Authorization Act. As Secretary of Defense Caspar Weinberger testified before the committee, the Reagan administration's handling of the Lebanon Crisis caught up with it. Senator James Exon (D-NE) began his questioning of Weinberger bluntly:

One of the problems we have on our hands that is going to rear its head in the near future is the fact that this administration continues to ignore the legitimate role of Congress under the War Powers Act with regard to the involvement of our troops in Lebanon. The War Powers Act request [report] has never been sent over here by the administration, despite the fact that 14 of the 17 members of the Foreign Relations Committee made such a request last month [in their letter to Reagan] Why are we being stonewalled by the administration on... a very serious issue?⁵⁴

Exon's questioning of Weinberger marked the first meaningful congressional parry against the Reagan administration's unilateral handling of Lebanon policy. Weinberger replied to Exon by arguing that the Marines in Lebanon were still not involved in hostilities. Exon was justifiably unpersuaded: "it seems to me that [your argument that the Marines are not involved in imminent hostilities] is one more of the unrealistic approaches, stonewalling, that the administration is taking." Moreover, Exon said, the administration's stonewalling would come at a price: "you [stonewall Congress] at the further peril of the overall defense budget," he told Weinberger.⁵⁵ Although coming from a democratic senator, this threat was credible, as it came amid a bipartisan controversy over defense spending.⁵⁶

⁵⁴ U.S. Congress, Senate, Committee on the Budget, *National Security: Hearings before the Committee on the Budget*, 98th Cong., 1st sess., 1983, 93.

⁵⁵ U.S. Congress, Senate, Committee, *National Security*, 94.

⁵⁶ Helen Dewar and George C. Wilson, "Hill GOP Seeks Reagan Shift on Defense Budgets: Leaders Respond Angriily To His Stance on '84, '85" *The Washington Post* (1974-), July 30, 1982.

On March 1, Senator Percy, who had “fully supported” the President’s decision to deploy Marines to Lebanon in 1982, introduced the Lebanon Emergency Assistance Act of 1983. This act provided both military and economic support to the Lebanese armed forces. Notably, it marked the first time Congress had formally involved itself in Lebanon policy. In addition to provisions about economic and military aid, the Lebanon Emergency Assistance Act stated that “the President shall obtain statutory authorization from the Congress with respect to any substantial expansion in the number or role in Lebanon of the United States Armed Forces.”⁵⁷ To clarify the purpose behind this provision, the Act included a further section stating that “nothing in this section is intended to modify, limit, or suspend any of the standards and procedures prescribed by the War Powers Resolution of 1973.” In a speech before the Senate, Senator Percy wrote that these two requirements reflected “a bipartisan agreement on the need for congressional participation” in Lebanon policy.⁵⁸ Percy noted that the Committee on Foreign relations had “made clear” in its December 1982 letter to Reagan “its intention to insist upon specific authorization for any extended commitment” of forces in Lebanon. Months later, Congress had finally insisted.

By allowing the Marines currently deployed in Lebanon to remain there, the Lebanon Emergency Assistance Act effectively preserved the status quo in Lebanon. As a result, the Reagan administration found it acceptable, albeit unwelcome. In an April 20 letter to the Senate Committee on Foreign Relations, Acting Secretary of State Kenneth W. Dam wrote that the language on executive powers in the Lebanon Emergency Assistance Act “correctly describes what this administration intends to do... and is therefore acceptable to us.”⁵⁹ In accepting congressional

⁵⁷ Lebanon Emergency Assistance Act of 1983, Public Law. 98-43, *U.S. Statutes at Large* 97 (1983), 214.

⁵⁸ Senator Percy, speaking on the Lebanon Emergency Assistance Act of 1983, 98th Cong. 1st sess., *Congressional Record* 129 (May 20, 1983): <https://www.govinfo.gov/app/details/GPO-CRECB-1983-pt10>, S 13252.

⁵⁹ Kenneth W. Dam, speaking on the Lebanon Emergency Assistance Act of 1983, 98th Cong. 1st sess., *Congressional Record* 129 (May 20, 1983): <https://www.govinfo.gov/app/details/GPO-CRECB-1983-pt10>, S 13252.

limits on further Marine deployments, however, the Reagan administration was likely trying to forestall an even more severe limitation of its powers. As Dam wrote later in the same letter:

I strongly hope that your committee [the Senate Committee on Foreign Relations] will not find it necessary to deal with this question [of presidential cooperation with Congress] in the context of section 4(a)(1) of the War Powers Resolution. It would be highly premature and unwise, and potentially damaging to the integrity of the resolution, for Congress to prejudge the possible applicability of that section to future arrangements which have not yet been negotiated and future circumstances which cannot yet be predicted. Such an action, which would amount to a public finding that U.S. forces will be exposed to an imminent risk of involvement in hostilities, is in no way a foregone conclusion... Surely it would be far preferable for Congress to reserve judgment on this matter (as we will) until it can evaluate the circumstances as they develop, knowing that the provisions of the war powers resolution will, of course, remain available.

Thus, in accepting the Lebanon Emergency Assistance Act's requirement that further Marine deployments receive congressional authorization, the Reagan administration was seeking to avoid even greater congressional scrutiny under the WPR. As Dam's letter shows, the Reagan administration was deeply concerned about the effect that triggering the WPR would have on its Lebanon policy. This concern made it willing to compromise on the Lebanon Emergency Assistance Act, which Reagan signed into law on June 27, 1983. Yet, even in signing the act, Reagan subtly undermined its authority, writing that the act allowed the deployment of additional Marines to Lebanon "if circumstances [required] it while Congress is considering a request for statutory authorization" and that "nor, of course, is [the act] intended to infringe upon the Constitutional authority of the President..."⁶⁰ Reagan's words upon signing the Lebanon Emergency Assistance Act did not change the reality that he had been pressured into at least formally accepting legislative limits on his presidential powers. They did, however, reflect his

⁶⁰ Ronald Reagan, "Statement on Signing the Multinational Force in Lebanon Resolution," Ronald Reagan Presidential Library & Museum, October 12, 1983, <https://www.reaganlibrary.gov/archives/speech/statement-signing-multinational-force-lebanon-resolution>.

willingness to continue challenging these limits. The battle for control of American policy in Lebanon was far from over.

After the passage of the Lebanon Emergency Assistance Act, there was a lull in congressional pushback as Reagan's Lebanon policy showed signs of life. The reprieve proved fleeting as, on August 28, fighting between the Lebanese army and a Druze militia spilled over into a Marine compound, forcing U.S. Marines to return fire. The next day, two Marines were killed in Druze artillery attacks.⁶¹ This prompted the Reagan administration to convene a crisis management group that "recommended a review" of the WPR, a review which a State Department spokesperson soon announced was underway.⁶² This recommendation failed to placate Congress; on August 30, the chairman of the House Foreign Affairs Committee issued a statement arguing that the death of the two Marines had triggered the WPR.

The next day, in a letter to Congress detailing the combat that the Marines had engaged in, Reagan replied to calls to invoke the WPR. Yet, Reagan's letter again reflected his desire to avoid the constraints of the WPR. Just as his August 1982 letter had, Reagan's letter was sent "consistent with" but not "under" the WPR.⁶³ Furthermore, it again dodged the crux of the matter: whether the deployment of the Marines in Lebanon was subject to the sixty-day time limit that the WPR imposed on troops engaged in hostilities not expressly authorized by Congress. Unsurprisingly, Reagan's letter strongly suggested that they were not, stating that "it is still not possible to predict the duration of the presence of [American] forces in Lebanon." Thus, despite being written in response to a worsening political and military crisis, Reagan's August 1983 letter to Congress was

⁶¹ Frank, *U.S. Marines in Lebanon, 1982-1984*, 78.

⁶² Bernard Gwertzman, "No Policy Shift, White House Says," *The New York Times*, August 30, 1983, sec. World, <https://www.nytimes.com/1983/08/30/world/no-policy-shift-white-house-says.html>.

⁶³ Ronald Reagan, "Reagan Note on Lebanon," *The New York Times*, August 31, 1983, sec. World.

not meaningfully distinct from its August 1982 predecessor. The administration refused to subject its Lebanon policies to the War Powers Act; Reagan had not answered Senator Exon's calls to tear down the war powers wall.

Throughout September 1983, sporadic fighting between Marines and Druze militias continued. The fighting was regular enough to make untenable the Reagan administration's view that the Marines were not involved in hostilities and provoke a fresh and particularly furious round of congressional scrutiny. On September 20, in anticipation of Secretary of State Shultz's testimony the next day, Senator Robert Byrd (D-WV) read two *New York Times* articles into the congressional record. The first, entitled "War Powers Dispute," observed that "the political stalemate over keeping American marines in Lebanon springs from a determined effort by Congressional leaders to establish an important legal precedent that President Reagan wants to avoid."⁶⁴ Notably, Congress's desire to reel in the Reagan administration's foreign policy making powers was both bipartisan and strong:

Congressional Democrats joined by many Republicans contend that if they do not now force President Reagan to seek their concurrence, it will be a dangerous precedent, diminishing the powers of Congress. "If we don't trigger the War Powers Act now, it will be a precedent that will make that legislation a dead letter," said Representative Stephen J. Solarz, a Brooklyn Democrat. "What is at stake here is the ability of Congress to exercise any control over the dispatch of American forces into combat situations." The White House fears the opposite danger. If the President too openly accepts the basic premise of the War Powers Resolution, officials say, he will lose flexibility and be left naked to foreign military pressures in such delicate situations as Lebanon today.

The stage was thus set for a showdown over presidential war powers. Congress, united across partisan lines, wanted to limit the authority of an administration making important foreign policy decisions without its input. The fact that Congress was so unified and was willing to hold

⁶⁴ Hedrick Smith, "News Analysis: War Powers Dispute," *New York Times, Late Edition (East Coast)*, September 17, 1983, sec. 1.

hostage policy decisions that it substantively agreed with suggests the extent of its frustration with the Reagan administration. Less than a year after the Senate Committee on Foreign Relations had sent the administration a tepid letter asking that it voluntarily cooperate with Congress, there had been a marked shift in Congress's approach to the issue of presidential war powers in Lebanon.

Congressional pressure on the Reagan administration forced it to respond. On September 21, Secretary of State Shultz found himself "testifying before both the House and the Senate on the situation in Lebanon and on the War Powers issue."⁶⁵ In his testimony, Shultz warned Congress that its actions were undermining the American position in Lebanon:

This is why our domestic controversy over war powers has been disturbing. The uncertainty about the American commitment only weakens our effectiveness; doubts about our staying power can only cause the aggressors to discount our presence—or to intensify their attacks, in hopes of hastening our departure... The Executive and Legislative Branches, as you know, have important differences of principle with respect to the War Powers Resolution. The Executive Branch has traditionally had questions about the requirement of Congressional authorization for Presidential disposition of our armed forces, both in light of the President's Commander-in-Chief power and on practical grounds. Congress, of course, has had a different view. We could not expect to resolve this basic difference definitively now, but the Administration has been prepared to consider practical proposals that enabled us to protect our common, national interest in Lebanon without prejudging our respective positions on the basic issue of principle.⁶⁶

As he testified before Congress, Shultz was keenly aware that Congress was negotiating what would become the Multi-National Force in Lebanon Resolution (MNFILR). Only eight days after Shultz testified, Representative Clement Zablocki (D-WI), who had introduced the WPR in the House a decade earlier, introduced a version of the MNFILR which would have

⁶⁵ Shultz, *Turmoil and Triumph*, 226.

⁶⁶ George Shultz, speaking on administration policy in Lebanon, 98th Cong. 1st sess., *Congressional Record* 129 (September 21, 1983): <https://www.govinfo.gov/app/details/GPO-CRECB-1983-pt18/https%3A%2F%2Fwww.govinfo.gov%2Fapp%2Fdetails%2FGPO-CRECB-1983-pt18%2FGPO-CRECB-1983-pt18-4-2>, H 25191.

severely antagonized the Reagan administration. Zablocki's MNFILR set specific conditions under which Reagan would be obligated to withdraw troops from Lebanon and would have required the President to provide regular reports to Congress about the situation in the country.⁶⁷ Notably, Representative Clarence D. Long proposed an amendment to Zablocki's bill which would have cut funding to the Marines in Lebanon until Reagan invoked the War Powers Resolution. House leadership then undertook a series of procedural maneuvers to sink the Long-Obeys amendment, leading Long to bemoan the "beginning of a kind of legislative dictatorship in which... if leadership does not approve [of members' actions] they just simply scrub [votes and bills] and introduce something else."⁶⁸ Despite Long's protestations, his amendment fell in a 158 to 272 vote.⁶⁹ While Long's amendment, which would have undoubtedly drawn the ire of the Reagan administration, failed to pass, Zablocki's less demanding but still substantial form of the MNFILR passed the House on September 29 in a 271-161 vote. In the vote, in a demonstration of Congress's determination to reign in the Reagan administration's unilateral handling of Lebanon policy, at least 28 Republican members of Congress voted for the MNFILR. Notably, in its findings, the MNFILR stated that the August 29 exchange of fire that had killed two Marines had also triggered §4(a)(1) of the WPR.⁷⁰

For weeks prior to its passage, the Reagan administration had been severely concerned about the form the MNFILR would take. In a September 15 memorandum, Reagan's trusted Chief of Staff James Baker wrote that while congressional "leadership is favorably disposed

⁶⁷ Clement J. Rep. Zablocki, "Multinational Force in Lebanon Resolution," Pub. L. No. 98-119 (1983), <https://www.congress.gov/bill/98th-congress/house-joint-resolution/364>.

⁶⁸ Representative Clarence D. Long, speaking on H. Res. 318, 129th Cong., 1st Session, *Congressional Record* 129, pt. 19: <https://www.govinfo.gov/app/details/GPO-CRECB-1983-pt19/GPO-CRECB-1983-pt19-1>, H 26110.

⁶⁹ Rep. Clarence D. Long, "Amendment to the Multinational Force in Lebanon Resolution," Pub. L. No. H.Amdt.395 to H.J.Res.364 (1983), <https://www.congress.gov/amendment/98th-congress/house-amendment/395>.

⁷⁰ Hall, *The Reagan Wars*, 159.

toward working something out,” their “rank and file is rapidly moving beyond [their] control.”⁷¹ Bracing the Reagan administration for a potential rebellion among the congressional rank and file, Baker wrote that “we probably need to reach agreement [about the contents of the MNFILR] today, or else be prepared to let the Congress work its will without us.” In this scenario, Baker noted, Reagan may be forced to “refuse to sign the type of resolution that may emerge,” incurring the political costs of a presidential veto.

In a further display of the Reagan administration’s concern over the MNFILR, administration officials drafted a letter to Senate Majority Leader Howard Baker (R-TN) in which Reagan would have asked Baker to “take the lead in fashioning a joint resolution that would reaffirm our policy” in Lebanon.” James Baker (no relation), edited drafts of Reagan’s letter such that they more strongly defended Reagan’s presidential authority. For example, instead of acknowledging “the need for the Congress to speak under the general rubric” of the WPR, Baker acknowledged only “Congress’s *desire*” (emphasis mine) to do so.⁷² Similarly, Baker manually changed a line in the letter hoping “that [the President and Senate] could cooperate in the development of a resolution” to one stating that Reagan that “would want to cooperate... only on a basis that would not impair [his] authority as Commander in Chief.”⁷³ Most notably, while earlier drafts of Reagan’s letter had noted that the president intends “to submit a report to the Congress as provided for in Section 4 of the War Powers Resolution in advance of the introduction” of the MNFILR, later versions did not include this line.

⁷¹ September 15, 1983, Memorandum annotated by James Baker, Box 60, Folder 6, Legislative Strategy: Foreign Policy, James A. Baker III papers, Princeton University, Princeton, New Jersey.

⁷² Draft of a letter from Ronald Reagan to Howard Baker, Box 60, Folder 6, Legislative Strategy: Foreign Policy, James A. Baker III papers, Princeton University, Princeton, New Jersey.

⁷³ Draft of a letter from Ronald Reagan to Howard Baker, Box 60, Folder 6, James A. Baker III papers.

While it is unclear whether Baker made this change, the overall picture is evident. Crucially, the Reagan administration saw the MNFILR as far more than a symbolic assertion of congressional powers; instead, in the administration's view, the MNFILR threatened the viability of Reagan's Lebanon policy. Thus, from the moment that the MNFILR was conceived, the Reagan administration sought to minimize the MNFILR's impact on its foreign policy in Lebanon.

In particular, the Reagan administration concerned itself with four components of the MNFILR. First was the issue of whether the Marines in Lebanon were engaged in "hostilities." If, in the MNFILR, Congress held that they were, then the Reagan administration would face severe pressure to conduct its Lebanon Policy under the WPR. To the Reagan administration, which chafed at the idea of subjecting troop deployments in Lebanon to the WPR's sixty-day limit, an MNFILR declaring that the Marines were involved in hostilities was unacceptable. The administration considered several options to resolve this dilemma. First, Baker's memorandum said, the administration could "hold to [its] current position (and let Congress do what it may)." ⁷⁴ In this scenario, the administration would have directly confronted Congress, vetoing any resolution restricting its free hand in Lebanon. Second, the administration considered filing a §4 report that would not trigger the sixty-day limit of §4(a)(1). Under this option, the administration would have acknowledged Congress's view that §4(a)(1) applied and left it to the courts to decide whether §4(a)(1) was in fact operative. Thirdly, in what was the most moderate option he presented, Baker wrote that the administration could file a §4(a)(1) report in exchange for an "acceptable resolution." This acceptable resolution would presumably have required

⁷⁴ September 15, 1983, Memorandum annotated by James Baker, Box 60, Folder 6, Legislative Strategy: Foreign Policy, James A. Baker III papers, Princeton University, Princeton, New Jersey.

Congress to authorize the Marines' deployment in Lebanon and stipulated that Congress could not withdraw this authorization.

Finally, Baker noted that Reagan could “sign a resolution in which Congress (not the executive Branch) finds that §4(a)(1) applies” if the resolution were otherwise acceptable.⁷⁵ This conciliatory option would offer both Reagan and Congress a way to save face: Congress could symbolically invoke the WPR, thus asserting its authority, while Reagan could avoid filing a §4(a)(1) report and accepting the legitimacy of the WPR. This was the option the Reagan administration chose; on October 12, 1983, Reagan signed the MNFILR. Yet, in exchange for Reagan's signature, Congress had made several key concessions. First, it did not include any congressional termination provisions in the MNFILR. This was an important concession to Baker and the rest of the administration, which worried that Congress could amend or modify the MNFILR and once again challenge the presence of the Marines in Lebanon. Second, Congress placed its determination that §4(a)(1) of the WPR was in force in Lebanon in the findings section of the MNFILR rather than its text; congressional findings do not have the practical effects of statutory text and are often overlooked in statutory interpretation.⁷⁶ Perhaps even more importantly, the MNFILR authorized the Marines to remain in Lebanon for an additional eighteen months.

Upon signing the MNFILR, Reagan stated that his signing of the resolution should not be construed as acceptance of its invocation of the WPR.⁷⁷ Furthermore, Reagan “made it clear that he felt no constitutional obligation to seek congressional authorization after the expiration of the

⁷⁵ September 15, 1983, Memorandum annotated by James Baker, Box 60, Folder 6, Legislative Strategy: Foreign Policy, James A. Baker III papers, Princeton University, Princeton, New Jersey.

⁷⁶ Jarrod Shobe, “Enacted Legislative Findings and Purposes,” *University of Chicago Law Review* 86, no. 3 (May 1, 2019), <https://chicagounbound.uchicago.edu/uclrev/vol86/iss3/3>.

⁷⁷ Ronald Reagan, “Statement on Signing the Multinational Force in Lebanon Resolution,” Ronald Reagan Presidential Library & Museum, October 12, 1983, <https://www.reaganlibrary.gov/archives/speech/statement-signing-multinational-force-lebanon-resolution>.

eighteen-month period” authorized in the MNFILR.⁷⁸ In refusing to accept Congress’s invocation of the WPR, Reagan asserted an extraordinarily broad presidential power; in his eyes, the president was permitted to overrule a congressional finding that the WPR was applicable. This proposition was never challenged in court and its legal legitimacy remains unclear today. Regardless, in practice, the MNFILR allowed Reagan to both continue to deny the legitimacy of the WPR and still receive congressional authorization for his deployment of the Marines. Congress, on the other hand, was able to demonstrate the continued relevance of the WPR, implicitly claim the power to authorize and deauthorize troop deployments, and lend its backing to a Lebanon policy it supported. Thus, the MNFILR enabled both Congress and the Reagan administration to save face. Its ultimate impact, however, was to preserve the status quo in Lebanon.

Washington machinations could not obscure the fact that the status quo in Lebanon remained a debacle. Only eleven days after Reagan signed the MNFILR, the release of the Long Report brutally exposed the shortcomings of the administration’s Lebanon policy. For example, the report noted that “progress toward a diplomatic solution [to the crisis had] slowed” and the security of the Marines had “continued to deteriorate.”⁷⁹ As a memorandum sent to Reagan in early 1984 stated, the Long Commission’s scathing assessment of the Reagan administration’s policy in Lebanon has led to “a growing crescendo of criticism from both liberals and conservatives” in Congress.⁸⁰ The memorandum noted that, just as Baker had feared might happen, Speaker of the House Tip O’Neill (D-MA) and other prominent members of Congress

⁷⁸ Louis Fisher, *Presidential War Power* (Lawrence, Kansas: University Press of Kansas, 1995), 141.

⁷⁹ “Report of the DOD Commission on Beirut International Airport Terrorist Act, October 20, 1983” (Washington, D.C.: GPO, December 20, 1983), <https://babel.hathitrust.org/cgi/pt?id=umn.31951d006579424&seq=1>, 134.

⁸⁰ Robert C. McFarlane, “Memorandum for the President” (Jason Saltoun-Ebin, January 3, 1984), The Reagan Files, <https://www.thereaganfiles.com/19840103-nspg-83.pdf>.

were reconsidering their support for the MNFILR and threatening to shorten the eighteen-month authorization for the Marines in Lebanon.

With public opinion already against its Lebanon policy, the Reagan administration found itself ill-equipped to resist Congress's growing dissatisfaction.⁸¹ In normal circumstances, presidents are generally responsive to public opinion. As a 2010 literature review noted, "under varying political and institutional conditions, presidents behave or give the appearance of serving as the public's delegate, responding to their wishes."⁸² Some scholars have gone even further, arguing that presidents "not only respond to [public] opinion but [do so] with considerable urgency... like antelope in an open field, they cock their ears and focus their full attention on the slightest sign of danger."⁸³ Yet, by December 1983, Reagan's Lebanon policy had been politically unpopular for months; despite its lack of public support, the administration had doggedly clung to its strategy. Swimming against the tide of public opinion was one matter; resisting a Congress with the public at its back proved another. Political science research has shown that "congruence between congressional ideology and public opinion" affects presidents' policy choices. For example, studies of "blame-game politics" have shown that the president can lose popularity relative to Congress if Congress positions itself closer to public opinion.⁸⁴ Ultimately, while the Reagan administration proved willing to resist public pressure to change its Lebanon policy, the threat of fighting a Congress aligned with public opinion—and thus being on the wrong side of "blame game politics"—proved too much to bear.

⁸¹ Hedrick Smith, "Foreign Policy Emerging as a Bigger Domestic Problem," *The New York Times*, December 25, 1983, sec. Week in Review.

⁸² James N. Druckman and Lawrence R. Jacobs, "Presidential Responsiveness to Public Opinion," in *The Oxford Handbook of the American Presidency*, ed. George C. Edwards and William G. Howell, 1st ed. (Oxford University Press, 2010), <https://doi.org/10.1093/oxfordhb/9780199238859.003.0008>, 170.

⁸³ Robert S. Erikson, Michael MacKuen, and James A. Stimson, *The Macro Polity*, Cambridge Studies in Public Opinion and Political Psychology (Cambridge: Cambridge University Press, 2002), 320.

⁸⁴ Brandice Canes-Wrone and Kenneth W. Shotts, "The Conditional Nature of Presidential Responsiveness to Public Opinion," *American Journal of Political Science* 48, no. 4 (2004): 690–706, <https://doi.org/10.2307/1519928>, 698.

In this political and strategic environment, the Reagan administration's support for its Lebanon policy began to disintegrate. To borrow an aphorism from Ernest Hemingway, the administration's resolve collapsed gradually then suddenly. In December 1983, Weinberger commissioned a paper titled "Strategy for Disengagement in Lebanon" and spoke of a growing consensus that "we were engaging in fruitless tactics in pursuit of unreachable goals."⁸⁵ At the end of 1983, Shultz was one of the few administration officials arguing that the Marines should remain in Lebanon. Yet, even he soon realized that the administration's position in Lebanon was untenable: besides noting the "political handwriting on the wall," Shultz perceived that U.S. adversaries in Lebanon "now believed that Congress would eventually force a U.S. pullout" and had adopted uncompromising negotiating positions as a result.⁸⁶

Nonetheless, as late as his State of the Union address on January 25, 1984, Reagan insisted that "there is hope for a free, independent, and sovereign, Lebanon...."⁸⁷ Two days later, Reagan met with Republican members of the House and warned about the consequences for the U.S. and Israel "if Congress forces a withdrawal of our troops."⁸⁸ However, in a shocking turn, on February 7, Reagan announced that he was withdrawing from Lebanon. His decision was met with astonishment and confusion in Congress; even Republican House members "responded with groans and hisses" when Deputy Secretary of State Kenneth Dam announced the administration's decision.⁸⁹

The Reagan administration's policy in Lebanon was almost universally viewed as a failure. Dam, fresh off his excoriation in front of Congress, confided in his diary that the

⁸⁵ Weinberger, *Fighting for Peace*, 167.

⁸⁶ Shultz, *Turmoil and Triumph*, 229.

⁸⁷ Inboden, *The Peacemaker*, 267.

⁸⁸ Ronald Reagan, *The Reagan Diaries*, ed. Douglas Brinkley (New York: HarperCollins, 2007), 215.

⁸⁹ Margaret Shapiro Washington Post Staff Writer, "Confusion, Anger Rise in Congress: Confusion, Anger Rise on Capitol Hill," *The Washington Post* (1974-), February 10, 1984.

administration had “no Middle East policy that we can describe.”⁹⁰ Weinberger wrote in his memoir that “Lebanon will, in [his] mind, always stand as major reproach to me because I [was unable] to prevent the worst loss of military lives” in his time at the Pentagon and called the deployment of the Marines “a sad and grievous error.”⁹¹ Shultz remained a lonely defender of the administration’s policy, writing that “we were right to have deployed the [Marines] and... we were right to have made the effort to help Lebanon.”⁹² Shultz’s post-mortem meaningfully differed from that of the Long Commission, Congress, or the public. Instead, in addition to lamenting missed diplomatic opportunities, Shultz’ assessment of what went wrong turned towards a familiar target for the administration: Congress.

On March 2, before the Senate Appropriations Subcommittee on Foreign Operations, Shultz bluntly stated that Congress’s debate over the administration’s policy in Lebanon, especially its threats to invoke the WPR and cut funding for the Marines, had made it impossible to conduct a “sensible” policy in Lebanon and “totally took the rug out from under” the administration’s diplomatic efforts.⁹³ Four days later, the administration’s allies in Congress seconded Shultz’s account. Senate Majority Leader Howard Baker, who had helped the Reagan administration negotiate the MNFILR, argued that “we cannot continue to begin each military involvement abroad with a prolonged, tedious, and divisive negotiation between the executive and the legislative branches of government” and called for a review of the WPR.⁹⁴ Similarly, Senator Rudy Boschwitz (R-MN), argued that Shultz was “correct when he observe[d] that Congress is ‘partly’ to blame” for the failure in Lebanon and bemoaned America’s inability to

⁹⁰ Inboden, *The Peacemaker*, 268.

⁹¹ Weinberger, *Fighting for Peace*, 173-174.

⁹² Shultz, *Turmoil and Triumph*, 232.

⁹³ Bernard Gwertzman, “Shultz Declares Debate Harmed Lebanon Effort,” *The New York Times*, March 2, 1984, sec. World, <https://www.nytimes.com/1984/03/02/world/shultz-declares-debate-harmed-lebanon-effort.html>.

⁹⁴ Sen. Howard Baker, speaking on the Secretary of State, 98th Cong. 2nd sess., *Congressional Record* 130 (March 6, 1984), <https://www.govinfo.gov/app/details/GPO-CRECB-1984-pt4>, S 4570.

maintain “constancy of resolve” in its foreign policy.”⁹⁵ Unsurprisingly, the Reagan administration’s congressional critics were unimpressed by its account of the failure in Lebanon. For example, Senator Minority Leader Byrd (D-WV) called Shultz’s complaints “petty and vindictive exercises in sour grapes” and “just another example of [the Reagan] administration’s attempt[s]... to find a scapegoat for a failed policy.”⁹⁶

Shultz and the Reagan administration were undeterred by Byrd’s criticism. Indeed, March 2, 1984, marked a turning point in the Reagan administration’s efforts to assert its executive powers: convinced that its policy in Lebanon had been doomed by congressional recalcitrance, the administration began a more forceful and public defense of its presidential prerogatives.

In an April 3 speech before the Trilateral Commission, Shultz restated the position he had taken a month earlier. “Our military role [in Lebanon] was hamstrung by legislative and other inhibitions,” Shultz told the commission.⁹⁷ Yet, in front of an audience of private-sector grandees, Shultz went further than he had in front of Congress. The legislative inhibitions that had doomed his efforts in Lebanon, Shultz said, were the product of a fifteen-year “legacy of contention between the executive and legislative branches” that had resulted in “a web of restrictions on executive power embedded permanently in our laws.” Tangled in this web, U.S. foreign policy had suffered from “a loss of coherence and recurring uncertainty in the minds of friend and foe about the aims and constancy of the United States.”⁹⁸ Shultz also singled out the

⁹⁵ Sen. Rudy Boschwitz, speaking on the consequences of our Lebanon policy, 98th Cong. 2nd sess., *Congressional Record* 130 (March 6, 1984), <https://www.govinfo.gov/app/details/GPO-CRECB-1984-pt4>, S 4568.

⁹⁶ Sen. Robert Byrd, speaking on U.S. Policy in Lebanon, 98th Cong. 2nd sess., *Congressional Record* 130 (March 6, 1984), <https://www.govinfo.gov/app/details/GPO-CRECB-1984-pt4>, S 4570.

⁹⁷ “Address by Secretary of State Shultz,” April 3, 1984, in *Foreign Relations of the United States, 1981-1988*, vol. I, Foundations of Foreign Policy, eds. Kristin L. Ahlberg and Kathleen B. Rasmussen (Washington D.C.: Government Publishing Office, 2022), Document 191.

⁹⁸ “Address by Secretary of State Shultz, in *Foreign Relations of the United States, 1981-1988*, vol. 1, Document 191.

WPR, arguing that it set “arbitrary 60-day deadlines that practically invite an adversary to wait [America] out.” At a press conference the next day, Reagan defended Shultz’s remarks. While the president dodged a question about the constitutionality of the WPR, he obliquely criticized it, saying that “the Constitution made it pretty plain... as to how diplomacy was to be conducted.”⁹⁹ Reagan, echoing Shultz, also noted Congress’s rise in power over the past decade and expressed skepticism about its ability to conduct foreign policy.

Perhaps the most remarkable aspect of Shultz’s speech was its historiography. By tying the Reagan administration’s clashes with Congress into a fifteen-year history of improper congressional involvement in foreign policy, Shultz raised the stakes of his argument. In 1984, having withdrawn from Lebanon, America was largely at peace: while the country faced terrorist threats and communist regimes around the world, its troops would not see combat until 1986. Thus, in April 1984, the debate over presidential foreign policymaking powers would not determine the outcome of any singular intervention abroad—the fate of the Marines in Lebanon was no longer hanging in the balance. Consequently, Shultz was no longer defending his position for primarily instrumental reasons. Instead, by connecting the Reagan administration’s struggle to cast off congressional constraints to a longer history, Shultz showed that the stakes of the debate had changed: now at issue was whether the Reagan administration could succeed in reversing a decade and a half of congressional ascendance and reasserting the powers it needed to win the Cold War. Thus, the essence of Shultz’s speech was ideological, not instrumental. In his view, the intervention in Lebanon was merely the latest instance that American foreign policy had been undermined by a Congress exceeding its proper role. If the Reagan administration were

⁹⁹ Ronald Reagan, “The President’s News Conference,” Ronald Reagan Presidential Library & Museum, April 4, 1984, <https://www.reaganlibrary.gov/archives/speech/presidents-news-conference-38>.

to achieve its grand strategic goals, its ideological conception of presidential powers would first have to prevail.

The Reagan administration's struggle to defend its Lebanon policy against congressional interference demonstrated the limits of its power. At first, the administration was successful in unilaterally conducting foreign policy in Lebanon: when Reagan deployed the Marines to Lebanon in mid-1982, Congress was indifferent. Yet, as the strategic landscape in Lebanon deteriorated and the Marines faced increasing danger, Congress intervened, passing first the Lebanon Emergency Assistance Act and then the MNFILR. In each instance, Congress asserted its power to shape foreign policy and defended the legitimacy of the WPR. In response, Reagan signed both measures reluctantly, each time asserting that his opposition to the WPR remained unchanged.

Soon after the MNFILR became law in October 1983, authorizing the Marines to remain in Lebanon for another eighteen months, the situation in Lebanon worsened. In response, Congress began expressing doubts about the viability of U.S. policy in Lebanon; the MNFILR came under threat as Congress considered resolutions to abridge the eighteen-month term and require Reagan to withdraw the Marines. Only months later, Reagan suddenly ordered a withdrawal from Lebanon, ending what had become an ignominy.

It is unclear whether Reagan's decision to withdraw the Marines was the result of mounting congressional and public opposition, a deteriorating strategic landscape, or both. Indeed, in the administration's view, congressional opposition was inextricably linked to the worsening strategic outlook: in its eyes, by throwing into question America's resolve to remain in Lebanon, Congress had incentivized American adversaries to dig in and outwait the Marines.

In the end, the showdown between Reagan and Congress ended in a draw. On one hand, the administration conducted the policy it chose: Congress was slow to respond in instances when the administration was the first mover and neither the Lebanon Emergency Assistance Act nor the MNFILR meaningfully altered the status quo in Lebanon. In other words, the Reagan administration determined American policy and was, at least until 1984, not compelled to modify it.

Yet, Congress still meaningfully influenced the Reagan administration's Lebanon policy. Indeed, the administration's efforts to weaken both the Lebanon Emergency Assistance Act and the MNFILR show that what Congress did mattered. Even though the administration may have had the ability to ignore Congress entirely, it did not do so—the political costs of such a course would have been too high. This is why the administration reluctantly accepted a compromise on the MNFILR and Lebanon Emergency Assistance Act, both of which asserted Congress's foreign policymaking authority. Notably, even though the MNFILR and the Lebanon Emergency Assistance Act did not force the administration to alter the status quo in Lebanon, the administration perceived them as influential. As we have seen, administration officials like Shultz saw the MNFILR as a signal of weakness to America's adversaries: even if the MNFILR did not change policy in practice, at least in the administration's view, it significantly shaped the outcome of U.S. foreign policy in Lebanon.

The withdrawal of the Marines from Lebanon was the nadir of Reagan's presidency. In early 1984, public approval for Reagan's foreign policy was the lowest it had ever been and the administration was scrambling to counter criticism of a Lebanon policy that had not achieved its goals and cost hundreds of Americans their lives.¹⁰⁰ Thus, the Reagan administration emerged

¹⁰⁰ Barry Sussman, "Criticism of Foreign Policy Growing: Reagan Facing Criticism Over His Foreign Policy," *The Washington Post* (1974-), January 20, 1984.

from the Lebanon quagmire bruised and bitter about congressional meddling in its foreign policy.

For the Reagan administration, one of the lessons of Lebanon was that Congress was still too powerful. In its view, its efforts to protect Reagan's freedom of action in Lebanon had proved insufficient: congressional debate and legislation like the MNFILR had still doomed American policy in the country. Thus, as Shultz's March 2 testimony before Congress and April 3 speech before the Trilateral Commission showed, the administration had become more willing to challenge congressional power even more directly than it previously had. Rather than instrumentally defending Reagan's freedom of action in Lebanon, administration officials like Shultz began an ideological assault on the WPR and Congress's foreign policymaking power.

Thus, in 1984, the battle for American foreign policy renewed along fresh lines. As the *Washington Post* reported, "in foreign affairs President Reagan portrays himself as a Gulliver tied down by Lilliputians in coils of constraints."¹⁰¹ While the Reagan administration had "shown great resourcefulness in extricating itself from the webs that Congress spins around it" it continued to chafe at congressional restrictions on its power. For example, in 1985, "Shultz lambast[ed]... lawmakers for paralyzing U.S. policy in Nicaragua," leading the *Post's* Philip Geyelin to quip that "as Jeane Kirkpatrick might put it, the Reagan Republicans always blame the U.S. Congress first."¹⁰² Congress's actions between 1982 and 1984 had emboldened the Reagan administration and led it to aggressively proselytize its expansive vision of presidential powers. While Congress had reeled in the administration in Lebanon, it would find it difficult to restrain Reagan again.

¹⁰¹ Murrey Marder, "Hill Fights Reagan for Soul of Foreign Policy," *Washington Post*, September 2, 1984, ProQuest Historical Newspapers.

¹⁰² Philip Geyelin, "Kissinger Sees The Confusion," *The Washington Post (1974-)*, May 31, 1985, ProQuest Historical Newspapers.

Chapter 2: “A Typical Mid East Problem”

*“I just have a difficult time understanding why the administration... does not accept what would be a common sense interpretation of the [WPR] and come to the Congress to seek [its] support rather than elect to pursue a much narrower interpretation of the [WPR] and thereby potentially invite greater problems in the legislative branch [than] the Administration would naturally receive...”*¹⁰³ - Congressman Meldon Edises Levine, 1987

By 1987, the Reagan administration had spent years contesting congressional efforts to shape its foreign policy. Since its first day in office, the administration had worried that Congress would decisively obstruct its efforts to win the Cold War. In response, it had heeded James Baker’s admonition to make restoring the “independent rights” of the executive a “central theme [it] ought to push.”¹⁰⁴ Yet, by 1984, it appeared to administration officials that they had not pushed hard enough. In conducting a post-mortem on the debacle in Lebanon, the Reagan administration concluded that its policy had failed due to congressional interference. In speeches before the Trilateral Commission and the National Press Club, Shultz and Weinberger had made the administration’s case that congressional attempts to subject the administration’s policy to statutory limits had doomed its policy in Lebanon. As Shultz argued in 1984, “the sad truth is that many of our difficulties over the last 15 years [including in Lebanon] have been self-imposed.”¹⁰⁵

Three years later, in response to Iranian attacks, the Reagan administration authorized the American navy to protect neutral shipping transiting the Persian Gulf. At first, this policy flew under the radar; as it had in Lebanon, the administration was able to unilaterally deploy American forces without encountering resistance. Yet, when American forces came under fire,

¹⁰³ “Overview of the Situation in the Persian Gulf” (Washington, D.C: U.S. Government Printing Office, 1987), 60.

¹⁰⁴ Notes from a meeting with Richard Cheney, Box 66, Folder 11, Personal Notes: 1980, James A. Baker III papers, Princeton University, Princeton, New Jersey.

¹⁰⁵ “Address by Secretary of State Shultz, in *Foreign Relations of the United States*, 1981-1988, vol. 1, Document 191.

most notably in the *Stark* Incident, Congress sought to influence the administration's policy. To the Reagan administration, history seemed to be repeating itself: just as it had in Lebanon, an initially indifferent Congress had politicized American setbacks, imperiling the nation's foreign policy in the process. Yet, approaching the end of its time in office, embittered by its experience in Lebanon, and already at loggerheads with Congress over the Iran-Contra Affair, the administration resolved to resist congressional oversight. In its fight to defend its policy in the Persian Gulf, the Reagan administration would mount its most fervent defense of presidential warmaking powers yet.

On May 25, 1984, President Reagan signed National Security Decision Directive 141 (NSDD 141). NSDD 141 was written in response to “the growing threat to U.S. and allied vital interests in the Gulf region” posed by “recent escalation in the Iran-Iraq War, specifically attacks against [non-belligerent] shipping.”¹⁰⁶ From its beginning in 1980, the war had posed a quandary for the Reagan administration. Victory for Ayatollah Khomeini's radical Shia regime was unacceptable; victory for Saddam Hussein's brutal Iraqi regime was no more palatable. As Assistant Secretary of Defense for International Security Affairs Richard Armitage put it, “there was no great love for Saddam Hussein. Neither side was a good guy. It's a pity the war could not have lasted forever.”¹⁰⁷ Yet, by the time that NSDD 141 was issued, Iranian advances in the war had convinced the U.S. to support Iraq. By buttressing the Iraqi war effort through SIGINT, nonlethal equipment, and removing Iraq from a blacklist of state sponsors of terrorism, Reagan

¹⁰⁶ “National Security Decision Directive 141: Responding to Escalation in the Iran-Iraq War” (Federation of American Scientists, May 25, 1984), Federation of American Scientists Intelligence Resource Program, <https://irp.fas.org/offdocs/nsdd/nsdd-141.pdf>.

¹⁰⁷ David Crist, *The Twilight War: The Secret History of America's Thirty-Year Conflict with Iran* (New York, N.Y.: Penguin Press, 2012), 97.

hoped to stalemate the war, weakening both Iran and Iraq and forcing them to negotiate a lasting peace.¹⁰⁸

Yet, in September 1986, Iran was once again on the offensive, threatening the key Iraqi city of Basra. Seeking to bolster its war effort by starving Iraq of revenue, Iran began mining the Persian Gulf and attacking Kuwaiti oil tankers. In response, Sheik Ali Khalifi of Kuwait appealed to the U.S. and Soviet Union to protect Kuwaiti oil tankers, an appeal the Soviets readily replied to. Five Kuwaiti oil tankers soon began sailing under the Soviet flag.¹⁰⁹ The Reagan administration was now faced with a choice: accept the Sheik's request to allow Kuwaiti tankers to sail under the American flag—and the protection of the Navy's Middle East Force—or allow the Soviets to supplant the U.S. in the Persian Gulf. The former option entailed its own risks. Indeed, several officials in the State Department argued that reflagging and escorting Kuwaiti tankers would put American ships in harm's way without providing any tangible benefits. As Secretary of State Shultz argued in a private memo, "it is not the role of the United States to take the lead in protecting neutral shipping in the Gulf."¹¹⁰ Furthermore, with the lessons of Lebanon front of his mind, Shultz worried about the durability of any U.S. reflagging operation. If U.S. forces came under fire, as they well might, Shultz worried that the U.S. would not be "prepared to see it [the operation] through" and that "as soon as our sailors came under fire and casualties occurred, Congress would call the navy home."¹¹¹

Defense secretary Weinberger and his allies challenged Shultz's view. Weinberger was keenly aware that the Iran-Contra affair had decimated American credibility in the region.

¹⁰⁸ Inboden, *The Peacemaker*, 277.

¹⁰⁹ Inboden, *The Peacemaker*, 436.

¹¹⁰ Crist, *The Twilight War*, 212.

¹¹¹ Shultz, *Turmoil and Triumph*, 926.

Indeed, America's allies in the Gulf "had taken great risks in opposing Iran and facilitating the buildup of U.S. military infrastructure" and were aghast that "Reagan was secretly arming the country that most threatened them."¹¹² As Assistant Secretary of State for Near Eastern and South Asian Affairs Richard William Murphy noted in a prepared statement before the House Committee on Foreign Affairs, in "light of the Iran-Contra revelations, [the administration] had found that the leaders of the Gulf states were questioning the coherence and seriousness of U.S. policy in the Gulf along with our reliability and staying power."¹¹³ In Weinberger's view, Reagan's withdrawal from Lebanon had further damaged U.S. credibility in Iranian eyes: "after seeing the effect that the terrorist bombing of the Marines barracks had on our position in Lebanon, the Iranians could very well interpret" a decision to reject Kuwait's request "as evidence that they had us on the run."¹¹⁴ To the defense secretary, protecting Kuwaiti tankers offered the U.S. a chance to restore its regional credibility, counter Soviet influence, undermine the Iranian war effort, protect the oil supplies that American allies like Japan relied on, and preserve America's historic commitment to freedom of the seas. In contrast to Shultz, Weinberger was also far more dismissive of potential congressional opposition and the "legalities of reflagging."¹¹⁵

Within the Reagan administration, Weinberger's view prevailed and on March 23, 1987, the U.S. offered to extend military protection to Kuwaiti ships in the Persian Gulf.¹¹⁶ In response to what, in 1984, he had labelled "a typical Mid East problem," Reagan resolved to "respond

¹¹² Hal Brands, *Making the Unipolar Moment: U.S. Foreign Policy and the Rise of the Post-Cold War Order* (Ithaca, New York: Cornell University Press, 2016), 265.

¹¹³ "Overview of the Situation in the Persian Gulf" (Washington, D.C: U.S. Government Printing Office, 1987), 16.

¹¹⁴ "National Security Policy Implications of United States Operations in the Persian Gulf" (Washington: House of Representatives, July 1987), <https://babel.hathitrust.org/cgi/pt?id=uc1.31210011074240&seq=1>, 63.

¹¹⁵ Crist, *The Twilight War*, 212.

¹¹⁶ Shultz, *Turmoil and Triumph*, 926.

forcefully to any attacks on vessels flying our flag”: in Operation Earnest Will, the U.S. would use military force to promote the stability of the Persian Gulf.¹¹⁷ Initially, there was little public or congressional interest in the administration’s reflagging policy. As Weinberger wrote in his memoir, “congressional reaction [to the reflagging policy] initially ranged from positive to indifferent” and committees “usually did not have time” for his briefings about it, allegedly because they were preoccupied with the Iran-Contra affair.¹¹⁸ This account conflicts with that of a July 1987 report by House Committee on Armed Services, which noted that “there was effectively no prior consultation [between the Administration and] Congress regarding the Kuwaiti request [and] its acceptance was given little prominence by the Administration....”¹¹⁹ Both accounts agree, however, that the reflagging operation did not immediately draw meaningful congressional scrutiny. As it had in Lebanon, the Reagan administration had unilaterally committed America’s armed forces to keep the peace in a volatile region; as it had been in 1982, Congress was slow to respond.

Indeed, as the Committee on Armed Services noted, “the reflagging might well have gone ahead virtually unnoticed” but for an American tragedy: the Iraqi attack on the U.S.S *Stark* on May 17. That day, an Iraqi fighter fired two Exocet missiles at the U.S.S *Stark*, a U.S. Navy frigate. The missiles killed 37 American sailors and severely damaged the *Stark*. As the *Stark* Incident blanketed the front pages of news outlets like the *New York Times*, Congress could no

¹¹⁷ Reagan, *The Reagan Diaries*, 240, 496.

¹¹⁸ Weinberger, *Fighting for Peace*, 400.

¹¹⁹ “National Security Policy Implications of United States Operations in the Persian Gulf” (Washington: House of Representatives, July 1987), <https://babel.hathitrust.org/cgi/pt?id=uc1.31210011074240&seq=1, 2>.

longer remain idle.¹²⁰ Although Saddam Hussein admitted Iraqi responsibility for the tragedy and apologized, the *Stark* Incident turned Congress's gaze towards the Persian Gulf.

On May 18, the day after the U.S.S. *Stark* had been hit, the National Security Planning Group (NSPG) convened to plan the administration's response. In a meeting involving Reagan, Shultz, Weinberger, Attorney General Edwin P. Meese, CIA Director Robert Gates, Secretary of the Treasury James Baker, and other high-ranking officials, the administration grappled with the reality that, in the aftermath of the attack on the *Stark*, "Congress has focussed [sic] again on our role in the Gulf" and the reflagging policy is now "a much higher-profile political issue."¹²¹ While much of the meeting focused on the geopolitical implications of the *Stark* incident, domestic politics were a central concern for the administration. In particular, just as it had during the crisis in Lebanon, the administration worried that if the U.S. abandoned its reflagging policy, "it will be seen as a sign of United States weakness and inability to sustain a soundly-based policy."¹²² With relations with Congress at a low-ebb due to the Iran-Contra affair, the Reagan administration was worried that congressional pressure would curtail its Persian Gulf strategy. As Weinberger noted during the meeting, the administration "may have trouble with Congress but must go ahead." The "trouble" Weinberger was referring to was the "need to notify [Congress] under [the] War Powers [Act]."¹²³

¹²⁰ John H. Cushman Jr., "Iraqi Missile Hits U.S. Navy Frigate In Persian Gulf," *The New York Times*, May 18, 1987, sec. World, <https://www.nytimes.com/1987/05/18/world/iraqi-missile-hits-us-navy-frigate-in-persian-gulf.html>.

¹²¹ May 18, 1987, NSPG Meeting, Box 91309, Folder 0152, National Security Planning Group (NSPG): Records, 1981-1988, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitalibrary/snof/execsec-nspg/91309/40-752-81131938-91309-001-2019.pdf>.

¹²² May 18, 1987, NSPG Meeting, Box 91309, Folder 0152, National Security Planning Group (NSPG): Records, 1981-1988, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitalibrary/snof/execsec-nspg/91309/40-752-81131938-91309-001-2019.pdf>.

¹²³ May 18, 1987, NSPG Meeting, Box 91309, Folder 0152, National Security Planning Group (NSPG): Records, 1981-1988, Ronald Reagan Presidential Library. Accessed at

James Baker shared Weinberger's assessment that the War Powers Act was an obstacle to the administration's policy, recalling his negotiations with Congress over the Multinational Force in Lebanon Resolution (MNFILR). Apparently, Baker was unsatisfied with the compromises made in the MNFILR. This time, rather than trying to compromise over the administration's Persian Gulf strategy, Baker suggested complying with the WPR but challenging it in court, presumably in the hope that the courts would vitiate the WPR's limitations. This idea was rejected by White House Chief of Staff Howard Baker, who argued that the "administration should probably not challenge [the] War Powers [Resolution] in court at this time."¹²⁴ Attorney General Meese supported James Baker's suggestion that the administration notify Congress under the WPR, but noted that, if it decided to file a WPR report, the administration should "express reservations." Furthermore, Meese noted that if Iraq provided a "satisfactory apology" for its attack on the *Stark*, the administration "should be able to avoid [the constraints of the] War Powers [Act]."¹²⁵

The May 18 NSPG meeting makes it evident that the WPR played a meaningful role in shaping the Reagan administration's thinking. The administration was not concerned about the legal consequences of WPR violation: indeed, in the case of the administration's reflagging, the WPR would prove legally impotent. Instead, as the *Washington Post* reported, the specter of the Iran-Contra affair made the administration "sensitive to congressional criticism of [its] failure to

<https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-001-2019.pdf>.

¹²⁴ May 18, 1987, NSPG Meeting, Box 91309, Folder 0152, National Security Planning Group (NSPG): Records, 1981-1988, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-001-2019.pdf>.

¹²⁵ May 18, 1987, NSPG Meeting, Box 91309, Folder 0152, National Security Planning Group (NSPG): Records, 1981-1988, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-001-2019.pdf>.

consult Congress” and eager to “head off similar criticism” of the reflagging operation.”¹²⁶ In other words, the administration worried that a showdown with Congress over its strategy in the Persian Gulf would not only signal a lack of resolve to America’s adversaries, but entail political costs an administration reeling from the Iran-Contra scandal could not afford to pay. Yet, officials like Weinberger warned that filing a WPR report could backfire, “inviting criticism that might force the administration to back away” from the reflagging operation.¹²⁷ Clearly, the Reagan administration knew that the WPR would play a central role in shaping the future of Operation Earnest Will.

The Reagan administration’s fear that Congress would seek to reign in the administration’s unilateral Persian Gulf strategy was realized during hearings before the House Foreign Affairs Committee (HFAC) on May 20, 1987. During the hearing, the first meaningful instance of congressional oversight of Reagan’s strategy, Congress would finally ask “very serious questions about [a] policy” that had enmeshed American forces in the deadliest conflict of the last decade.¹²⁸ The WPR’s applicability to the reflagging operation proved a particularly significant point of contention. Unsurprisingly, before the HFAC, administration officials like Richard William Murphy argued that the WPR was inapplicable to the reflagging operation. In the administration’s view, the protection of ships in international waters did not require a §4(a)(1) report.¹²⁹ Furthermore, Murphy argued that the administration’s actions were intended

¹²⁶ Lou Cannon and David Hoffman, “White House Aides Argue on War Powers: U.S. Aides Disagreed on Invoking War Powers Act,” *The Washington Post* (1974-), May 21, 1987.

¹²⁷ Cannon and Hoffman, “White House Aides Argue on War Powers.”

¹²⁸ “Overview of the Situation in the Persian Gulf” (Washington, D.C: U.S. Government Printing Office, 1987), 2.

¹²⁹ United States Congress House Committee on Foreign Affairs, *Overview of the Situation in the Persian Gulf*, 23.

to deter, rather than escalate, conflict: “our actions are such as to make it clear that any prospect of hostilities is neither imminent nor clearly indicated.”¹³⁰

This view met substantial resistance within Congress. For example, Congressman Robert Torricelli (D-NJ), pointed out that Iran had threatened to attack ships flying the American flag, while the U.S. had threatened to defend neutral shipping against any attacks. Because “they threaten to act, [and] we threaten to respond,” Torricelli argued that the situation in the Persian Gulf risked involving American forces in imminent hostilities. The administration’s position to the contrary, he averred, was putting forth “an unacceptably high threshold for invoking the War Powers Act [and setting] a poor precedent for the future.”¹³¹ Similarly, Congressman Meldon Edises Levine (D-CA) expressed his bewilderment at the administration’s position. Given that there was “broad and deep bipartisan support” in Congress for the administration’s policy, Levine could not understand why Reagan was pushing a narrow interpretation of the WPR and risking congressional blowback.¹³²

Even though it was plausible that congressional majorities supported the administration’s policy, as the May 18 NSPG meeting had shown, the administration was unwilling to share decision-making power with Congress or set a precedent for more stringent congressional oversight of its foreign policy. The reason for this was three-fold. First, the Reagan administration did not believe Congressman Levine’s assurances that Congress would authorize the reflagging operation. As we have seen, even prior to Reagan’s decision to begin Operation Earnest Will, administration officials like Shultz worried that if the policy encountered setbacks,

¹³⁰ United States Congress House Committee on Foreign Affairs, *Overview of the Situation in the Persian Gulf*, 23.

¹³¹ United States Congress House Committee on Foreign Affairs, *Overview of the Situation in the Persian Gulf*, 53-54.

¹³² United States Congress House Committee on Foreign Affairs, *Overview of the Situation in the Persian Gulf*, 60.

congressional pressure to withdraw would mount. In other words, the administration wanted to not only have the power to control Operation Earnest Will in the near-term, but also ensure that it could continue the operation as it saw fit if Congress turned against it.

Furthermore, administration officials argued that filing a §4(a)(1) WPR report subjecting Operation Earnest Will to the WPR's sixty-day clock would make the operation dependent on congressional vicissitudes. In response to suggestions that Congress might authorize Operation Earnest Will if the administration filed a §4(a)(1) report, Weinberger said that "it is that 'might' that worries me: the House *might* of course [authorize the operation under the WPR], but it might not take any action at all, or it might pass an unfavorable resolution, at which point all the ships would have to come home."¹³³ To administration officials like Weinberger, the uncertainty that giving Congress a say in Persian Gulf policy would entail was simply too great. In fact, it might even be dangerous: Weinberger forcefully argued that subjecting the reflagging operation to this time limit would "jeopardize our military forces... help Iran... [and] confirm our lack of resolve both to the Iranians and to our Arab friends." Triggering the WPR's sixty-day limit, he averred, "would signal defeat of the mission before the first convoy began."¹³⁴ These comments reveal how concerned the Reagan administration was about the WPR's power to limit its foreign policymaking authority. Rather than viewing the WPR as a legal nuisance, officials like Weinberger saw it as a dangerous piece of legislation compliance with which could imperil the administration's foreign policy. Thus, the primary reason the Reagan administration struggled against congressional efforts to subject Operation Earnest Will to the WPR was its desire to have a free hand to run Operation Earnest Will. In the administration's view, congressional oversight

¹³³ Casper Weinberger, "Dangerous Constraints on the President's War Powers," in *The Fettered Presidency: Legal Constraints on the Executive Branch*, eds. L. Gordon Crovitz and Jeremy A. Rabkin, AEI Studies 485 (Washington, D.C: American Enterprise Institute for Public Policy Research, 1989), 100.

¹³⁴ Weinberger, *Fighting for Peace*, 401.

of the reflagging operation would backfire, undermining its chances of success and damaging American credibility in the process.

Yet, strategic considerations did not account for the entirety of the administration's reluctance to obtain congressional authorization for the reflagging operation. Indeed, as the Lebanon Crisis had revealed, key members of the administration such as Shultz and Weinberger had developed a deep ideological opposition to the WPR. In September 1983, in remarks before the House of Representatives, Shultz had argued that "in the last 15 years, there have been instances of deadlock between our branches of government which resulted in harm to our foreign policy" and noted that "our domestic controversy over war powers has been disturbing."¹³⁵ After the disintegration of the administration's Lebanon policy, he had mounted a crusade against the WPR, going before the Trilateral Commission to argue that the WPR had led to a "loss of coherence" in American foreign policy and "sets arbitrary 60-day deadlines that practically invite an adversary to wait us out."¹³⁶ Even before the Senate Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, Shultz had expressed support for a legal challenge to the WPR, arguing that it intrudes on executive powers and undercuts presidential foreign policy.¹³⁷ Similarly, in his 1993 memoir, Shultz had bemoaned how, throughout its time in office, the Reagan administration was forced to navigate "the as-yet-uncharted-thicket of the War Powers

¹³⁵ George Shultz, speaking on administration policy in Lebanon, 98th Cong. 1st sess., *Congressional Record* 129 (May 20, 1983): <https://www.govinfo.gov/app/details/GPO-CRECB-1983-pt18/https%3A%2F%2Fwww.govinfo.gov%2Fapp%2Fdetails%2FGPO-CRECB-1983-pt18%2FGPO-CRECB-1983-pt18-4-2>, H 25190-25191.

¹³⁶ "Address by Secretary of State Shultz, in *Foreign Relations of the United States*, 1981-1988, vol. 1, Document 191.

¹³⁷ Bernard Gwertzman, "War Powers Test by Supreme Court Weighed in Senate," *The New York Times*, March 29, 1984.

Act.” In his view, “the American agonies subsumed under the terms Vietnam and Watergate had tied [the administration] in knots.”¹³⁸

Weinberger was perhaps even more ideologically hostile to the WPR. In parallel with Shultz, after the Reagan administration’s failure in Lebanon, he had harshly criticized the WPR in a famous 1984 speech defining the “Weinberger Doctrine”:

Beginning in the 1970s Congress demanded, and assumed, a far more active role in the making of foreign policy and in the decision-making process for the employment of military forces abroad than had been thought appropriate and practical before. *As a result, the centrality of decision-making authority in the Executive branch has been compromised by the Legislative branch to an extent that actively interferes with that process.* At the same time, there has not been a corresponding acceptance of responsibility by Congress for the outcome of decisions concerning the employment of military forces (emphasis mine).¹³⁹

Weinberger clearly shared Shultz’s assessment of recent presidential history. In both men’s eyes, the War Powers Act had marked the beginning of an era of congressional intrusion on presidential prerogatives; this intrusion had undermined American foreign policy, not least in Lebanon. It was in response to this perceived shift in the relative power of the president and Congress that the Weinberger Doctrine dictated that before the U.S. commits forces abroad, “there must be some reasonable assurance [that the deployment will] have the support of the American people and their elected representatives in Congress.”¹⁴⁰ In this sense, the Weinberger Doctrine was a concession to congressional power: Weinberger realized that, at least in his contemporary political context, unilateral presidential deployments could not be counted on to produce successful foreign policy outcomes.

¹³⁸ Shultz, *Turmoil and Triumph*, 294.

¹³⁹ Caspar W. Weinberger, “‘The Uses Of Military Power’: Remarks Prepared for Delivery by the Hon. Caspar W. Weinberger, Secretary of Defense, to the National Press Club, Washington D.C.,” November 28, 1984, <https://www.pbs.org/wgbh/pages/frontline/shows/military/force/weinberger.html>.

¹⁴⁰ Weinberger, “‘The Uses Of Military Power’: Remarks Prepared for Delivery by the Hon. Caspar W. Weinberger, Secretary of Defense, to the National Press Club, Washington D.C.”

In a 1989 essay entitled “Dangerous Constraints on the President’s War Powers,” Weinberger continued his critique of the WPR, arguing that it was incompatible with sound foreign policy or indeed the role of the president. Although it was published two years after Operation Earnest Will was authorized, “Dangerous Constraints on the President’s War Powers” is still representative of Weinberger’s views during the crisis; rather than reflecting the lessons Weinberger learned from the struggle to authorize the reflagging operation, it should be viewed as the culmination of years spent criticizing the War Powers Act. Nonetheless, now no longer in office, Weinberger felt at liberty to mount a particularly forceful critique of the limits of presidential warmaking powers. “Every president who has ever been subjected to [the WPR] believed it to be unconstitutional,” Weinberger wrote, “and I do not think that any president could support it and feel able to carry out his oath of office.”¹⁴¹ Weinberger’s statement is incorrect: President Jimmy Carter had called the WPR “an appropriate reduction” in presidential powers.¹⁴² and his Office of Legal Counsel had issued a memorandum acknowledging the constitutionality of the resolution that, as of 2022, has not been revoked.¹⁴³ Nonetheless, Weinberger’s statement that the WPR was unconstitutional and that no president could accept its restrictions without violating his oath of office is striking. In Weinberger’s view “one just cannot conduct foreign policy” under the WPR, which causes “indecision, delay, [and] frequent shifts” in American strategy abroad.¹⁴⁴

¹⁴¹ Weinberger, “Dangerous Constraints on the President’s War Powers,” in the *Fettered Presidency*, eds. L. Gordon Crovitz and Jeremy A. Rabkin, 95.

¹⁴² “‘Ask President Carter’ - Remarks During a Telephone Call-in Program on the CBS Radio Network.”

¹⁴³ Charlie Savage, “U.S. Discloses Decades of Justice Dept. Memos on Presidential War Powers,” *The New York Times*, September 16, 2022, sec. U.S., <https://www.nytimes.com/2022/09/16/us/politics/war-powers-justice-dept-president.html>.

¹⁴⁴ Weinberger, “Dangerous Constraints on the President’s War Powers,” in the *Fettered Presidency*, eds. L. Gordon Crovitz and Jeremy A. Rabkin, 95-97.

Clearly, Weinberger had a longstanding hostility to the WPR. This hostility motivated his adamant opposition to efforts to pursue a congressional authorization for Operation Earnest Will. “As we developed our policy in the Gulf,” Weinberger recalled in his memoir, “I saw the War Powers Resolution as a political tool that could very easily result in needless death for many of our military personnel.”¹⁴⁵ Weinberger’s opposition to filing a WPR report with Congress was thus both strategic and ideological: in his view, bringing the reflagging operation under the auspices of the WPR was not only unnecessary as a legal and constitutional matter, but would ultimately vitiate the administration’s policy in the Persian Gulf.

Finally, it is likely that the administration made a political calculation that, even in a Congress where Democrats controlled both the House and the Senate, there would not be enough votes to coerce it into invoking the WPR. Even as Ambassador Richard Murphy testified before the Senate on May 20, several senators expressed support for the administration’s position. For example, Senator Larry Lee Pressler (R-SD) felt “very strongly that the War Powers Act does not apply in this case” and pointed out that “nobody was really paying much attention to the situation in the Persian Gulf” prior to the attack on the *Stark*, which he characterized as an accident insufficient to trigger the WPR’s reporting provisions.¹⁴⁶ Senator Jesse Helms (R-NC) took an even more pro-administration line, arguing that “the continuing debate over the War Powers Act, an act I believe to be patently unconstitutional, has sent signals to the countries of the Persian Gulf that support for President Reagan is not firm.”¹⁴⁷ Although Senators Pressler and Helms were both conservative allies of the Reagan administration, Congress appeared divided enough

¹⁴⁵ Weinberger, *Fighting for Peace*, 400.

¹⁴⁶ U.S. Congress, Senate, Committee on Foreign Relations, U.S. Policy in the Persian Gulf, 100th Cong., 1st sess., 1988, 32.

¹⁴⁷ U.S. Congress, Senate, Committee on Foreign Relations, U.S. Policy in the Persian Gulf, 100th Cong., 1st sess., 1988, 120.

for the administration to gamble that it would not muster the majorities necessary to force it into WPR compliance. This political calculation, an ideological opposition to the WPR, and a concern over its strategic impacts on Operation Earnest Will all led the Reagan administration to refuse to seek congressional authorization for its policy in the Persian Gulf.

Thus, the stage for another showdown with Congress was set. Throughout 1987, an administration unwilling to apply the WPR to its Persian Gulf policy would struggle to prevent congressional interference in Operation Earnest Will. Yet, while in the Lebanon Crisis, Congress had successfully reeled in the administration, the 1987 clash over the Persian Gulf would show the limits of congressional power.

On May 21, 1987, the day after Richard Murphy's testimony before the HFAC, Senator Pell wrote Shultz and asked him to "take immediate steps" to submit a §4(a)(1) report under the WPR.¹⁴⁸ Unconvinced by the administration's arguments before Congress, Pell and his allies sought to pressure the administration into filing a WPR report. Unsurprisingly, Shultz replied with a letter restating the administration's position that the attack on the *Stark* was an accident and that an operation designed to deter conflict could not fall under the WPR.¹⁴⁹

In response to the administration's refusal to invoke the WPR, Congress sought to compel it to do so. On May 28, Congressman Henry Gonzalez (D-TX) introduced House Joint Resolution 295, which stated that the *Stark* Incident had triggered the WPR and called for the removal of U.S. forces from the Persian Gulf.¹⁵⁰ The resolution died in Congress without

¹⁴⁸ Sen. Clairborne Pell, "Persian Gulf and the War Powers Resolution: Report Together with Additional Views (to Accompany S. 1343)" (Washington, D.C: United States Senate, July 10, 1987), 7.

¹⁴⁹ Pell, "Persian Gulf and the War Powers Resolution," 7.

¹⁵⁰ Rep. Henry B. Gonzalez, "A Joint Resolution to Call for the Removal of the United States Armed Forces from the Persian Gulf," H.J.Res.295 (1987), <https://www.congress.gov/bill/100th-congress/house-joint-resolution/295/actions>.

receiving a vote. On June 9, Senator Mark Hatfield (R-OR) introduced Senate Bill 1343, requiring that reflagging operations in the Persian Gulf comply with the WPR.¹⁵¹ S.1343 was remarkably limited, stipulating only that the reflagging operation had triggered the WPR. Notably, it also including a provision stating that even if the Reagan administration refused to submit a §4(a)(1) report, the WPR would still be applicable: its authors clearly understood that, even if the bill passed, the Reagan administration would refuse to submit a WPR report. However, on June 30, even this narrow invocation of the WPR only passed the Committee on Foreign Relations by a margin of ten votes to nine. All ten votes in favor came from democratic senators while all nine votes in opposition came from republican ones: support for invoking the WPR ran along partisan lines.¹⁵² Republican opponents to S.1343 wrote a report arguing that the bill would “undercut the President’s foreign policy” and “send a signal to the world of American indecision and vacillation and weakness.”¹⁵³ Perhaps due to its tepid support in committee, S.1343 never received a vote on the Senate floor.

Yet, as ineffective as these early congressional attempts to assert its influence in the Persian Gulf were, they rankled the administration’s nerves. Indeed, Reagan, who rarely involved himself in war powers arcana, privately raged at Congress’s behavior. In his diary, writing about a June 25 NSPG meeting, Reagan wrote that “our main discussion was over a program to head off Cong[ress] from reversing us in the Persian Gulf. In their efforts to ‘ding’ me they are destroying our foreign policy in the Middle East. They have to be stopped.”¹⁵⁴ Evidently, even though Congress was broadly supportive of his goals in the Persian Gulf, Reagan had internalized Weinberger and Shultz’s concerns about giving Congress a say in administration

¹⁵¹ Pell, “Persian Gulf and the War Powers Resolution”, 8.

¹⁵² Pell, “Persian Gulf and the War Powers Resolution,” 8.

¹⁵³ Pell, “Persian Gulf and the War Powers Resolution,” 13.

¹⁵⁴ Reagan, *The Reagan Diaries*, 511.

policy. To Reagan, even token congressional efforts to influence his administration's policy were a threat to its viability.

To Reagan's undoubted chagrin, S.1343 marked only the start of months of congressional resistance to the administration's unilateral policy in the Persian Gulf. In anticipation of this resistance, the Reagan administration devoted large portions of its monthly NSPG meeting to the politics of Operation Earnest Will. Indeed, the stated purpose of the meeting was to "review, strengthen, and build greater public and Congressional support for our policy in the Persian Gulf."¹⁵⁵ To the administration, the stakes were high. The pre-meeting memorandum written by National Security Advisor Frank C. Carlucci noted that the administration was facing "a major test of [its] ability to conduct steady, consistent" foreign policy and that any perceived retreat would embolden Congress "to restrict our room for maneuver on a whole range of issues."¹⁵⁶

On June 15, the Reagan administration submitted a report to Congress outlining its policy in the Persian Gulf.¹⁵⁷ The NSPG hoped that this report would foster congressional support for its policy and help defeat congressional efforts to stop the reflagging operation.¹⁵⁸ The report, however, did not grant Congress any additional oversight of U.S. operations in the Persian Gulf.

¹⁵⁵ June 15, 1987, NSPG Meeting, Box 91309, Folder 0154, National Security Planning Group (NSPG): Records, 1981-1987, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-003-2019.pdf>.

¹⁵⁶ June 15, 1987, NSPG Meeting, Box 91309, Folder 0154, National Security Planning Group (NSPG): Records, 1981-1987, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-003-2019.pdf>.

¹⁵⁷ David Johnston, "Reagan Report to Congress Will Assess Gulf Peril," *The New York Times*, June 15, 1987.

¹⁵⁸ June 15, 1987, NSPG Meeting, Box 91309, Folder 0154, National Security Planning Group (NSPG): Records, 1981-1987, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-003-2019.pdf>.

On July 21, 1987, Operation Earnest Will began in earnest as a convoy of Kuwaiti tankers under U.S. naval protection sailed up the Persian Gulf.¹⁵⁹

In the summer of 1987, there was a lull in congressional efforts to assert control over Operation Earnest Will. Whereas between May 28 and June 10, Congress had considered four separate resolutions invoking the WPR, between June 10 and September 23, it considered none.¹⁶⁰ Instead, that summer, congressional opposition to the Reagan administration's unilateralism took the form of a speculative lawsuit. On August 7, three senators sued Reagan and Weinberger, alleging that the start of Operation Earnest Will on July 22 had triggered §4(a)(1) of the WPR. The three original plaintiffs—who would later withdraw from the case, leaving the lawsuit to be taken up by 110 members of the House of Representatives—hoped that the U.S. District Court for Washington D.C. would compel Reagan to submit a WPR report.¹⁶¹ The fact that less than half of the House democratic caucus signed on to the lawsuit suggests that it was widely seen as futile. Unsurprisingly, on December 18, Judge George H. Revercomb declined to review the case, writing that the plaintiffs' request presented a nonjusticiable political question.¹⁶² A declaration as to whether Operation Earnest Will involved American forces in “imminent hostilities” would necessarily “contradict legislative pronouncements on one side or the other of the issue” and thus involve the court in policymaking, Judge Revercomb wrote; “The court refrains from joining the debate on the question of whether ‘hostilities’ exist in that region [the Persian Gulf].”¹⁶³ Tellingly, Judge Revercomb's ruling went largely unnoticed: it was not mentioned in Congress on either December 18 or December 19 and publications including the

¹⁵⁹ Hall, *The Reagan Wars*, 251.

¹⁶⁰ Hall, *The Reagan Wars*, 258.

¹⁶¹ *Lowry v. Reagan*, 676 Federal Supplement 333 (United States District Court for the District of Columbia 1987).

¹⁶² Hall, *The Reagan Wars*, 90.

¹⁶³ *Lowry v. Reagan*, 676 Federal Supplement 333 (United States District Court for the District of Columbia 1987).

Washington Post and *New York Times* did not cover it. Indeed, the *New York Times*'s first and only mention of *Lowry v. Reagan* came in December 1990, more than a year after the end of the Reagan presidency.

Lowry's insignificant impact on either the political or legal dimensions of the debate over Operation Earnest Will demonstrates how weak legal constraints on the Reagan administration were. In this sense, the courts' failure to resolve the dispute over the WPR supports the imperial presidency thesis. Yet, as the preceding months of tensions between the administration and Congress make clear, it was not the prospect of an unfavorable court order that concerned the administration. Instead, the administration worried about the possibility that Congress would pass a resolution declaring the WPR active in the Persian Gulf. Such a resolution would have forced the administration to either comply with the WPR, an outcome it saw as damaging to its policy in the Persian Gulf, or defy Congress, incurring severe political costs. As Michael Patrick Hulme has written, although presidents "have virtually unlimited discretion over use of force decisions, they worry greatly over the liability they undertake when acting absent sufficient political cover from Congress."¹⁶⁴ This dynamic was in force in the Persian Gulf, where the Reagan administration was at legal liberty to act as it wished but felt severely constrained by congressional opposition. Although *Lowry* suggested that the Reagan presidency was an imperial one, the fall of 1987 would force the Reagan administration to once again defend its Persian Gulf policy against an emboldened congressional opposition.

In the latter half of 1987, the nature of U.S. operations in the Persian Gulf changed. While Operation Earnest Will had focused on escorting and protecting Kuwaiti-owned oil

¹⁶⁴ Hulme, "In the Shadow of Congress," 3.

tankers, in response to the *Bridgeton* Incident, where the MV *Bridgeton* struck an underwater mine placed by Iran, the Reagan administration sought additional options. In response to the increasingly dangerous situation in the Gulf, the Reagan administration secretly launched Operation Prime Chance, whose stated goal was to stop Iranian forces from attacking Persian Gulf shipping. In practice, in addition to passively defending shipping transiting the Persian Gulf, the American navy would now actively stop Iran from endangering the shipping in the first place.

As a result of this shift, on September 21, U.S. forces stumbled into a direct engagement with the Iranian navy. That night, U.S. helicopters observed crewmen on the *Iran Ajr* laying mines in an anchorage for neutral shipping, including U.S. naval vessels.¹⁶⁵ In response, Rear Admiral Harold Bernsen ordered two helicopters to fire their rockets at the *Iran Ajr*, which was disabled. The following morning, American soldiers boarded the *Iran Ajr*, finding several Iranian fatalities, releasing the remaining Iranian sailors, and scuttling the ship. The American attack on the *Iran Ajr* was meaningfully escalatory and unsurprisingly drew a venomous response from Iranian President Ali Khamenei, who threatened to retaliate.¹⁶⁶

Fortuitously for the Reagan administration, the attack took place three days after the Senate voted 50 to 41 against invoking the WPR in the Persian Gulf. A proposal sponsored by Senators Brock Adams (D-WA), Dale Bumpers (D-AR), and Mark Hatfield (R-OR) sought to revive S.1343, inserting into the 1988 Defense Authorization Bill language applying the WPR to the Persian Gulf.¹⁶⁷ In introducing the proposal, Senator Hatfield, a liberal Republican, urged

¹⁶⁵ Hall, *The Reagan Wars*, 241.

¹⁶⁶ Norman Kempster, "Iran Threatens to Retaliate for U.S. Attack," *Los Angeles Times (1923-1995)*, September 23, 1987, sec. I.

¹⁶⁷ Helen Dewar, "War Powers Resolution Not Invoked: Senate Votes Against Limiting Reagan in Persian Gulf Actions," *The Washington Post (1974-)*, September 19, 1987.

Congress not to “stand idly by and watch the President ignore the law of this land,” pointing out that Weinberger had designated the Gulf “an imminent danger area” and raised pay for troops serving there. Surely, Hatfield argued, the administration could not simultaneously provide “imminent danger pay” for troops serving in the Persian Gulf while denying that they were facing imminent hostilities.¹⁶⁸ Notably, Senator Frank Murkowski, who had opposed S.1343, supported the amendment. Despite reiterating his support for Reagan’s policy in the Gulf, and even raising his previous doubts about the constitutionality of the WPR, Murkowski noted the “escalating reality” in the Persian Gulf and turned the Reagan administration’s argument that invoking the WPR would doom its policy on its head: “no policy can be sustained unless it has congressional support,” Murkowski pointed out, support that the administration could obtain by filing a WPR report.¹⁶⁹ Thus, unlike S.1343, which had made it out of committee by a one vote margin and never received a floor vote, the Hatfield-Bumpers-Adams amendment posed far more of a threat to the Reagan administration.

Ultimately, the amendment was defeated 50-41, with 35 Republicans and 15 Democrats voting against it; 34 Democrats and only 7 Republicans voted for it.¹⁷⁰ Many of the 15 Democrats who voted against the amendment were moderates who did not support the administration’s policy in the Persian Gulf but were reluctant to undermine American credibility in the region. For example, Senator Byrd (D-WV), who had earlier expressed openness toward the amendment and argued that “the escort and convoy operation is imprudent [and] the policy is wrong” nonetheless was reluctant to invoke the WPR, which “could be interpreted to require the

¹⁶⁸ Sen. Mark Hatfield, speaking on Amendment no. 698, 100th Cong. 1st sess., Congressional Record 133 (September 18, 1987): <https://www.govinfo.gov/app/details/GPO-CRECB-1987-pt18/>, S 24480-24481.

¹⁶⁹ Sen. Frank Murkowski, speaking on Amendment no. 698, 100th Cong. 1st sess., Congressional Record 133 (September 18, 1987): <https://www.govinfo.gov/app/details/GPO-CRECB-1987-pt18/>, S 24485.

¹⁷⁰ “To Table the Hatfield Amendment to the Fiscal 1988-98 Defense Authorization,” GovTrack.us, September 18, 1987, <https://www.govtrack.us/congress/votes/100-1987/s256>.

pullout of the American commitment in the gulf.”¹⁷¹ The failure of the Hatfield-Bumpers-Adams amendment demonstrated how difficult it was for Congress to rally majorities around invoking the WPR. Even though “the majority of the Senate went on the record several times against the [reflagging] operation,” the Senate did not have the votes to act.¹⁷²

After the *Iran Ajr* incident, however, it was far from clear that another attempt to invoke the WPR would fail. On September 23, Democratic leaders in the Senate, including Senator Byrd, announced new legislation to reign in the administration’s policy in the Gulf. While Democratic leaders were “convinced that any legislative effort” invoking the WPR would fail, they sought to create a mechanism for Congress to review the administration’s policy within six months.¹⁷³ In effect, rather than seeking to impose the restrictive confines of the WPR onto the Reagan administration, democratic leadership took a more moderate approach.

Seeking to deflect congressional scrutiny, on September 24, Reagan sent a letter to Congress describing the U.S. navy’s actions as defensive ones undertaken pursuant to the Commander-in-Chief’s power to unilaterally defend American forces.¹⁷⁴ Yet, just as Reagan’s letters to Congress throughout 1983 had failed to head off a challenge to his policy in Lebanon, this letter, lacking any meaningful legal or policy implications, did not influence congressional

¹⁷¹ Sen. Robert Byrd, speaking on Amendment no. 698, 100th Cong. 1st sess., Congressional Record 133 (September 18, 1987): <https://www.govinfo.gov/app/details/GPO-CRECB-1987-pt18/>, S 24503.

¹⁷² Helen Dewar, “War Powers Resolution Not Invoked: Senate Votes Against Limiting Reagan in Persian Gulf Actions,” *The Washington Post* (1974-), September 19, 1987.

¹⁷³ Steven V. Roberts, “Democrats in Senate to Seek Limit on Gulf Involvement,” *The New York Times*, September 23, 1987, sec. World, <https://www.nytimes.com/1987/09/23/world/democrats-in-senate-to-seek-limit-on-gulf-involvement.html>.

¹⁷⁴ Ronald Reagan, “Letter to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on the United States Air Strike in the Persian Gulf,” Ronald Reagan Presidential Library & Museum, September 24, 1987, <https://www.reaganlibrary.gov/archives/speech/letter-speaker-house-representatives-and-president-pro-tempore-senate-united-2>.

behavior. If anything, the final proposal that the democratic leadership put forward several days later was more restrictive than its original one.

On September 25, Democratic leadership released a proposal that would end the reflagging operation within 90 days unless Congress authorized the operation in a separate resolution.¹⁷⁵ This proposal, in essence a watered-down version of the WPR, immediately drew fervent opposition from the Reagan administration. Senator John Warner (R-VA), an administration ally, told his fellow Senators that having consulted with National Security Advisor Frank Carlucci, James Baker, and President Reagan, he had learned that the administration was “unequivocal” in its opposition to the proposal.¹⁷⁶ Two days later, Reagan himself pledged to veto the “ill-conceived” and “disastrous” proposal that would provide “a means for Iran to achieve... our complete withdrawal from the Persian Gulf...”¹⁷⁷ Unsurprisingly, Weinberger backed Reagan’s critique, calling the proposal “the height of absurdity.”¹⁷⁸ Even after the *Iran Ajr* incident, the Reagan administration was no more willing to compromise its stance on executive powers. As Senator Dale Bumpers (D-AR), a persistent critic of Reagan’s intransigence on WPR issues bemoaned, any bill “that would be meaningful, the President will veto. Anything we could craft that he would sign would be a toothless tiger.”¹⁷⁹ The democratic

¹⁷⁵ Jonathan Fuerbringer, “Reagan Pledges to Fight a Proposal by the Senate to Prohibit U.S. Naval Operations in Persian Gulf,” *The New York Times*, September 26, 1987, sec. World, <https://www.nytimes.com/1987/09/26/world/reagan-pledges-fight-proposal-senate-prohibit-us-naval-operations-persian-gulf.html>.

¹⁷⁶ Sen. John Warner, speaking on Amendment no. 732, 100th Cong. 1st sess., Congressional Record 133 (September 18, 1987): <https://www.govinfo.gov/app/details/GPO-CRECB-1987-pt18/>, S 25136.

¹⁷⁷ Fuerbringer, “Reagan Pledges to Fight a Proposal by the Senate to Prohibit U.S. Naval Operations in Persian Gulf.”

¹⁷⁸ Molly Moore, “Weinberger Scathes Drive for War Powers Curbs,” *Washington Post*, September 28, 1987, <https://www.washingtonpost.com/archive/politics/1987/09/28/weinberger-scathes-drive-for-war-powers-curbs/fb7c81b2-3308-49ab-b56f-c6f71316c9de/>.

¹⁷⁹ Sen. Dale Bumpers, speaking on Amendment no. 732, 100th Cong. 1st sess., Congressional Record 133 (September 18, 1987): <https://www.govinfo.gov/app/details/GPO-CRECB-1987-pt18/>, S 25137.

leadership's amendment, like so many of previous attempts to assert congressional authority over the administration's policy in the gulf, died in the halls of Congress.¹⁸⁰

“Senate Blocks Move to Invoke War Powers Resolution: Republicans Back Byrd in 54-31 Vote,” read a *Washington Post* headline on June 7, 1988.¹⁸¹ This headline could just as well been written in June 1987, September 1987, or October 1987. A year after Operation Earnest Will had begun, Congress was no closer to exercising meaningful influence over it: repeated efforts to invoke the WPR had failed in the face of bipartisan opposition and more roundabout attempts to constrain the administration without invoking the WPR had fared little better.

Part of Congress's failure to act can be attributed to the success of the Reagan administration's arguments that congressional interference would undermine its policy in the Persian Gulf. As the events of September 1987 demonstrated, even Democrats were at times swayed by the administration's view that applying the WPR to Operation Earnest Will would decimate American credibility in the Persian Gulf. Ultimately, regardless of the reasons for its success, it is clear that throughout 1987, the Reagan administration effectively defended what it saw as its presidential prerogatives against congressional interference.

In May 1987, motivated by an ideological hostility toward the WPR and concern that invoking it would lead to a repeat of events in Lebanon, the Reagan administration had resolved to stand athwart congressional efforts to shape Operation Earnest Will. Already at loggerheads with Congress over Iran-Contra and near the end of its term, the Reagan administration running

¹⁸⁰ Hall, *The Reagan Wars*, 242.

¹⁸¹ Helen Dewar, “Senate Block Move to Invoke War Powers Resolution: Republicans Back Byrd in 54-31 Vote Derailing Action on Tanker Convoys in Persian Gulf,” *The Washington Post* (1974-), June 7, 1988.

Operation Earnest Will was more tolerant of political risk and more willing to directly challenge the WPR than it had been in 1983 and 1984. Its decision to do so paid dividends, giving it a free hand in the Persian Gulf and achieving the goals set in the June 1987 NSPG meeting. In its view, the administration had proven its “ability to conduct steady, consistent” foreign policy and prevented Congress from restricting its “room for maneuver on a whole range of issues.”¹⁸² As Weinberger reflected:

In many ways [the story of Operation Earnest Will] was the classic battle between the legislative and executive branches of our government... the President had to keep his commitments to help [America’s Persian Gulf Allies] despite mounting congressional opposition and continued attempts to fetter the President and reverse his decisions. But the President stood firm... [and] the Congress finally gave up trying to block the President, and we accomplished everything we set out to do.¹⁸³

In the battle for control of American policy in the Persian Gulf, the Reagan administration had won. In the process, it had forcefully asserted presidential foreign policymaking power, undermining the constitutionality of the WPR and flaunting congressional efforts to reign in Operation Earnest Will. In doing so, the Reagan administration set political and legal precedents that resonated long after Operation Earnest Will had faded into memory.

¹⁸² June 15, 1987, NSPG Meeting, Box 91309, Folder 0154, National Security Planning Group (NSPG): Records, 1981-1987, Ronald Reagan Presidential Library. Accessed at <https://www.reaganlibrary.gov/public/digitallibrary/smf/execsec-nspg/91309/40-752-81131938-91309-003-2019.pdf>.

¹⁸³ Weinberger, *Fighting for Peace*, 428.

Conclusion: The Legacy of the Reagan Restoration

In 1980, Richard Cheney had advised the incoming Reagan administration to “restore power and auth[ority] to [the] exec[utive] Branch... [and show] strong ldr’ship [sic].¹⁸⁴ In its time in office, the administration had heeded Cheney’s advice, repeatedly deploying American troops abroad without congressional authorization and aggressively challenging the WPR. In Lebanon, its first major foreign policy venture, the Reagan administration had fought doggedly to resist congressional oversight: its letters to Congress repeatedly refused to comply with §4(a)(1) of the WPR; its officials used congressional hearings to challenge the applicability of the WPR to the Marines’ deployment in Lebanon; and it had worked tenaciously to water down the Lebanon Emergency Assistance Act and the MNFILR. Nonetheless, to limit congressional backlash to its policy, the administration had paid lip service to the legitimacy of the WPR. It was only after congressional pressure fatally undermined their policy in Lebanon that administration officials like Shultz and Weinberger began to loudly challenge the constitutionality of the WPR. Shultz’s well-known Trilateral Commission Speech and Weinberger’s speech before the National Press Club defining the Weinberger Doctrine were the rhetorical apogee of this challenge.

In practical terms, the apogee of the Reagan Restoration came during the Persian Gulf War. Straining to contain the Iran-Contra Affair, approaching the end of its time in office, and with little political capital to lose, a Reagan administration that had spent years rhetorically crusading against the WPR was prepared to directly challenge congressional limits on its power. The fact that, in September 1987, Weinberger was willing to tell the *New York Times* that the administration “always felt [the WPR] was unconstitutional” attests to the Reagan

¹⁸⁴ Notes from a meeting with Richard Cheney, Box 66, Folder 11, Personal Notes: 1980, James A. Baker III papers, Princeton University, Princeton, New Jersey.

administration's increased gumption.¹⁸⁵ In the Persian Gulf, the Reagan administration succeeded at keeping Congress at arms' length: the political and strategic outlook for its policy was far better than it had been in Lebanon and Congress proved too divided to pass any legislation limiting Reagan's free hand. Furthermore, as the ten-to-nine Committee on Foreign Relations vote on S.1343 showed, the Republican party had accepted the Reagan administration's arguments for a stronger executive. After a decade of work by unitary executive legal theorists in the academy and Reagan administration officials in the halls of the Eisenhower Executive Office Building, the powers of the imperial presidency had been restored.

Nonetheless, they were still contested. Iran-Contra in particular dealt Congress and the public a harsh reminder of the consequences of presidential unilateralism. By 1987, sixty percent of Americans trusted Congress more than the Reagan administration on foreign relations and Iran-Contra was being talked of as a "new Watergate."¹⁸⁶ Thus, in 1987, Richard Cheney found himself once again defending the powers of the presidency—the congressional ascendance that had happened after Watergate could not be allowed to happen again. Sitting on the joint House and Senate committee investigating the Iran-Contra Affair, Cheney furiously swam against the Iran-Contra tide. In the views of a minority report behind which Cheney was the driving force, the argument that the Reagan administration had abused its power was "hysterical." Furthermore, the report cited *United States v. Curtiss-Wright Export Corporation*, a 1936 Supreme Court ruling that had defined the president as "the sole organ of the federal government in the field of

¹⁸⁵ Richard Halloran, "Captive Iranians Said to Help U.S. Find Mines In Gulf," *The New York Times*, September 24, 1987, sec. World, <https://www.nytimes.com/1987/09/24/world/captive-iranians-said-to-help-us-find-mines-in-gulf.html>.

¹⁸⁶ Sean Wilentz, "Mr. Cheney's Minority Report," *The New York Times*, July 9, 2007, sec. Opinion, <https://www.nytimes.com/2007/07/09/opinion/09wilentz.html>.

international relations.”¹⁸⁷ “Congressional actions to limit the president in [his discretion over foreign policy] should be reviewed with a considerate degree of skepticism,” Cheney’s report said. “If they interfere with core presidential policy functions, they should be struck down.”¹⁸⁸

Almost twenty years after Cheney signed on to the Iran-Contra minority report, he was vice president; one of the legal aides who had helped produce the minority’s report was now his chief of staff. The administration he worked in embraced the unitary executive theory and “pushed executive power at all costs.”¹⁸⁹ When asked by a reporter about his views of executive powers, in remarks Weinberger or Shultz could have made, Cheney lamented an “erosion of presidential power... reflected in a number of developments [including] the War Powers Act,” which he implied was unconstitutional. For further insight into his views on presidential powers, Cheney told the reporter, he should reference “an obscure text”—the report he had written in 1987.¹⁹⁰ Decades after Reagan left office, the ghosts of his presidency still lingered.

Reagan’s Resonance

Reagan’s war powers legacy remains indelible. It is unsurprising that the George W. Bush administration, laden as it was with Reagan-era veterans, transposed Reagan’s agenda into a new century. More notably, even Barack Obama, who promised a clean break from the executive unilateralism of the Bush years, ended up governing in the mold of his predecessor.¹⁹¹ The case of Libya, where the administration authorized a campaign of airstrikes against Muammar

¹⁸⁷ *United States v. Curtiss-Wright Export Corp.*, 299 Federal Reporter 304 (Supreme Court of the United States 1936).

¹⁸⁸ David J. Barron, *Waging War: The Clash Between Presidents and Congress, 1776 to ISIS* (Riverside: Simon & Schuster, 2016), 378.

¹⁸⁹ Christopher S. Kelley, “Rhetoric and Reality? Unilateralism and the Obama Administration,” *Social Science Quarterly* 93, no. 5 (2012), 1146.

¹⁹⁰ Richard Cheney, “Vice President’s Remarks to the Traveling Press,” The White House, December 20, 2005, <https://georgewbush-whitehouse.archives.gov/news/releases/2005/12/20051220-9.html>.

¹⁹¹ Kelley, “Rhetoric and Reality? Unilateralism and the Obama Administration,” 1.

Gaddafi's regime, is illustrative. Like the Reagan administration had, the Obama administration faced a War Powers Act controversy.¹⁹² Just as Weinberger, Shultz, and Dam had, Department of State Legal Advisor Harold Koh defended the administration's position that the WPR did not apply. Koh's argument that U.S. intervention was too limited to warrant a WPR report would have been familiar to these members of a bygone executive branch. Pointedly, in his fourteen-page statement to the Senate, Koh thrice cited the deployment of the Marines in Lebanon and twice cited the Persian Gulf tanker reflagging operation as precedents for the administration's stance.¹⁹³

In 1990, as a law professor, Koh had called for the revitalization of "a National Security Constitution based on active congressional and judicial participation" and repudiated the Reagan Restoration.¹⁹⁴ The fact that, by 2011, he was so heavily leaning on its legacy is a testament to the enduring strength of Reagan's revitalization of presidential war powers.

Today, there is a voluminous literature on the aggrandizement of the modern presidency. In this literature, it is not uncommon to hear familiar refrains about the need to restore congressional involvement in foreign policymaking; legal reforms strengthening the War Powers Act are one oft-mooted remedy.¹⁹⁵ Debates about the merits of broad presidential foreign policymaking power and about the benefits of various proposed reforms fall beyond the scope of this work. However, the case studies discussed in this paper suggest several lessons to inform these debates.

¹⁹² "Libya and War Powers: Hearing Before the Senate Committee on Foreign Relations," *Harvard Law Review* 125, no. 6 (2012): 1546–53.

¹⁹³ "Libya and War Powers" (U.S. Government Printing Office, June 28, 2011), https://www.foreign.senate.gov/imo/media/doc/062811_Transcript_Libya%20and%20War%20Powers.pdf, 9.

¹⁹⁴ Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair*, 208.

¹⁹⁵ Matthew C. Waxman, "War Powers Reform: A Skeptical View," *The Yale Law Journal*, March 8, 2024, 777.

First, even if the president can initiate a longstanding military intervention without congressional consent, a lack of congressional buy-in will severely hinder the intervention. In Lebanon, Reagan was able to conduct the foreign policy he wanted; none of Congress's verbal critiques or legislative restrictions compelled the administration to change its policy. They did, however, undermine the administration's credibility in the region: because the Marines' deployment in Lebanon appeared tentative, American adversaries were incentivized to wait-out the Reagan administration. In a sense, then, the Reagan administration's battle with Congress over its Lebanon policy ended in a pyrrhic victory that left it with the military tools it wanted, but not the credibility to use them successfully. Thus, its Lebanon policy was reduced to a halfhearted and aimless military commitment of the kind that Carl von Clausewitz warned about: "a short jump is certainly easier than a long one, but no one wanting to get across a wide ditch would begin by jumping half-way."¹⁹⁶ Without Congress's support, the Reagan administration could only jump halfway across the ditch. Thus, Lebanon is a warning about the limits of executive power. In a country where we have "535 secretaries of state," cooperation between the president and Congress can only strengthen the credibility and resilience of U.S. foreign policy.¹⁹⁷

The Persian Gulf reflagging operation, on the other hand, demonstrates the difficulties Congress faces in restraining presidential foreign policy ventures. Unlike in Lebanon, the Reagan administration's Persian Gulf policy enjoyed public support and appeared to be succeeding. This created strong political disincentives for members of Congress to oppose the administration's policy, even more so on a basis as arcane as the separation of powers. As a result, votes to restrict

¹⁹⁶ Michael Howard, *Clausewitz On War*, electronic resource, A Bradley Lecture Series Publication (Washington: Library of Congress, 1998), <http://www.columbia.edu/cgi-bin/cul/resolve?clio18016218>, 598.

¹⁹⁷ John F Kerry, Transcript: Secretary Of State John Kerry On Cuba, Nuclear Deal With Iran, July 20, 2015, <https://www.npr.org/2015/07/20/424769835/transcript-secretary-of-state-john-kerry-on-cuba-nuclear-deal-with-iran>.

the Reagan administration's free hand in the Persian Gulf invariably fell along largely partisan lines; even the *Iran Ajr* incident did not shift the underlying political dynamics on the issue. Thus, Congress's inability to restrain Reagan's policy in the Persian Gulf shows how difficult it is to separate war powers debates from their underlying political contexts: challenging popular foreign policies on war power grounds is politically unpalatable. Until bipartisan congressional majorities prioritize asserting Congress's institutional prerogatives over standing by the foreign policy of their party's president, that is unlikely to change.

At the same time, this history of the Reagan presidency still offers hope to congressional institutionalists and those seeking to restrain the executive through law. From a cynic's point of view, the WPR and the courts ostensibly meant to enforce it both failed to restrict the administration's free hand in Lebanon and the Persian Gulf. In both crises, the WPR was never formally invoked; even in the rare moments when the judiciary was called upon to exert its influence, as it was in *Lowry v. Reagan*, it refused to do so. Yet, it is nonetheless clear that the WPR profoundly shaped the Reagan administration's foreign policy. While it may not have formally bound the administration, it provided a legal and moral basis for Congress's claims to a greater role in foreign policymaking. These claims had political power: the Reagan administration could not ignore them entirely without paying a steep political price. Thus, in countless NSPG meetings, public speeches, press conferences, and congressional hearings, administration officials sought to undermine the WPR, the lodestone upon which congressional opposition to its foreign policy rested. Indeed, in Reagan-era foreign policy debates, arcane discussions of the WPR were a consistent presence in not only the *Congressional Record*, but the front-pages of the *New York Times* and the *Washington Post*. Ultimately, Reagan, Shultz, and Weinberger would have been puzzled by claims that the WPR was a dead letter. The sheer

amount of attention they paid to it—and the vehemence of their resistance to its authority—shows that, at least to the Reagan administration, the WPR mattered.

Finally, the story of the Reagan Restoration shows that the presidency is not static. When Reagan entered office, the executive branch seemed diminished; this appearance inspired a generation of unitary executive theorists devoted to empowering the presidency.¹⁹⁸ Yet, by the end of Reagan's time in office, the presidency appeared a different institution: a president who had paid lip service to the WPR in an effort to quell congressional resistance to his Lebanon policy had not only defeated congressional efforts to shape his Persian Gulf policy, but was asserting extraordinary presidential powers in his defense against the Iran-Contra Affair. As we have seen, this increase in Reagan's power was hard-won; it was only after years of battles with Congress, public advocacy for a stronger executive, and the legal work of unitary executive theorists that the Reagan Restoration was completed. In other words, presidential powers are not static, but negotiated, changing in response to public demands, foreign policy exigencies, legal ideologies, and the character and policies of the men and women in office. As we seek to prepare our constitutional order for a new era of turmoil, this fact should inspire us all.

¹⁹⁸ Skowronek, "The Conservative Insurgency and Presidential Power: A Developmental Perspective on the Unitary Executive."

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