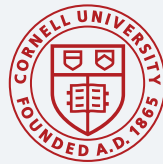


A publication of the

Institute of Politics
and Global Affairs



Cornell Brooks
Public Policy

Bipartisan Policy Review



March 2022



Institute of Politics and Global Affairs

Mission Statement

Today, politics is more volatile, uncertain, complex, and ambiguous than ever before, yet we continue applying the salve of soundbites.

Our mission is to raise the discourse and deepen understanding of both domestic and international affairs.

The Institute of Politics and Global Affairs hosts world-class programs—in New York City, Ithaca, Washington, and international locales—with leaders from the United States and abroad. These programs provide opportunities for enriched understanding of political content in our contemporary societies.

The institute actively strives to build connections among Cornell University faculty, students, alumni, and policymakers while simultaneously engaging supporters, partners, and the general public.

For additional information visit iopga.cornell.edu or email iopga@cornell.edu

Bipartisan Policy Review

March 2022

Message from the Director <i>Representative Steve Israel</i>	5
Introducing this Edition of the BPR <i>Sarah Kreps and Douglas L. Kriner, Cornell University</i>	8
The End of Grand Strategy? <i>Daniel W. Drezner, The Fletcher School, Tufts University</i>	10
The Return to Realism in U.S. Grand Strategy <i>Stephen Walt, Harvard Kennedy School</i>	13
What We Talk About When We Talk About Grand Strategy <i>Kori Schake, American Enterprise Institute</i>	16
9/11 and a Practitioner's View of Our National Security Toolkit <i>Annie Pforzheimer, Center for Strategic and International Studies</i>	20
Authorizing Military Force, Twenty Years After 9/11 <i>Andrew Rudalevige, Bowdoin College</i>	22
Presidents, Congress, and the Partisan Politics of War <i>William Howell, University of Chicago</i>	26
Courts and Inconsistent Presidential Positions in Foreign Affairs <i>Jide Nzelibe, Northwestern Pritzker School of Law</i>	29



Honorary Editorial Advisory Committee

Former Secretary of Defense Chuck Hagel
Former Secretary of Defense Leon Panetta
Former Secretary of Agriculture Dan Glickman
Former Ambassador Tim Roemer
Representative Brian Baird (D-WA)
Representative Ron Barber (D-AZ)
Representative Melissa Bean (D-IL)
Representative Tim Bishop (D-NY)
Representative Ben Chandler (D-KY)
Representative Tom Coleman (R-MO)
Representative Ryan Costello (R-PA)
Representative Charlie Dent (R-PA)

Senator Byron Dorgan (D-ND)
Representative William Enyart (D-IL)
Representative Elizabeth Esty (D-CT)
Representative Michael Ferguson (R-NJ)
Representative Chris Gibson (R-NY)
Representative Janice Hahn (D-CA)
Senator Heidi Heitkamp (D-MN)
Representative Jack Kingston (R-GA)
Representative Jim Leach (R-IA)
Senator Larry Pressler (R-SD)
Representative Chris Shays (R-CT)

A Message from the Director

Welcome to the third edition of the Bipartisan Policy Review (BPR)—produced by the Institute of Politics and Global Affairs (IOPGA) at the Jeb E. Brooks School of Public Policy at Cornell University.

In this edition of the BPR, we consider U.S. foreign policy. The crisis in Ukraine once again demonstrates the need for U.S. global leadership. Some would argue, however, that American leadership was diminished by twenty years of inconclusive war and the chaotic U.S. exit from Afghanistan. At this point of transition with complex global security challenges ever on the horizon, what should American foreign policy strategy look like going forward?

In this issue, we consider the lasting consequences of the U.S. response to the Global War on Terror and distill lessons hopefully learned to guide future U.S. foreign policy responses. The articles presented are authored by public servants and academics, based on a 9/11 Anniversary Workshop co-hosted by IOPGA in New York City in September 2021, twenty years after those horrific events changed the world.

The BPR's mission is to give voice to policy insights that are often drowned out in the partisan echo chamber. These pages don't include the usual partisan sniping or soundbites you read or hear elsewhere, but rather offer common ground. This publication is a platform for consensus-building, including thoughtful analysis from different points of view. Each BPR features innovative ideas by Republicans and Democrats, practitioners and academic experts, to provide a platform for nuance in the discussion of ambiguous, complex, uncertain, and volatile problems.

We invite you to start this edition by reading an executive summary (pages 8-9) found in the introduction written by two Cornell University professors of government, Sarah Kreps, IOPGA faculty fellow, and Douglas Kriner, IOPGA faculty director.

Finally, an appeal. If you consider a platform for bipartisan consensus to be refreshing and necessary, please consider contributing by visiting our website, iopga.cornell.edu, or contacting Program Director Emily Anderson (ema97@cornell.edu).

On behalf of myself and Cornell University, I wish you a safe and healthy 2022.



Steve Israel

Member of Congress 2001–17

Contributors



Daniel W. Drezner

Daniel W. Drezner is professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University, a nonresident senior fellow at the Chicago Council on Global Affairs, and the author of “Spoiler Alerts” for the *Washington Post*. He is the co-director of Fletcher’s Russia and Eurasia program. Drezner has written seven books, including *The Ideas Industry* and *All Politics is Global*, and edited three others, including *The Uses and Abuses of Weaponized Interdependence*. He received his B.A. in political economy from Williams College and an M.A. in economics and a Ph.D. in political science from Stanford University.



William Howell

William Howell is the Sydney Stein Professor in American Politics at the University of Chicago, where he holds appointments in the Harris School, political science department, and College. Currently, he is the director of the Center for Effective Government, chair of the political science department, and co-host of *Not Another Politics Podcast*. A member of the American Academy of Arts and Sciences, William has written widely on separation-of-powers issues and American political institutions, especially the presidency.



Sarah Kreps

Sarah Kreps is the John L. Wetherill Professor of Government, Adjunct Professor of Law, and Director of the Tech Policy Lab at Cornell University. She is also a Non-Resident Senior Fellow at the Brookings Institution. Dr. Kreps has held fellowships at the Council on Foreign Relations (where she is a life member), Harvard’s Kennedy School of Government, and the University of Virginia’s Miller Center for Public Affairs. She has a BA from Harvard University, MSc from Oxford, and Ph.D. from Georgetown. Between 1999-2003, she served on active duty in the United States Air Force.



Douglas L. Kriner

Douglas L. Kriner is Clinton Rossiter Professor in American Institutions in the Department of Government and the faculty director of the Institute of Politics and Global Affairs at Cornell University. He is the author of five books, including (with Dino Christenson) *The Myth of the Imperial Presidency: How Public Opinion Checks the Unilateral Executive*; *After the Rubicon: Congress, Presidents, and the Politics of Waging War*; and (with Francis Shen) *The Casualty Gap: The Causes and Consequences of American Wartime Inequalities*.



Jide Nzelibe

Jide Nzelibe is The Benjamin Mazur Summer Research Professor of Law at Northwestern Pritzker School of Law. His research and teaching interests include international trade, foreign relations law, public and private international law and contracts. He is an elected member of the American Law Institute.



Annie Pforzheimer

Annie Pforzheimer is a Senior Non-Resident Associate at the Center for Strategic and International Studies, an Adjunct Professor at the City University of New York, and a public commentator on foreign policy. Her previous thirty-year diplomatic career included positions such as Deputy Chief of Mission in Kabul; director of the U.S. security assistance program in Mexico; lead human rights officer in Turkey and South Africa; and Director for Central America migration issues at the National Security Council. Ms. Pforzheimer is a graduate of Harvard University and the National Defense University, and a member of the Council on Foreign Relations.



Andrew Rudalevige

Andrew Rudalevige is the Thomas Brackett Reed Professor and chair of the Government and Legal Studies Department at Bowdoin College. His research and teaching focus on American political institutions, with emphasis on the presidency, executive branch politics, and public administration. His books include *By Executive Order* (Princeton University Press, 2021) and *The New Imperial Presidency: Renewing Presidential Power after Watergate* (University of Michigan Press, 2006), as well as the textbook *The Politics of the Presidency* (10th rev. ed, 2022) and, as co-editor, books on the Bush and Obama presidencies and on the Office of Management and Budget.



Kori Schake

Kori Schake leads foreign and defense policy studies at the American Enterprise Institute. She is the author of *Safe Passage: the Transition from British to American Hegemony*, and with Jim Mattis, she is the editor of *Warriors and Citizens: American Views on Our Military*. Dr. Schake has taught at Stanford, Johns Hopkins SAIS, and West Point. She has also had a distinguished career in government, working at the U.S. State Department, the U.S. Department of Defense, and the National Security Council.



Stephen M. Walt

Stephen M. Walt is the Robert and Renée Belfer Professor of International Affairs at Harvard's Kennedy School of Government. He is a contributing editor at *Foreign Policy* magazine and a non-resident Senior Fellow at the Quincy Institute for Responsible Statecraft. Professor Walt is a Fellow of the American Academy of Arts and Sciences and received the International Studies Association's Distinguished Senior Scholar award in 2014. His books include *The Origins of Alliances*, (1987); *Taming American Power: The Global Response to U.S. Primacy* (2005); and (with John J. Mearsheimer) *The Israel Lobby and U.S. Foreign Policy* (2007). His latest book is *The Hell of Good Intentions: America's Foreign Policy Elite and the Decline of U.S. Primacy* (2018).



Introducing this Edition of the BPR

Sarah Kreps and Douglas L. Kriner, Cornell University

On October 7, 2001, the United States launched an intervention in Afghanistan in response to the September 11 terrorist attacks. On August 30, 2021, almost two decades later, the U.S. withdrew its last troops amidst the backdrop of a looming humanitarian crisis, widespread fear for the safety and treatment of women and girls, and questions about access to food and medicine. In the last days of the American military involvement in Afghanistan, the United States lost 13 service personnel and conducted an errant drone strike that it acknowledged killed 10 Afghan civilians, including 7 children. While Americans overwhelmingly avored the troop withdrawal, they were sharply critical of its execution. And while the chaotic scenes from Kabul prompted recriminations and finger-pointing from both sides of the aisle, there is little real political appetite to re-engage in Afghanistan. If the goals were not achieved in a twenty-year span, they are unlikely to be achieved in another tranche of time.

On September 10, 2021, a handful of academic and policy experts on U.S. foreign affairs gathered to reflect on the last twenty years and discuss what these developments augur in terms of the path forward for the United States' role in the world and the separation of powers at home.¹

Of the group, no one appears to have agreed with General Petraeus's assessment that it was "premature to leave." Staying would have all but certainly meant an indefinite occupation, including the attendant cost and casualties, without even guaranteeing that Afghanistan would not become a safe haven for terrorists—a goal that almost certainly would have required a dramatically expanded troop presence.

The question, then, is what we might expect in terms of foreign policy going forward. In his contribution, Dan Drezner flags the concern about how political polarization will undermine the credibility of American commitments. If President Obama can negotiate a U.S. position in the Paris Agreement, or the Iran nuclear agreement, that his successor comes into office and undoes, then why will any country—looking at our polarized political landscape and the policy whiplash that seems to accompany presidential transitions—bother to make agreements with the United States? Historically, democracies have benefited because of their ability to make credible commitments, but polarization risks undercutting those advantages and American international leadership more generally.

Stephen Walt is more sanguine about his expectations for US foreign policy going forward, but largely because of his pessimism about the consequences of American leadership from previous eras. He argues that NATO enlargement soured relations with Russia, efforts to broker Middle East peace agreements floundered, and failed interventions created power vacuums in the Middle East. Stepping back from "liberal hegemony," in which the U.S. seeks to project its values around the world, will not only conserve American resources but lead to better outcomes. Focusing those resources in Asia—perhaps an actual Asia pivot?—will be more effective in attracting allies in the Pacific and balancing against China.

Kori Schake shares some of that Walt's pessimism, concluding that it is "incontestable that al Qaeda achieved its objectives with the 9/11 attacks." Spurred to retaliate, the United States incurred considerable costs in waging its counterterrorism efforts around the world. The counterfactual of not expending those resources is hard to calculate of course. It is easy to fault security theater, such as removing shoes for a flight because of one would-be "shoe bomber" terrorist, but it is impossible to know the attacks that did not happen because of the fulsome intelligence sharing apparatus that coalesced only because the attacks revealed our inability to connect dots both across U.S. intelligence agencies and across borders. A further unintended consequence of the over-emphasis on military options in the years following 9/11, Annie Pforzheimer notes,



Interior of World Trade Center station



is the systematic underinvestment in other tools of diplomacy essential to meeting contemporary challenges. Policies of building better defenses, going on the offense with punitive strikes, building multilateral capacity, and increasing bilateral security assistance all have aspects to recommend them; but also come with financial and political costs, as evidenced by the attempt of the last four administrations to dabble in all of those policies.

Taken together, polarization, foreign policy failures, and the ineffectiveness of an array of policy instruments points to a conclusion that humility in U.S. policy will serve the country well, which means focusing on the big picture concerns such as China, for example, and setting aside the ambitious, doomed-to-fail projects like nation-building that perennially seem appealing for a dispositionally optimistic country like the United States but that never end well.

Both at home and abroad, the legacy of 9/11 is complicated, protean, and, ultimately, unresolved.

Domestically, the twenty years since 9/11 have reiterated and intensified many of the dynamics that have long driven inter-branch politics in foreign affairs. As Andrew Rudalevige argues, Congress inevitably struggles to rein in power once delegated to the executive, perhaps even more so in military matters. Both the 2001 (Afghanistan) and 2002 (Iraq) Authorizations to Use Military Force (AUMF) remain on the book. And the former is still used to justify a wide range of actions from Syria to Somalia to Libya to Yemen, despite the best efforts of Congress in October 2001 to limit its scope. While the Biden administration has signaled a willingness to revisit the 2001 AUMF and even bolder reform efforts have gained some traction, whether Congress can meet the moment and seek to

rebalance war powers for the first time since the aftermath of Watergate is anything but certain.

Despite common claims of a Cold War foreign policy consensus, partisanship has long-fueled congressional push-back against presidential foreign policy. Increasing levels of polarization have only intensified this partisan dynamic. As a result, presidents risk criticism and its attendant political costs in periods of divided government but are insulated from these risks when their party controls Congress. After 9/11, a unified government aided the escalation and expansion of the Global War on Terror. Twenty years later, William Howell argues it eased the path for an equally difficult decision – leaving Afghanistan. Withdrawal was politically riskier than maintaining the status quo and handing over a troubled occupation to a fifth president; but unified government reduced, at least somewhat, those political costs.

Finally, another consequence of polarization-fueled swings in policy seen from administration to administration is that they may, unintentionally, weaken judicial restraint in foreign affairs. Jide Nzelibe argues that seemingly wanton shifts in policy make it harder for courts to assume that such actions reflect genuine institutional judgments regarding the national interest rather than mere partisan politicking. This could open the door for presidential defeats in cases brought by both institutional and private actors in a sphere where they had previously enjoyed broad deference from the courts.

Sarah Kreps is the John L. Wetherill Professor of Government, Adjunct Professor of Law, and Director of the Tech Policy Lab at Cornell University.

Douglas L. Kriner is Clinton Rossiter Professor in American Institutions in the Department of Government and the faculty director of the Institute of Politics and Global Affairs at Cornell University.

[1] We thank the Charles Koch Foundation for generous financial support for this.



The End of Grand Strategy?

Daniel W. Drezner, *The Fletcher School, Tufts University*

Grand strategy is an attempt to marry state capabilities with social purpose. It is therefore an intentional act of intellectual creation, designed to guide foreign actors, national security bureaucracies, and outside analysts about what to expect from a country's foreign policy. Notable American grand strategies have included the "splendid isolation" of the antebellum era and containment of the Soviet Union during the Cold War.

In theory, democracies possess two advantages in the formulation of grand strategy. First, democracies should be able to forge a normative consensus about the primary aims of any grand strategy. Foreign policy elites in democracies have traditionally been in rough agreement about the country's national interests and objectives. This consensus enables grand strategy debates to say within well-defined parameters, as was the case during both the Cold War and immediate post-Cold War eras.

Second, for grand strategies to have any resonance they need to last, and democracies should have a comparative advantage in making credible, enduring commitments. The institutional veto points that democracies accrue, like the legislative ratification of treaties, are more readily observable and verifiable than autocratic efforts to mimic credible commitment devices. Robust institutions and rules of the game are what ensure stable policies in a majority-rule voting system. In other words, institutional constraints ensure that policies and strategies persist over time.

Greater levels of polarization obviously erode the ability to fashion a national consensus.

Unfortunately, increases in political polarization and political populism undercut these democratic advantages. Indeed, the ability to credibly commit and fashion a normative consensus has eroded so badly that it has effectively sabotaged efforts to create a sustainable grand strategy. U.S. policymakers must reckon with this fact for the foreseeable future.

The evidence for increased political polarization in the United States is incontrovertible. Congressional scholars have concluded that over the past half-century the average Democratic member of Congress has moved leftwards and the average Republican member of Congress has moved much further to the right. Other measures of partisan

conflict show that the increase in political polarization goes beyond elected officials. For both Democrats and Republicans, party elites have become more ideologically extreme than the broader party membership. Indeed, political elites are now more ideologically extreme than at any time in postwar history. Considerable survey and experimental evidence shows that partisans on one side increasingly dislike and distrust partisans on the other side. Indeed, one recent experimental study concluded that Americans discriminated more based on political partisanship than on either race or gender.

Back in 2007, Charles Kupchan and Peter Trubowitz warned in the pages of *International Security* that, "the polarization of the United States has dealt a severe blow to the bipartisan compact between power and cooperation. Instead of adhering to the vital center, the country's elected officials, along with the public, are backing away from liberal internationalist compact, supporting either U.S. power or international cooperation, but rarely both." That warning has been born out. Public and elite support for the liberal internationalism has frayed badly. Data on Senate votes show that by 2001, there was even more polarization on foreign affairs votes than domestic policy votes. The bifurcation of American foreign policy is also evident in public opinion polls. Across a wide array of foreign policy questions – climate change, counterterrorism, immigration, the use of force – polling data shows that American public attitudes are badly split.

Greater levels of polarization obviously erode the ability to fashion a national consensus; polarization is a literal indication of the lack of consensus. Expert opinions are more likely to be discounted in a polarized climate. Indeed, not everyone will accept a common set of stylized facts even if there is a consensus among policy elites. Partisans will have an incentive to craft arguments around facts not in evidence to support their foreign policy leaders unconditionally. As a result, in many areas of foreign policy, there is no consensus about the stylized facts or common narratives that ordinarily frame a debate. As one party replaces the other in the executive branch, the national security strategy documents are likely to swing wildly from one ideological pole to the other.

It could be argued that because democracies foster credible commitments, the United States could still ensure the durability of American grand strategy. The resurgence of populist politics, however, has unwittingly highlighted the weakness of that counterargument. While populist parties are ideologically mutable, they are procedurally dogmatic in ways that threaten credible commitments. The most significant populist position is hostility to the very ideas of technocratic expertise



or institutional constraint. Populists articulate their agenda as one that is opposed to corrupt elites trying to frustrate the wants of the common man. They oppose any constraints on the ability of a populist leader to govern, characterizing such constraints as elite manipulation of the system.

Institutional constraints are expressly designed to endure regardless of who is in power. Can populist governance really erode such constraints? The evidence from the last decade suggests that the answer is yes. In presidential systems like the United States, executives have learned to bypass or ignore attempts by other branches of government to constrain their actions. These include executive orders, executive agreements, presidential proclamations, presidential memoranda, signing statements, and national security directives. The Trump administration exploited these pre-existing prerogatives and sought to further enhance executive power. These efforts ranged from deconstructing the administrative state to exploiting emergency measures to override the will of Congress, to daring the judiciary to rule against blatantly unconstitutional actions and acting without constraint in the interim, to flouting the informal norms that have long regulated presidential behavior.

Furthermore, the binding nature of international commitments turns out to be less binding than commonly assumed. Many international arrangements are adhered to more out of habit or soft law obligations than hard law treaties. This makes it relatively easy for populist leaders to exit those agreements. The Trump administration excelled at this practice. In 2017, the new administration withdrew from the

Paris Agreement on climate change, and the Iranian nuclear deal a year later. During Trump's administration the United States also withdrew from the United Nations Human Rights Council, World Health Organization, and the Intermediate

The ability to credibly commit and fashion a normative consensus has eroded so badly that it has effectively sabotaged efforts to create a sustainable grand strategy.

Nuclear Forces treaty with Russia. The U.S. went so far as to impose sanctions on International Criminal Court officials. The United States also stymied appointments to the World Trade Organization's Appellate Body, rendering it functionally inert for the foreseeable future. Even hard law treaties are not that hard a constraint. Most treaties have denunciation and withdrawal clauses that countries can unilaterally exercise without being in breach of treaty, and many such clauses do not require legislative assent. They were invoked rarely until the recent wave of populist nationalism, representing a meta-norm that has now eroded.

The Biden administration quickly reversed many of President Trump's exits from international agreements. Nonetheless, Biden also acknowledged that U.S. credible commitments



have been weakened, telling Congress, “in my conversations with world leaders... I’ve made it known that America is back. And you know what they say? The comment that I hear most of all from them is they say, ‘We see America is back but for how long?’” To translate this into the argot of social science, any democracy that experiences a bout of populism causes other countries to engage in Bayesian updating about that regime’s ability to credibly commit.

The combined effect of polarization and populism is that successive presidents will be able to eradicate their predecessors’ grand strategy. Polarization has eroded the notion that politicians need to govern from the center. Presidents who alternate from the extremes of the American political spectrum will have an incentive to reverse their predecessors’ policies. Grand strategy could represent an amplification of the “Mexico City” policy, in which Republican and Democratic presidents flip-flop rules governing U.S. aid to global family planning depending on who controls the executive branch. The combination of populist impulses, worn-down guardrails, and presidents emerging from the ends of the political spectrum will whipsaw U.S. foreign policy between ultra-conservative and ultra-liberal approaches.

What is to be done? It is possible that as the U.S. withdraws from the forever wars of the Middle East, public and partisan attention will wane. This would allow a return to elite-driven grand strategy. For this to happen, however, the Republican Party would have to resemble its pre-2016 edition, which seems unlikely. A second approach, which President Biden is attempting, is to fashion a grand strategy around the areas that still generate bipartisan support: great power competition and partnership with long-standing democratic allies. This might work, but the pressing threat of climate change is unlikely to allow that minimal consensus to thrive.

The combined effect of polarization and populism is that successive presidents will be able to eradicate their predecessors’ grand strategy.

The last response is not to mourn the end of grand strategy, but to bury it and move on. Moving forward without grand strategy requires embracing two principles: decentralization and incrementalism. Decentralized but mutually coordinated decision-making networks are best suited to highly uncertain conditions. Governments should organize the foreign policy machinery in the same way. Incrementalism – addressing concrete short-term problems in vital trouble spots – is also the safer bet. Both decentralization and incrementalism would mean devolving responsibility from Washington to theater commanders, special envoys, and subject-matter experts. In other words, it means taking the exact opposite tack of so many past administrations, which concentrated ever more decision-making in the White House. Simply put, aspiring national security advisers should give up competing for the title of the next George Kennan. That time is past.

Daniel W. Drezner is a professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University.



The Return to Realism in U.S. Grand Strategy

Stephen Walt, Harvard Kennedy School

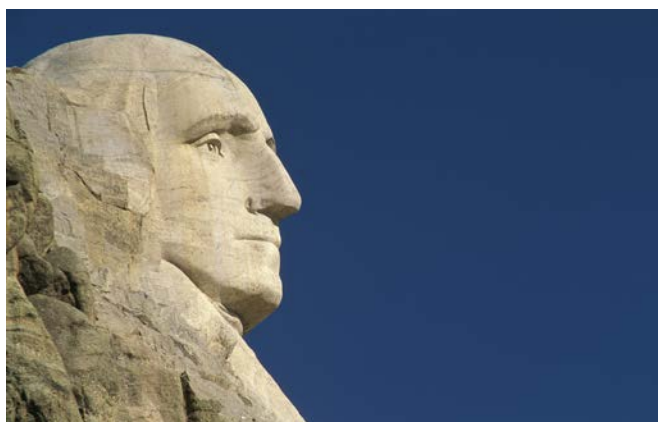
For most of American history, U.S. foreign policy succeeded because U.S. leaders pursued a grand strategy based on realist principles. During the unipolar era that followed the Cold War, however, America's foreign policy elite abandoned realism in favor of a decidedly unrealistic grand strategy—liberal hegemony—and clung to it despite repeated setbacks. Together with the rise of China, these failures are leading the United States back to the realism and restraint that served it well in the past.

American politicians typically wrap their policy decisions in idealistic rhetoric, but U.S. grand strategy was usually realist at its core. From 1776 to the 1890s, when the United States was relatively weak, presidents from George Washington to Grover Cleveland sought to avoid dangerous foreign entanglements and concentrated on building power at home, expanding across North America, and expelling the European powers from the Western hemisphere. They did these things because they understood that becoming the only great power in the Western hemisphere would maximize U.S. security.¹

After achieving great power status around 1900, the United States sought to keep any other great power from achieving a similar position in its own neighborhoods. Woodrow Wilson took the United States into World War I to prevent Germany from achieving hegemony in Europe, and Franklin Roosevelt maneuvered the United States into World War II to stop Nazi Germany and Imperial Japan from dominating Europe and the Far East respectively.² Instead of intervening at the start, however, the United States let other states bear most of the costs of fighting and left itself in the best position to shape the postwar peace.

Because the medium powers of Europe and Asia could not contain the USSR by themselves after World War II, maintaining a balance of power in Europe and Asia required America to go “onshore.” Washington helped create balancing coalitions in both theaters and deployed its own forces there to deter Soviet expansion and undermine Soviet power. That effort finally bore fruit in the late 1980s, as the Warsaw Pact and then the Soviet Union itself collapsed.

According to former president George H. W. Bush and national security advisor Brent Scowcroft, victory in the Cold War left the United States “standing alone at the height of power. . . with the rarest opportunity to shape the world.”³ And U.S. leaders succumbed to that temptation, abandoned the realism that had guided them in the past, and set out to remake the world in America's image. A new grand strategy—liberal hegemony—sought to create a global liberal order by using American power to spread democracy, markets, and other liberal values.



Proponents of liberal hegemony believed spreading these values would decrease the risks of war and maximize U.S. security and prosperity. They also saw the United States as the “indispensable nation” that was uniquely qualified to lead this process.⁴ As former Secretary of State Warren Christopher told the Senate Foreign Relations Committee in 1993, “the new world we seek will not emerge on its own. We must shape the transformation that is underway.”⁵

Spreading liberal ideals may have been a worthy goal, but liberal hegemony was a dismal failure. When this strategy was adopted in the early 1990s, the United States was on good terms with all the world's major powers, including Russia and China. Its military forces seemed invincible, the U.S. economy was performing well, and other states were embracing democracy and market-based economics. The 1993 Oslo Accords seemed to herald a final end to the Arab-Israeli conflict, an agreement with North Korea appeared to have capped its nuclear program, and Iran had no nuclear enrichment capacity. Even international terrorism seemed like a manageable problem. As General Colin Powell, then-Chairman of the Joint Chiefs of Staff, put it in 1991, “I'm running out of enemies. I'm down to Castro and Kim Il-Sung.”⁶ Life was good.

Thirty years later, NATO enlargement had helped poison relations with Russia, Moscow had responded by annexing Crimea, and China was now a peer competitor that openly rejected liberal values. Repeated U.S. efforts to broker a peace agreement in the Middle East had led nowhere and the two-state solution sought by Clinton, Bush, and Obama was farther away than ever. The U.S. homeland had been struck on September 11, 2001 and Washington had responded by invading Afghanistan in 2001 and Iraq in 2003. Both wars ended in costly defeats—with over \$6 trillion dollars squandered and thousands of American and foreign lives lost—and the American military no longer seemed quite so invincible. New extremist movements had emerged in the political vacuums

created by U.S.-led regime change and the brief hopes for an “Arab Spring” had been extinguished by authoritarian crackdowns or brutal civil wars. North Korea had tested several nuclear weapons and expanded its stockpile of missiles and Iran had developed the infrastructure for building the bomb if it wished. Democracy was now in retreat, with 2020 marking the fifteenth consecutive year in which the level of global freedom declined.⁷ Nor did economic globalization deliver as promised: lower- and middle-class inequality soared inside the United States and in 2008 corruption in the U.S. mortgage market led to the worst global recession since the 1930s.

Yet liberal hegemony did not fail because the United States faced a legion of powerful, crafty, and ruthless adversaries whose brilliant schemes repeatedly foiled Washington’s noble aims. Rather, it failed because its conceptual foundations were faulty and its central objectives were unrealistic.⁸

For starters, expanding America’s security umbrella increased U.S. obligations without providing new resources with which to meet them. Open-ended NATO enlargement both alarmed Moscow and committed Washington to defend weak and vulnerable members to the east, while France, Germany, and the United Kingdom let their own armed forces atrophy. Washington did manage to topple several hostile foreign regimes, but the results were not thriving new democracies but a set of failed states. These failures contributed to the erosion of America’s own democratic system, and the Economist magazine’s annual “Democracy Index” downgraded the United States from the category of “full democracy” to “flawed democracy” in 2016, even before the election of Donald Trump.⁹

The elite consensus in favor of liberal hegemony is being challenged by a growing movement of experts who favor a grand strategy of realism and restraint.

These depressing results should not surprise us. Liberal hegemony rested on the idea that the United States had found the magic formula for a modern globalized society and its proponents assumed that other states would be eager to embrace these ideals and join a U.S.-led liberal world order. Transforming the social and political institutions of a foreign society is a complex and highly uncertain undertaking, however, and Washington had no idea how to create successful democracies in places like Iraq, Somalia, Afghanistan, or Yemen. Foreign-imposed regime change rarely leads to stable democracies, and local populations inevitably come to resent even well-intentioned foreign occupiers.¹⁰ The puzzle



is not that liberal hegemony failed; it is that American elites convinced themselves it would be easy to do.

Yet liberal hegemony went unchallenged for more than two decades, in part because the United States was still very powerful, wealthy, and secure (and could therefore afford to keep doing the same dumb things), but also because America’s foreign policy elite remained deeply committed to it. Not only did most members of this elite fully support liberal hegemony’s lofty ideals, it also appeals to their sense of self-worth, enhanced their power and status, and strengthened their claims to a greater slice of the budgetary pie. And because members of this elite are rarely held to account no matter how often they are wrong, they were able to make the same mistakes over and over.¹¹

But liberal hegemony’s failures could not be ignored forever, and the United States is gradually returning to a more realistic grand strategy. This process began with Donald Trump, who ran for office openly challenging many familiar dogmas of recent U.S. foreign policy. Although Trump was too ignorant and incompetent to orchestrate a decisive break with the past, his criticisms resonated with a public that was tired of foreign policy failures and wanted Washington to pay more attention to problems at home.

China’s rise provides the other impetus for a return to realism. The United States could indulge in hubristic fantasies when it faced no serious great power rival(s), but China is likely to be a more formidable competitor than the Soviet Union ever was. Earlier hopes that engagement would lead China to democratize and embrace the norms of a U.S.-led world order have been dashed, which is why the Biden administration is now ramping up competition with China, strengthening ties with traditional allies, and working to reinforce America’s technological edge.

Furthermore, the elite consensus in favor of liberal hegemony is being challenged by a growing movement of experts who favor a grand strategy of realism and restraint. Restrainers believe the United States should use military force abroad only when its vital interests are at stake and focus primarily on helping uphold the balance of power in key strategic regions (Europe, North and Southeast Asia, and perhaps the Persian Gulf). In other words, restrainers favor a return to the strategy of “offshore balancing” that guided U.S. policy successfully during most of the 20th century.

Offshore balancing recognizes that the United States is still the most secure great power in history, protected by two enormous oceanic moats and the deterrent power of thousands of nuclear weapons. These features do not insulate America from all dangers, but no other major power is remotely as secure as the United States is. To maximize these advantages, the United States should still strive to prevent any other great power from dominating its own region, which would enhance its ability to project power and influence elsewhere (including into the Western hemisphere).

The good news is that there is no potential hegemon in Europe today.¹² Accordingly, the United States should gradually draw down its military presence on the continent and turn European security back over to its European allies. It should disengage militarily from the greater Middle East for similar reasons: the region is more divided than it has ever been, no country can dominate the others, and the strategic value of oil and gas will decline as the world weans itself off fossil fuels.

In Asia, however, offshore balancing prescribes that the United States lead a balancing coalition intended to prevent China from achieving regional hegemony. The United States should not seek to overthrow the Chinese Communist Party or threaten the territorial integrity of the mainland, but it should help key Asian partners withstand Chinese pressure for the foreseeable future. Far from being isolationists, restrainers also believe the United States should continue to trade and invest around the world, conduct energetic diplomacy with both friends and foes, and promote liberal values abroad by showcasing democracy’s virtues here at home.

As one would expect, calls for a return to realism and restraint have prompted a vigorous backlash from unrepentant hardliners and mainstream defenders of liberal hegemony.¹³ Fortunately, their efforts to salvage liberal hegemony are doomed to fail. China will neither disappear nor become a liberal democracy any time soon, which means that the United States will have little time, money, or lives to waste on quixotic crusades. Competing with China will also require significant reforms at home, and the costs of mitigating and adapting to climate change and preparing for future pandemics will place additional strains on America’s finances and political consensus. Younger Americans rightly reject Trumpian visions of a “Fortress America,” but they show little interest in a new crusade to spread liberal values.

The unipolar era is over, and great power politics is back.

The unipolar era is over, and great power politics is back. Like it or not, realism still provides the best guide to this world, and present circumstances call for a combination of energetic diplomacy and greater military restraint. Armed with a more realistic grand strategy, keeping the United States secure and prosperous will be a straightforward and easily achievable goal.

Stephen M. Walt is the Robert and Renée Belfer Professor of International Affairs at Harvard’s Kennedy School of Government.

-
- [1] See Stephen M. Walt, “U.S. Grand Strategy after the Cold War: Can Realism Explain It? Should Realism Guide It?” *International Relations* 32, no. 1 (March 2018), and John J. Mearsheimer, *The Tragedy of Great Power Politics*, rev. ed. (New York: W. W. Norton, 2014), chap. 7.
- [2] On Wilson’s realist motivations for entering World War I, see Dale Copeland, “The U.S. Entry into World War I,” paper presented at the 2021 International Studies Association Annual Meeting (March 2021). On Roosevelt and the U.S. entry into World War II, see Marc Trachtenberg, “Developing an Interpretation through Textual Analysis: The 1941 Case,” in his *The Craft of International History: A Guide to Method* (Princeton: Princeton University Press, 2006), chap. 4.
- [3] George H. W. Bush and Brent Scowcroft, *A World Transformed* (New York: Alfred A. Knopf, 1998), p. 564.
- [4] It was Secretary of State Madeleine Albright who described the United States as “the indispensable nation . . . that sees farther than others do.” See “Interview on NBC-TV *The Today Show* with Matt Lauer,” February 19, 1998 at <https://1997-2001.state.gov/statements/1998/980219a.html>
- [5] See Warren Christopher, “The Shifting Priorities of U.S. Foreign Policy: Peacekeeping Downgraded,” Testimony to the Senate Foreign Relations Committee, November 4, 1993, *Department of State Bulletin* 4, no. 4-5 (January-April 1994), p. 43.
- [6] Powell is quoted in “Communism’s Collapse Poses a Challenge to America’s Military,” *U.S. News and World Report*, October 14, 1992, p. 28.
- [7] *Freedom in the World 2021: Democracy under Siege*, at <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>
- [8] See Stephen M. Walt *The Hell of Good Intentions: America’s Foreign Policy Elite and the Decline of U.S. Primacy* (New York: Farrar, Straus & Giroux, 2018); John J. Mearsheimer, *The Great Delusion: Liberal Dreams and International Realities* (New Haven: Yale University Press, 2018); and Patrick Porter, *The False Promise of Liberal Order: Nostalgia, Delusion and the Rise of Trump* (New York: Polity Press, 2020).
- [9] See “Declining Trust in Government is Denting Democracy,” at <https://www.economist.com/graphic-detail/2017/01/25/declining-trust-in-government-is-denting-democracy>
- [10] See Alexander B. Downes, *Catastrophic Success: Why Foreign-Imposed Regime Change Goes Wrong* (Ithaca, NY: Cornell University Press, 2021).
- [11] The points in this paragraph are central themes in Walt, *Hell of Good Intentions*.
- [12] See Barry Posen “Europe Can Defend Itself,” *Survival* 62, no. 6 (January-December 2020); and Stephen M. Walt, “Exactly How Helpless is Europe?” *Foreign Policy*, May 21, 2021, at <https://foreignpolicy.com/2021/05/21/exactly-how-helpless-is-europe/>
- [13] See, among others, Hal Brands and Peter Feaver, “Should America Retrench?” *Foreign Affairs* 95, no. 6 (November-December 2016); and especially Daniel Deudney and John Ikenberry, “Misplaced Restraint: The Quincy Coalition versus Liberal Internationalism,” *Survival* 63, no. 4 (August-September 2021). For responses, see John J. Mearsheimer and Stephen Walt’s rejoinder to Brands in Feaver in the same issue of *Foreign Affairs*, and Rajan Menon and Andrew Bacevich, “U.S. Foreign Policy Restraint: What It Is, What It Is Not,” *The National Interest*, August 9, 2021, at <https://nationalinterest.org/feature/us-foreign-policy-restraint%E2%80%94what-it-is-not-191370>



What We Talk About When We Talk About Grand Strategy

Kori Schake, *American Enterprise Institute*



Schake's theory of strategy is that every proficient strategist is a desperate paranoiac. That is the tradecraft, by Providence of the Creator or acquisition in study and acculturation. Because every good strategist lives in constant anxiety considering all that could go wrong, probing for evidence of what is going wrong, assessing how best to respond to new developments, and recalibrating their actions. They are always expecting a trap door to open under them, sending them sprawling into a subterranean sewer – or worse.

But we reify strategy by conflating it with policy, and especially when we talk of “grand strategy.” Because what we actually mean when we talk about grand strategy is a conflation of policy and strategy.¹ Truman understood the distinction; the actual title of his administration's strategy, NSC-68, was United States Objectives and Programs for National Security. Eisenhower also understood the distinction, calling his administration's national security strategies Basic National Security Policies. I know it sounds pedantic, but the distinction is actually important to why we get so much wrong in American national security. We spend too little time refining our thinking about what we're trying to achieve, and too much on the tactical and operational decisions of how to accomplish them. As a result, national security strategies have devolved into flaccid recitations of vague outcomes with little connection to resources.² And resources are the lifeblood of strategy – the actual purpose of developing strategies is to prioritize and assign resources.

My strongest impression beginning work in the Bush White House after 9/11 was how scared everyone was. Senior policymakers considered every day September 10th and were desperate to avoid failing the American people again by not doing enough to protect us. We knew far too little about the terrorist threat and therefore couldn't accurately assess its prevalence or immanence. We were so risk-averse about doing too little that the Bush administration took broad decisions (about interrogations, for example) that were damaging to our reputation and fueling the threat, so as to have a wider margin for error. As the administration got smarter about the nature of the threat, it narrowed the aperture of action and selected more precise tools.

But it seems to me incontestable that al Qaeda achieved its objectives with the 9/11 attacks. They dramatically changed the trajectory of U.S. policy to focus on terrorism and the Middle East. We selected policies that inflicted enormous human, economic, and reputational costs. The combination of their provocation and our policies drove up the cost of U.S. support for Middle East partners, affected our ability to organize and lead international efforts, precipitated American public support for foreign policy retrenchment, and imposed the opportunity cost of not getting out ahead of China's challenge. The United States squandered its “unipolar moment.”

The United States squandered its “unipolar moment.”

Were the policies or the strategy to blame? Both. The policy became eliminating the terrorist threat to the U.S. Given what we now know about the dimensions of that threat, it was the wrong policy objective, wildly disproportional to the magnitude of the challenge. The Bush administration pivoted from the National Security Advisor writing in *Foreign Affairs* that “the 82nd Airborne should not be walking kids to school in the Balkans” to military conquest and nation-building projects in two of the least auspicious countries for success.

The strategy was to subjugate all other national security objectives to terrorism, preventatively attack terrorists, deny them safe havens, track and interdict funding for their organizations, consolidate protections into a leviathan Homeland Security Department, optimize the military to counter-terrorism operations, and fuse the CIA into an operational extension of the military.



Because strategy is the practice of assessing alternatives, and because the strategy has had remarkable durability (which suggests subsequent administrations considered it preferable), what alternatives genuinely existed?

BETTER DEFENSES. Improves our ability to prevent attacks through better domestic protections on who is in the country or who comes into the country, and by restricting access to weapons possession. The perimeter of U.S. security could perhaps be extended cooperatively with joint intelligence sharing, the development of common enforcement standards, and confidence-building screening (e.g., the policy adopted toward Canada). Unfortunately, there are obvious cultural and constitutional challenges domestically, substantial time lag and a high degree of difficulty to develop international partnerships and standards, as well as higher political costs for failure.

PUNITIVE STRIKES. Eliminates the most talented terrorists and possibly deters recruitment, keeps terrorist organizations on the run, and domestically popular as it demonstrates the administration is doing something and the predominant costs are imposed on foreigners. This is the Biden counter-terrorism policy: keep killing bad guys until there are no more bad guys. Unfortunately, in 20 years, this approach has not managed to reduce the number of bad guys, relies on detailed intelligence difficult to attain without an extensive military presence, alienates populations in which the attacks occur, and incurs higher political costs for failure.

IMPROVED MULTILATERAL CAPACITY. Creates in the UN and other multilateral bodies the multilateral intelligence sharing and assessment of threats as well as operational abilities to take diplomatic, financial, and military action; with decision rules for their employment and a willingness

to enforce. One example would have been to convene in The Hague to revise the Geneva Conventions to encompass binding legalities for fighting terrorism. If successful, this approach could build an enduring international order favoring our interests, but it requires compromise, enormous diplomatic effort, trust in allies to defend our interests they may not fully share, would make the U.S. complicit in other states' use of the organization for illicit purposes (for example, think Russia claiming all domestic opposition is terrorism, or China wanting an international force of prison guards in Xianjing). This alternative, too, requires a substantial time lag to implement and carries higher political costs for failure as 'outsourcing' U.S. security to international institutions.

BILATERAL SECURITY ASSISTANCE. Trains and equips indigenous forces to identify and fight emergent terrorists in their own territory. When successful, this approach offloads the work to governments accountable to their own people (where it properly belongs). But it is costly, requires a substantial time lag to implement, and often fails either because forces prove incapable or governments prove willing to make choices contrary to U.S. interests. Also, this has the 'School of the Americas' problem, wherein the U.S. provides military training without strengthening civilian institutions, and militaries take over the country and commit abuses. Still, this is the least politically costly approach.

The four presidential administrations have all adopted some elements of these strategies; it hasn't been a clean decision. (Policymakers typically hedge in implementation.) The Bush administration chose a high-cost strategy that maximized autonomy of decision and minimized the likelihood of any future attacks. Subsequent administrations have sought to reduce the costs of the Bush approach, but didn't really devise alternative strategies. For example, the Obama administration



Strategy is the practice of assessing alternatives.

sought to substitute civilian surges for military ones, but failed to produce them in either Iraq or Afghanistan. The Trump administration jettisoned multilateralism, reducing the effectiveness and increasing the cost of existing strategy. The Biden administration appears to be shifting to a narrower counter-terrorism strategy, but it's early yet in assess the consequences. (Obama attempted a similar shift in Iraq only to have to battle back ISIS.) Biden's approach is likely to require more bilateral security assistance to countries for which there may not be domestic support.

Each subsequent administration had the benefit of more information about the terrorist threats, established defenses against domestic attacks from foreign terrorists, and the benefit of time elapsed since the last successful foreign attacks, which reduces the potential political costs of choosing strategies with thinner margins of error. None of this relieves the Bush administration of responsibility for setting the course, nor regains the opportunities missed, nor exonerates any of the administrations for failing to produce actually integrated strategies.

The counterfactuals I wonder about most are two. Whether, if the Iraq sanctions regime had held together another couple of years, the Bush administration would have invaded Iraq? And if someone other than Donald Rumsfeld had been Secretary of Defense (with different constellation of Cabinet influence and downstream personnel consequences in DOD), would the policy and strategy have been different?

America's founding generations would be astonished at the breadth of power our country has acquired; the wealth and influence and strength the U.S. enjoys was their fond aspiration but a hundred years out of their grasp. They had to navigate an international order they were unimportant in, at the most an afterthought or a marginal consideration in the choices of states shaping the order.

While the autonomy of the 'unipolar moment' is overstated, the policy and strategy choices the U.S. made in the aftermath of the 9/11 attacks substantially increased the cost to the U.S. of shaping the order. The sources of U.S. strength are so various and difficult to replicate, we are likely to remain the shaping power, especially if one of the lessons we take from 9/11 is to conjure the mindset of a time when the United States was a weak power, incapable of setting and enforcing behaviors by other states. Recapturing the perspective of a weaker power would be so beneficial for U.S. grand strategy. Because humility not only becomes a great power, it increases that power.

Kori Schake leads foreign and defense policy studies at the American Enterprise Institute.

—
[1] It bears similarity to the conflation of leadership and management, where leadership is knowing where to go and management is figuring out how to get there. They're distinct from each other and management cannot be successful if leadership's vision is faulty. It's not so much the adage that if you don't know where you're going then any road will take you there, than it is perfect strategizing and execution are just expenditures of resources if the destination isn't superior to the starting point.

[2] This is even true of the Trump National Security Strategy and its much-praised downstream planning document the 2018 National Defense Strategy. It was actually the NDS that established China as the priority; it's much less clearly articulated in the NSS, and neither document states what our actual objectives are for policy toward China. The Trump administration, and the Biden administration have both failed to establish the end state we're attempting to achieve, and therefore their strategies are unmoored.





9/11 and a Practitioner's View of Our National Security Toolkit

Annie Pforzheimer, Center for Strategic and International Studies

Serving as a U.S. diplomat from 1989-2019 afforded a front-row seat to the 9/11 inflection point of U.S. grand strategy. After the attack, U.S. leaders turned naturally to the military to project American resolve and keep us safe, but twenty years later we are back to the relative insularity of the 1990's, uninterested in addressing other countries' problems by force and committed to bringing troops home. Greater reliance on military solutions sidelined the use of other items in the national security toolkit. Now that military solutions have proved ineffective or politically costly, we are not always able to provide policymakers with all the options they need to take on big challenges of the moment. In a complex world, we need to refocus our attention on these other tools and consider ways to use military force far more appropriately.

Before 9/11, the use of U.S. troops only uneasily found a place within strategic priorities in the Middle East, Balkans, and East Asia. Proxy wars abounded in the later Cold War period, but the U.S. military and intelligence community's operational roles were compartmentalized or completely secret. Even after the Cold War, troop safety was a major concern. The First Gulf War was characterized by restraint. In 1993, losing even a few soldiers in battle in Somalia became a political crisis, and a U.S. military ship sent to deliver humanitarian assistance in Haiti the same year was turned away by a small, less-armed force. But 9/11 shocked us to our core and changed our risk calculation. Like Pearl Harbor, the attack awoke in Americans a desire to pro-actively erase threats rather than merely defend or react against them. Calling our response to terrorism a "Global War" skewed our approach towards an expansion of military and intelligence spending, giving those agencies a far bigger voice in setting national security priorities. An August 2021 Harvard Kennedy School [report on U.S. war policy](#) characterizes pre-9/11 interventions after the Cold War as having humanitarian justifications but after 9/11 justified as defending and protecting the United States.

The national security toolkit is sometimes nicknamed "DIME" - an acronym for diplomatic, information, military, and economic aspects of power. (At the National Defense University, military colleagues reminded me that without them, it spells "DIE".) DIPLOMATIC and MILITARY tools have long historical usage and correspond to the biggest national security entities, the State and Defense Departments. INFORMATION functions relate to the use of knowledge to either understand or influence others. In this regard "public diplomacy" involves activities such as media relations, cultural events, and student exchanges. ECONOMIC elements of power include the carrots and sticks of international

investment, national security-related sanctions, banking regulations, trade compacts, and attempts to regulate and control the concurrent explosion of the illicit world economy, including terrorist financing.

While each tool has its function, funding, and fierce adherents, it is well accepted that they are best used in combination, or as a "whole of government" approach. Crisis-focused task forces at the National Security Council involve multiple agencies to solve a specific problem. Country teams at U.S. embassies have representatives from a wide range of government entities, including agricultural specialists, intelligence analysts, cultural affairs officials, federal law enforcement agencies, and the traditional political and economic diplomats, all operating under the guidance of the presidentially-appointed Ambassador.

During its brief 1990's unipolar moment, the U.S. used diplomatic, economic, and public diplomacy tools together in an ambitious pursuit of a post-Cold War "Community of Democracies." For a short time, the political winds blew against sizeable defense and intelligence budgets. Multilateralism was a key diplomatic channel, with a string of successful international peacekeeping and peace-making operations during that period, even as the UN remained on a short financial leash from the United States. Public diplomacy activities grew, including exchanges among young leaders from post-Soviet states and China, and opening of U.S. educational institutions to foreign students. Economic elements of national security came to the fore, primarily in the advancement of global trade and investment through major treaties such as NAFTA, intended to create a world that was commercially networked for good.

Fast forward to 9/11, and the strongly angry and fearful response by Americans marked their loss of confidence in their geographic remove from world conflicts. Going into battle made perfect sense as a response to an act of war, or as a pre-emptive action in Iraq to foreclose a threat of weapons of mass destruction fit with our desire to never again let a threat come to us if we had the chance to assertively go to it. While in the 1990's we expressed belligerence through limited use of air power, as in Kosovo, or we supported UN peacekeeping missions staffed by other nations' armies and police, within two months of the attack we had U.S. troops on the ground in Afghanistan and within two years, we had them in Iraq. Adjusted for inflation, in the decade after 9/11, military budgets [increased by 50 percent](#) while all other spending grew by 13.5 percent.



Pearl Harbor, Gulf War and 9/11 attacks.

But 9/11 shocked us to our core and changed our risk calculation. Like Pearl Harbor, the attack awoke in Americans a desire to pro-actively erase threats rather than merely defend or react against them.

Unfortunately, even enhanced military and intelligence capabilities cannot deliver a feeling of total safety from terrorism. While our Soviet enemy in the Cold War had been “easy to find, hard to kill,” the terrorist threat is the opposite. Attacks have continued worldwide, albeit at a reduced level, with new threats such as ISIS. To hit back at a terrorist cell requires a solid reading of the threat environment, the right technical capabilities, and a deep understanding of our targets – all of which need the skills and input of diplomats and allies.

The State Department’s ability to put forward diplomatic solutions immediately after 9/11 was hampered not only by its relative lack of funding and clout, but also by the perception that this tool was overly passive and time-consuming given the threat at hand. Military commanders sought and received latitude to act overseas without deferring to the Ambassador, a huge break with past procedure. In the mid-2000’s the State Department tried to create an expeditionary “Civilian Response Corps”, but Congress refused to fund it beyond pilot phases. The failure to make compromises at the UN Security Council in early 2003 that would have staved off the Iraq war was one diplomatic low point among many, as was Defense Secretary Rumsfeld’s 2003 insistence on excluding the Taliban from early Afghanistan negotiations. The energetic and optimistic U.S. military culture worked against more nuanced or hesitant analyses. Some military colleagues told me the State Department was a “can’t-do” institution, that said “yes, but” instead of “yes, sir.” Some of this criticism extended to instances when the State Department flagged issues of Afghan government weakness, which were in fact seminal.

Likewise, public diplomacy was a poor fit for urgent counter-terrorism needs, although it was often offered as a solution (like the idea of TV shows in Afghanistan showing “good cops”). Instead, it takes a long time to have impact, and even when successful, does not deliver spectacular or visible results. There have been public diplomacy successes post-9/11, like enhanced cultural and educational exchanges and networks of alumni who now lead companies and countries. But these programs have never been well resourced, and exchanges subsequently took a serious hit from four years

of “American First” jingoism and the cuts to visa access for students under the Trump administration and – in part due to Covid restrictions – have not yet rebounded under the Biden administration.

The economic instruments of power after 9/11 need re-thinking. The policies of the period focused on legitimate and rules-based economic activity as a moderating force in the world, through trade deals which knit together world economies and development that created a law-abiding and tax-paying middle class. But those deals brought hugely uneven prosperity; corruption undermined even the best-designed development approaches; and international criminals and terrorists adapted more quickly to globalization than our tools of financial and law enforcement cooperation.

We face international problems ranging from terrorism and insurgencies, to cyber and climate challenges and the growing predations of regional powers, with a deficient national arsenal of options.

We need all the tools, used all together, more than ever. Staying out of conflict is not always possible, so we still need military options; it’s as short-sighted to deny the role of military force as it is to overuse it. It is essential to prioritize alliances and multilateral diplomacy, particularly as NATO grapples with the fallout from Afghanistan withdrawal, and China challenges our political and economic positions in Latin America and Asia. We need to remember to give information tools the time and support they need, for generations to come, and to respond effectively to those left behind by globalization or struggling with corrupt leaders. Finally, opportunities are as important as threats. Today’s pandemic and global warming events have catalyzed a unique moment of public awareness of the need to work together as a planet, which we can only do if we use all the tools at our disposal.

Annie Pforzheimer is a Senior Non-Resident Associate at the Center for Strategic and International Studies, an Adjunct Professor at the City University of New York, and a public commentator on foreign policy.



Authorizing Military Force, Twenty Years After 9/11

Andrew Rudalevige, Bowdoin College

Three days after the 9/11 terrorist attacks, overwhelming majorities in Congress passed a joint resolution giving the president discretion “to use all necessary and appropriate force” to “prevent any future acts of international terrorism against the United States” by those who had “planned, authorized, committed, or aided” the “treacherous violence” of September 11.¹

Despite the broad language of this Authorization for the Use of Military Force (AUMF), legislators at the time stressed it embodied Congress’s prerogatives regarding war and peace. “By passing this resolution, we reaffirm our belief in our Constitution,” Senate Majority Leader Tom Daschle intoned. “By providing specific statutory authorization and by requiring continuing consultation between the President and the Congress, we also underscore the importance of the War Powers Resolution” (WPR).² Another senior senator, Joe Biden of Delaware, insisted the vote extended only limited discretion: “we do not say, pell-mell, ‘Go do anything, any time, any place.’”³ In the House, liberals like Rep. Peter DeFazio of Oregon praised changes to earlier drafts that “ceded too much authority to the executive branch.”⁴

Successive presidents have asserted their own authority to define what counts as war under the Constitution and to reinterpret the terms of the War Powers Resolution (WPR).

Twenty years later, though, many argue the version that passed did just that. The September 2001 AUMF has been used, somewhat “pell-mell,” as legal justification for American attacks on terrorist organizations that did not exist in 2001 and very far afield from Afghanistan.⁵ Meanwhile, successive presidents have asserted their own authority to define what counts as war under the Constitution and to reinterpret the terms of the WPR, defining “hostilities” down in such a way as to make that statute an even less effective barrier to the unilateral use of force. In 2021, the Biden administration expressed support for legislative efforts to revise the 2001 AUMF and repeal its 2002 Iraq stablemate.⁶ But meantime, authorizing the use of force remains largely a “blank check” in the hands of the president.

THE EXPANDING AUMF(S)

While the end of the U.S. war in Afghanistan in 2021 was controversial and chaotic, there is no doubt its start — against Osama bin Laden, al-Qaeda, and their Taliban hosts — was clearly authorized by the 2001 AUMF. As a result so, too, was the detention regime that arose to deal with what the Bush administration termed “unlawful enemy combatants.”⁷

But despite the 2001 authorization’s specific link to the “terrorist attacks that occurred on September 11, 2001,” over time it was invoked well beyond those boundaries.⁸ In 2014, the Obama administration argued that even though the so-called Islamic State (ISIS) had formed after the 9/11 attacks — and had even been repudiated by al-Qaeda — it was still the latter’s “associated” or “successor” force. Therefore, the 2001 AUMF applied to Operation Inherent Resolve against ISIS in Iraq, Syria, and elsewhere. And therefore, the requirements of the WPR that Congress grant specific authorization for the long-term use of American force were met. It is not clear how many degrees of separation presidential legal doctrine allows when connecting al-Qaeda and 9/11 to current operations. But such reasoning did extend the AUMF into Africa, largely in operations against al-Shabab. A June 2016 report to Congress listed operations in Afghanistan, Iraq, Syria, Yemen, Somalia, Djibouti, and Libya under the AUMF umbrella (further, four U.S. soldiers were killed in Niger in 2017 on another such operation.)⁹

The AUMF even reached to cover the use of force against the Syrian government — which has perpetrated many evils in recent years, but not the 9/11 attacks. When an American jet shot down a Syrian bomber in June 2017, the Trump administration argued that American forces would not be in Syria if not for the ISIS threat, and thus any “necessary and appropriate measure in support of counter-ISIS operations” was warranted.¹⁰

The 2002 Iraq AUMF is also worth noting in this regard. It was aimed at the threat posed to the United States by the Iraqi regime then in power, not generically applicable to the use of force within the borders of that nation under its post-Saddam government. But it, too, has been cited as legal authority for military action well past the conclusion of the Iraq War — most recently to justify the 2020 assassination of Iranian general Qassem Soleimani near Baghdad.¹¹



THE SHRINKING WPR

Even as post-9/11 AUMFs have been read broadly, the 1973 War Powers Resolution and Article I of the Constitution have been interpreted very narrowly. Article I gives Congress the power to declare war; the WPR requires legislative approval to introduce U.S. troops into sustained “hostilities.” But over time, presidents’ unilateral actions have created practical precedents that set aside the need for interbranch cooperation — and executive branch attorneys have built a latticework of supportive legal justification beneath them.

Sometimes the argument is that similar unilateralism has happened before.¹² There is of course a long history of presidents using force without congressional approval, in so-called “police actions” from the Barbary coast to Latin America. But while past practice does matter in Constitutional interpretation, until the Korean War such actions often reflected informal interbranch agreement about protecting U.S. commercial interests abroad. Dressing it up in doctrine changes the terms of engagement, as when the Justice Department’s Office of Legal Counsel (OLC) concludes broadly that presidents can use force short of “war” whenever they find an important “national interest” in doing so.¹³ War, the office argues — that is, “war in the constitutional sense” — means “prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period.”¹⁴ Presidents have rarely found that their preferred actions meet those definitions. This logic buttressed the Obama administration’s 2011 military intervention in Libya, and was expanded upon in a 2018 OLC opinion justifying the Trump administration’s 2017 and 2018 airstrikes in Syria over its use of chemical weapons.

Further, as former OLC chief Jack Goldsmith points out, the office has issued additional opinions that specifically underwrite presidential military action against terrorism. These claim that “the Constitution vests the President with the power to strike terrorist groups or organizations that cannot be demonstrably linked to the September 11 incidents, but that, nonetheless, pose a similar threat to the security of the United States and the lives of its people, whether at home or overseas.”¹⁵

The WPR, for its part, was enacted toward the tail end of the Vietnam War as a way for Congress to claw back a substantive role in decisions about the use of force. It has many drafting flaws that hinder that purpose.¹⁶ Even so, by its terms the WPR limits presidents from engaging troops in present or probable “hostilities,” especially beyond a 60-day window, unless there is (1) a declaration of war; (2) a specific statutory authorization; or (3) “a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.” The 2001 and 2002 AUMFs fall into the second category. Generally, presidential uses of force without congressional authorization have fallen into one or both of two categories: cases of self-defense, sometimes imaginatively defined, or in cases with wide multilateral support. (While the WPR specifically rules out inferring authority to use force from treaties, NATO and the UN nonetheless frequently appear in executive arguments on this point.)

As noted, the OLC justified Obama’s original involvement in Libya under his Article II powers, but did not address the legality of extending the military mission there past the 60-day “clock” embedded in the WPR. However, other administration lawyers argued that the Libya operation did not constitute “hostilities” under the terms of the WPR — thus, that law



December 2009 protest against the war, New York City. Photo by Felton Davis.

did not apply at all. In this reading, the WPR was meant (as Obama himself later said at a press conference), only for wars on the scale of Vietnam – “half-a-million soldiers there, tens of thousands of lives lost, hundreds of billions of dollars spent.”¹⁷ Like war itself, then, hostilities were now subject to definitional unilateralism unlikely to favor a Congressional role in authorizing force.

A NEW RESURGENCE REGIME?

The issue of the *National Journal* commemorating the first anniversary of the 9/11 attacks began with an essay arguing that “an invasion of Iraq requires the approval of Congress.”¹⁸ The application of the separation of powers to the use of force has been a constant theme over the past two decades.

But the answer has been largely constant as well. In some cases, Congress has granted the president wide discretion to act, writing blank checks to the executive branch. At other times presidents seem to have forged their own name on those checks. Either way, the four American presidents in office since 2001 have been able to use force in ways largely unfettered by the legislative branch.

Will that continue? In the 1970s, in the wake of Watergate and Vietnam, Congress acted to create a “resurgence regime” of new statutes and institutions designed to increase legislative relevance and rein in presidential power.¹⁹ That regime

largely crumbled, though, as Congress failed to live up to its own expectations or affirm its own institutional relevance. Sometimes this abdication flowed from principled decisions about the best locus for decision-making.²⁰ More often it flowed from legislative paralysis caused by division over the merits of a given policy, reinforced by the lockstep loyalty demanded by contemporary partisanship. It doesn’t hurt that demurring from responsibility allows legislators to complain about presidential action without being accountable for its results. (See: Afghanistan, 2021.)

Congress has granted the president wide discretion to act, writing blank checks to the executive branch.

Still, recent years have seen at least the stirrings of institutional pride on Capitol Hill. Donald Trump’s aggressive claims of unilateral authority prompted bipartisan votes to end U.S. involvement on Saudi Arabia’s side of the proxy war in Yemen and even, after the Soleimani strike, to “terminate the use of United States Armed Forces for hostilities against the Islamic Republic of Iran... unless explicitly authorized by a declaration of war or specific authorization for use of military

force against Iran.” Trump vetoed all of these, calling the last “very insulting.” Legislators were unable to muster the two-thirds majorities needed to override him. But while the Biden administration has not reversed recent presidencies’ interpretations of Article II’s inherent authorities, it did back away from the Yemeni war and support the repeal of the 1991 and 2002 AUMFs. In March 2021, the White House also endorsed “a narrow and specific framework” to replace the 2001 AUMF, so long as it “will ensure we can protect Americans from terrorist threats while ending the forever wars.”²¹

What such a replacement should look like in the statute books is a tricky question. Some in Congress want to simply empower the president. Others want to limit his autonomy: yet specifying enemies risks simple rebranding efforts by terrorist groups; specifying geography risks their quick relocation; specifying time or tactics risks handcuffing military effectiveness. Even repealing the 2002 AUMF has attracted opposition: Sen. Marco Rubio warned in 2021 against providing an opening that “our adversaries would use... to their advantage.”²² A grander bargain forged by senators ranging ideologically from Bernie Sanders to Mike Lee, proposes to replace and upgrade the WPR by redefining the range of presidential autonomy, sunseting all authorizations (thus requiring a Congressional vote to continue rather than stop a war), and using the power of the purse to defund unlawful uses of force.²³

There are of course risks to increasing legislative involvement in national security decision-making. But the “blank check” approach allowing unchecked intervention carries even greater risks to constitutional and congressional responsibilities — of war driven not by deliberation but by inertia, and of the unaccountable commitment of American lives to military endeavors that lack popular support or understanding. If the question is law over politics, the “lawfare” army of the executive branch will tend to prevail. But these are political questions, in the noblest sense of that phrase.²⁴ And a robust debate over the separation of powers is twenty years overdue.

Andrew Rudalevige is the Thomas Brackett Reed Professor and chair of the Government and Legal Studies Department at Bowdoin College.

-
- [1] As well as those who had “harbored” the perpetrators (i.e., the Taliban regime in Afghanistan). The joint resolution was passed in the House 420-1 and in the Senate 98-0, both on September 14, 2001, and signed into law as P.L. 107-40.
- [2] *Congressional Record* (September 14, 2001), S9459.
- [3] Quoted in Gene Healy, “9/14 Changed Everything,” Cato Institute (September 14, 2017), <https://www.cato.org/blog/9/14-changed-everything>.
- [4] *Congressional Record* (September 14, 2001), H5633.
- [5] Brian Finucane, “Putting AUMF Repeal Into Context,” JustSecurity (June 24, 2021), <https://www.justsecurity.org/77088/putting-aumf-repeal-into-context/>.
- [6] Giving the president power to “use the Armed Forces of the United States as he determines to be necessary and appropriate... against the continuing threat posed by Iraq” and enforce UN Security Council resolutions demanding Saddam Hussein forswear weapons of mass destruction; this provided authorization for the war that began in March 2003. The 1991 authorization for the first Gulf War also remains on the books as of this writing — as does a 1957 resolution allowing Pres. Dwight Eisenhower to use force in the Middle East against “armed aggression” driven by “international communism” remains on the books. (That last one expires when “when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions.”) See Charles D. Stimson, “Why Repealing the 1991 and 2002 Iraq War Authorizations Is Sound Policy,” Legal Memorandum #256 (January 6, 2020), Heritage Foundation.
- [7] See *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).
- [8] Charlie Savage, “Is the U.S. Now at War with the Shabab? Not Exactly,” *New York Times* (March 15, 2016).
- [9] In November 2016, the administration announced a legal opinion assigning not just al-Shabab leaders but the entire group to those culpable for the September 11, 2001, attacks. Yet al-Shabab did not exist until 2006. See Charlie Savage, Eric Schmitt, and Mark Mazzetti, “Obama Expands War with Al-Qaeda to Include al-Shabab in Somalia,” *New York Times* (November 28, 2016). At present the roster of groups the Biden administration claims are covered by the AUMF is not publicly available.
- [10] See the State Department’s August 2, 2017, letter to Senate Foreign Relations Chair Bob Corker (R-TN), <https://s3.documentcloud.org/documents/3911844/8-2-17-Corker-Response.pdf>.
- [11] See the Trump administration’s 2020 notification at <https://www.documentcloud.org/documents/6776446-Section-1264-NDAA-Notice.html>. The Iraqi government itself did not see Soleimani as a threat and denounced his assassination as a violation of the current agreement allowing U.S. troops to operate there.
- [12] From a 2011 OLC opinion: “In this context, ‘the pattern of executive conduct, made under claim of right, extended over many decades and engaged in by Presidents of both parties, “evidences the existence of broad constitutional power.”” The array of quotation marks reflect the OLC citing itself citing itself (in this case, the 2011 opinion cites a 1994 opinion that quotes a 1980 opinion). See OLC, *Authority to Use Military Force in Libya* (April 1, 2011), p. 30 (available at <https://www.justice.gov/sites/default/files/opinions/attachments/2021/02/18/2011-04-01-libya-deployment.pdf>).
- [13] OLC, *Authority to Use Military Force in Libya*.
- [14] OLC, April 2018 *Airstrikes Against Syrian Chemical Weapons Facilities* (May 31, 2018), pp. 18ff (available at <https://www.justice.gov/olc/opinion/file/1067551/download>), which also quotes the 2011 opinion extensively.
- [15] Goldsmith, “The Ease of Writing an OLC Opinion in Support of Military Action Against North Korea,” *Lawfare* (September 14, 2017), <https://www.lawfareblog.com/ease-writing-olc-opinion-support-military-action-against-north-korea>.
- [16] See, e.g., Andrew Rudalevige, *The New Imperial Presidency: Renewing Presidential Power After Watergate* (University of Michigan Press, 2005), pp. 192-200.
- [17] See Obama’s June 29, 2011, press conference, available at <https://obamawhitehouse.archives.gov/the-press-office/2011/06/29/press-conference-president>.
- [18] Stuart Taylor, Jr., “An Invasion of Iraq Requires the Approval of Congress,” *National Journal* (August 31, 2002).
- [19] Rudalevige, *New Imperial Presidency*; see also James Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings Institution, 1981).
- [20] See John Dearborn, *Power Shifts: Congress and Presidential Representation* (University of Chicago Press, 2021).
- [21] Finucane, “Putting AUMF Repeal Into Context”; White House press office tweet (March 5, 2021), <https://twitter.com/PressSec/status/1367825692205998081>.
- [22] Catie Edmondson, “Debate Over Presidential War Powers Sets Up Test for a Divided G.O.P.,” *New York Times* (August 4, 2021).
- [23] Introduced as the National Security Powers Act; see Andrew Desiderio, “Unlikely Senate Alliance Aims to Claw Back Congress’ Foreign Policy Powers ‘Before It’s Too Late,’” *Politico* (July 20, 2021).
- [24] Sarah Burns, “Legalizing a Political Fight: Congressional Abdication of War Powers in the Bush and Obama Administrations,” *Presidential Studies Quarterly* 51 (September 2021): 462-91.



Presidents, Congress, and the Partisan Politics of War

William Howell, University of Chicago



In August of 2021, Joe Biden finally brought America’s longest war to an end. After 20 years in Afghanistan, the president reasoned, continued investments in blood and treasure could no longer be justified. With the decision to withdraw, however, came a series of catastrophes that, among many other things, unleashed longstanding and familiar dynamics in the domestic politics of war.

The execution of the U.S. military’s withdrawal from Afghanistan proved disastrous from the very start. Within a matter of days, hours even, a Taliban insurgency walked over an Afghan army the United States had spent decades funding and training. Moments later, the Taliban toppled a secular government that successive presidential administrations—Democratic and Republican alike—had insisted was up to the task of holding and governing a country. Tens of thousands of Afghans desperately sought to escape the country—some, so much, that they clung to the landing gear of American planes departing Kabul. Amidst the hordes surrounding the capital airport, a suicide bomber killed thirteen U.S. service members and more than 150 Afghan civilians. In response, the American military launched a drone attack against suspected Islamic State perpetrators—only to mistakenly kill ten innocent civilians, including a U.S. aid worker and seven children.

Tragedy after mishap after blunder, and Congress stepped into the fray. In the weeks that followed, at least four Democratically controlled committees in the House and Senate launched hearings into the bungled withdrawal. Secretary of Defense Lloyd Austin, Secretary of State Antony Blinken, and the Chair of the Joint Chiefs Mark Milley all were called before committees demanding explanation.

These hearings, to be sure, represented a genuine congressional rebuke, the likes of which Biden had yet to face as president. But upon closer examination—of the hearings themselves, and of the statements made by committee members—they were far from the reckoning that many thought deserved. Indeed, the hearings may even *help* Biden as he tries to deflect blame and regain his political footing. Rather than belabor what Senate Foreign Relations Chair Bob Menendez called a “fatally flawed” withdrawal, the Democratic Senator promised to scrutinize “the many mistakes made over the course of twenty years” in Afghanistan, the lies told by past administrations about the preparedness of the Afghan military and government, and even the 2020 Taliban surrender deal negotiated by Donald Trump.¹ Similarly, Senator Chris Murphy, who chairs a Foreign Relations subcommittee on the Middle East, said that the committee should “go on the offensive” in highlighting the failures that long pre-dated Biden’s decision to withdraw.²

A variety of factors help to explain Congress’s rather tepid response to an unmitigated foreign policy disaster. The rapidity of the Taliban’s ascension and President Ashraf Ghani’s exile caught some members by surprise, and they were reluctant to get out in front of a news cycle that they didn’t entirely understand. Other members supported the decision to withdraw; and while they had definite concerns about its execution, they too thought that the war finally needed to end, come what may. A substantial body of research, however, underscores the importance of a third factor: the partisan composition of Congress.³ For all that makes this long, troubled war exceptional, the partisan, inter-branch politics that undergird it remain in keeping with past trends.

Congress's propensity to criticize the president for foreign policy blunders crucially depends upon who controls the House and Senate. During periods of unified government, Congress is usually reluctant to cast a bright light on presidential failures abroad; rather, majority party leaders

The heightened differentiation between the two parties, combined with the strengthened loyalty within them, accentuates the relevance of Congress's partisan composition for presidential decision-making.

recast objective failures as further justification for an original policy decision. These failures, they say, reveal the depravity of an enemy, the vital stakes of a military venture, or, in this present moment, the unwillingness of a sitting government to do its part to suppress an insurgency. That Ghani's government fell so quickly, Biden has argued, only reinforces the original decision to withdraw. As Biden declared the day after the Taliban entered Kabul, "If Afghanistan is unable to mount any real resistance to the Taliban now, there is no chance that 1 more year, 5 more years, or 20 more years of U.S. military boots on the ground would've made any difference."⁴ Even as they conduct their investigations, congressional Democrats are dutifully reiterating this line of reasoning.

Conversely, during periods of divided government, foreign policy failures reliably yield recriminations on Capitol Hill. For both electoral and policy reasons, the opposition party has ample incentives to highlight the foreign policy blunders of a sitting administration—one, its members ardently assert, that lacks the judgment, character, and acumen needed in our nation's highest office. When U.S. servicemen die unnecessarily, when the government fails to achieve its foreign policy objectives, when the president and those who serve him fumble on the international stage, members of the opposition party are reliably among the first to cry foul. And when they control the House and Senate, they can deploy the considerable powers vested in Article I to lambaste and undermine the president.

One can only imagine, therefore, how a Republican majority would have handled Congress's response to the Afghanistan withdrawal. Given Republican Representative Mike Johnson's statement that the withdrawal "makes Benghazi look like a much smaller issue," we might take the Benghazi investigations—which dogged Hillary Clinton throughout her 2016 campaign and well after—as a useful point of comparison.⁵ After an American diplomatic compound was attacked in 2012, Republicans launched six separate investigations in the

House, the last of which did not conclude until 2016. In their final reports, Republicans accused President Barack Obama and his closest allies of willful ignorance and deception. As evidence that the investigations were successful, Republican House majority leader Kevin McCarthy pointed out that Clinton's "numbers are dropping"—an admission, many thought, of the investigations' true motives.⁶ If Republicans controlled the House today, you can rest assured that they would choreograph hearings that damage the president.

Recognizing these political dynamics, presidents are more inclined to take risky actions abroad when their party maintains control of the House and Senate. On average, they exercise military force with greater frequency, they respond more quickly to foreign crises, and they sustain operations for longer periods of time. This basic relationship undergirds the willingness of presidents, all presidents, to assume the risks of war.

Now, of course, the unfolding events in Afghanistan concern the withdrawal of troops, not the initiation of a new military venture or the escalation of an existing one. Still, Biden's actions are broadly consistent with the deeper lessons of the existing use-of-force literature. Politically, the easy decision for Biden would have been to maintain a modest level of troops, and to hand a troubled occupation down to his successor, just as a troubled occupation had been handed down to him. By terminating a decades-old occupation, Biden pursued a path of decisively greater resistance. His willingness to do so was buoyed by the knowledge that the Democrats in control of the House and Senate would not zealously deploy Congress's investigatory, oversight, legislative, or budgetary powers to punish the president if—and, as it turns out, when—the policy's execution deviated from its initial planning.

Of course, domestic and international politics have changed dramatically since the beginning of the Afghanistan War. At home, the two major parties have undergone significant transformations. Moreover, during this same period, the ability of the United States to build a coalition of allies in support of a military venture has diminished, perhaps dramatically. Still, the partisan factors that define congressional-presidential relations in matters involving war continue to hold sway. And they are likely to do so for the foreseeable future.

Let's consider the domestic political arena first. Here, the ideological divisions between the parties have only grown more acute since the attacks on September 11, 2001, just as cohesion within their ranks has hardened. The Democratic Party is slightly more liberal than it was when George Bush originally assumed office. The Republican Party is markedly more conservative. And the rank-and-file members of both parties are slightly more likely to walk in lockstep behind their leaders. These basic facts have had huge consequences for the production of laws, the prevalence of scandals, and the representation of public interests in elite politics. For the most part, however, they serve to reinforce—rather than disrupt—preexisting political dynamics in matters relating to war.



The heightened differentiation between the two parties, combined with the strengthened loyalty within them, accentuates the relevance of Congress's partisan composition for presidential decision-making. Facing a Congress controlled by an ideologically more hostile and uniform opposition party than was typical in the post-War era, presidents have reason to proceed even more cautiously in matters involving war. And should their own party control the House and Senate, presidents can proceed with an even greater measure of confidence that Congress will stand down when the costs of war materialize.

What, then, about the foreign landscape? Here too, much is in flux. In the main, though, the events of the last 20 years underscore the U.S. military's limited capacity to promote, support, and sustain democracy abroad. The waste and carnage of the Afghanistan War coupled with the abject failures of the Iraq War and the State Department's halting diplomacy under the Trump administration have not only undermined U.S. hegemony abroad. They also have reduced the chances that allies will join us in common military causes, just as they have hardened the resolve of adversaries to fight. "The spontaneous and unrestrained wave of post-9/11 sympathy has transformed itself into anti-Americanism," write Stefan Halper and Jonathan Clarke. "[A]lliances painstakingly built up over half a century have been deconstructed, and multilateral institutions, most brought to life by American inspiration, have been diminished."⁷

These developments have two immediate consequences for presidents as they contemplate military action abroad. Directly, by raising the costs of war, they will depress U.S. military engagements with the outside world. It is difficult to imagine Biden launching some far-flung adventure with the troops he has recently brought home. Indirectly, meanwhile, these developments will fortify the dynamics that govern presidential-congressional relations in matters involving war. Finding it more difficult to build a broad international coalition in support of a military action, presidents, when opting to press forward, will either have to go it alone or else make a more convincing case for action. And when the costs

of future wars are born, as they invariably will, presidents will be left alone to rationalize them. Politically more vulnerable and exposed, co-partisans will have even more reason to rush to their president's aid, political opponents will sharpen their attacks, and partisan divisions will continue to animate the domestic politics of warmaking.

A debate has already taken hold about the significance of the Afghanistan War for the trajectory of U.S. foreign policy. There is good reason to believe that the long-overdue termination of this war will change the trajectory of U.S. foreign policy. The promotion of liberal democracy will no longer justify military action, occupations will not follow invasions, and Defense Department arguments on behalf of ongoing ventures will face heightened scrutiny. Amidst all this, though, the longstanding partisan politics that have defined interbranch relations over war are likely to persist—and may even become more pronounced—in the years ahead.

William Howell is the Sydney Stein Professor in American Politics at the University of Chicago.

[1] Bob Menendez, Opening Remarks, Senate Foreign Relations Committee Hearing on U.S. Withdrawal from Afghanistan, September 14, 2021, <https://www.foreign.senate.gov/press/chair/release/chairman-menendez-delivers-opening-remarks-at-full-committee-hearing-on-us-withdrawal-from-afghanistan>.

[2] Andrew Desiderio, "Dems Fret over How to Unearth Afghanistan Failures without Hitting Biden," *POLITICO*, September 17, 2021, <https://www.politico.com/news/2021/09/17/democrats-afghanistan-biden-failures-512279>.

[3] See, for example, William Howell and Jon Pevehouse, *While Dangers Gather: Congressional Checks on Presidential War Powers* (Princeton University Press, 2007); Douglas Kriner, *After the Rubicon: Congress, Presidents, and the Politics of Waging War* (University of Chicago Press, 2010); Helen Milner and Dustin Tingley, *Sailing the Water's Edge: The Domestic Politics of American Foreign Policy* (Princeton University Press, 2016).

[4] "Remarks by President Biden on Afghanistan," August 16, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan/>.

[5] Bill Powell, "After Kabul Attack, Biden Faces Benghazi-Style Backlash over Bungled Withdrawal," *Newsweek*, August 30, 2021, <https://www.newsweek.com/after-kabul-attack-biden-faces-benghazi-style-backlash-over-bungled-withdrawal-1623540>.

[6] Alex Moe and Carrie Dann, "McCarthy Links Benghazi Panel, Clinton's Sinking Poll Numbers," *NBC News*, September 30, 2015, <https://www.nbcnews.com/politics/2016-election/mccarthy-links-benghazi-panel-clintons-sinking-poll-numbers-n436151>.

[7] Stefan A. Halper and Jonathan Clarke, *America Alone: The Neo-Conservatives and the Global Order* (New York, NY: Cambridge University Press, 2004), 2.



Courts and Inconsistent Presidential Positions in Foreign Affairs

Jide Nzelibe, Northwestern Pritzker School of Law

It is almost an article of faith among both political scientists and constitutional scholars that presidents are empire builders who will seek to maximize their institutional flexibility in foreign policy. Correspondingly, we tend to think that presidents will have predictable policy biases in foreign policy because of their institutional outlook. But what happens when politicians seek to impose constraints on their foreign policy powers in ways that seem inconsistent with their perceived institutional biases? Alternatively, what happens when presidents engage in striking reversals in their institutional positions on key foreign policy issues across electoral cycles?

This essay suggests that although these anomalies may not be widespread, they occur with sufficient regularity to be of both theoretical and practical interest. But more importantly, they may also have significant implications for judicial oversight in foreign affairs. Dramatic swings in institutional or policy preferences by presidents across electoral cycles may encourage judges to be less deferential in foreign affairs controversies. In this picture, it will be more difficult for federal judges to sustain the pretense that presidential policy preferences on foreign affairs reflect institutional judgments regarding the national interest rather than partisan or factional considerations.

Dramatic swings in institutional or policy preferences by presidents across electoral cycles may encourage judges to be less deferential in foreign affairs controversies.

EXAMPLES

Consider these instances when presidents (and their co-partisans) have gone against the grain of their perceived institutional biases, or have reversed institutional preferences across electoral cycles:

● It was Trump, an avowedly pro-market Republican, who embraced a stridently nationalist posture in international trade policy, which went against the grain that presidents tend to be more pro-free trade while Congress tends to be more protectionist;

● It was Obama and his co-partisans in Congress who proposed restrictions on his 2015 request for authority to fight ISIS in Syria and Iraq, while Republicans in Congress attacked the same proposal for not giving Obama enough flexibility;

● It was the Obama administration in 2015 that denied a cross-border permit for the transnational Keystone Pipeline for environmental reasons, only to have the Trump administration reverse course and grant the permit, which was then rescinded again immediately the Biden administration stepped into office. Also, such a similar pattern of presidential passage and repeal across partisan lines prevailed on yet another international environmental issue, the Paris Accords);

● It was the Obama and Carter administrations that filed briefs before the Supreme Court arguing that federal courts should have leeway to adjudicate on human rights violations abroad under the Alien Tort Statute, and it was the Bush II, Reagan, and Trump administrations that reached an opposite conclusion due to separation of powers concerns.

THE SOURCE OF THE INCONSISTENCIES: WHEN PARTISAN JUDGMENTS TRUMP INSTITUTIONAL PREFERENCES

In a heavily polarized environment, certain partisan actors may sacrifice policy flexibility on one dimension, especially if that dimension is not of particular value to them but happens to be of significant value to the political opposition. *Presidents (and their co-partisans) may then allow their preferences for avoiding unfavorable policy outcomes to override their preferences for maintaining flexibility on low-value issues.* At bottom, such reversals of preferences across electoral cycles may simply reflect the result of new information about the distributive impact of ongoing institutional arrangements. Initially, when groups are uncertain about the likely effects of a specific interpretation of a foreign affairs power, they may all converge on favoring presidential flexibility. However, as soon as they learn how different interpretations may constrain new and salient policy goals, such as the domestic implementation of human rights treaties, they may revise their previous preferences.

Thus, when security issues become salient and seem to benefit politicians of the right, it may not be farfetched to witness left-leaning Democrats seeking to constrain the war-powers authority of their co-partisan in the White House, especially if their downstream goal is to constrain the national security flexibility of future Republican presidents. Similarly, Republicans may seek to increase constraints on the domestic



effects of human rights treaties, regardless of the occupant of the White House. Conversely, it may make sense for Republicans to seek to lower constraints on presidential war powers or international trade authority, while Democrats may prefer to lower constraints on the President's authority on international environmental issues.

To be clear, the claim here is not that any deviation from the standard account of institutional preferences in foreign policy can be explained largely by partisan factors; on the contrary, there are likely going to be deviations from expected policy or institutional positions that are genuinely ad-hoc or random. Rather, the narrower claim is that some of these deviations are systematic enough to warrant revisiting some aspects of the conventional account, including the possible role of judicial deference to the President in foreign affairs.

IMPLICATIONS FOR JUDICIAL DEFERENCE

The traditional argument for deference is that presidents are more accountable than Congress in foreign affairs because of their national orientation and their perceived superior sensitivity to the interests of foreign states. To the extent that presidents across the political aisle stake out similar (or the same) institutional preferences across electoral cycles, claims of deference seem somewhat justifiable. However, once this consensus breaks down, and partisan factions believe that a certain interpretation of foreign affairs authority will further or undermine their interests, the rationale for judicial deference starts to weaken.

There is a simple reason why inconsistency in foreign policy positions may be particularly conducive to judicial intervention. Under certain circumstances, a norm of consistency may serve as a surrogate for the judicial norm of

Not all policy inconsistencies will likely raise judicial eyebrows, but sudden and dramatic vacillations in presidential policy may increase the risks of judicial intervention.

impartiality in the sense that it demands that similar classes of cases be treated alike. Of course, not all policy inconsistencies will likely raise judicial eyebrows. But sudden and dramatic vacillations in presidential policy or institutional positions that remain unexplained, or that do not take into account significant reliance interests, may nonetheless increase the risks of judicial intervention.¹ This is especially likely when the policy is supposedly rooted in the President's institutional expertise, which should not flip every electoral cycle. Justice Gorsuch, a skeptic of deference in the administrative state, couches the conventional concern about inconsistencies in rule interpretation in similar terms:

[T]hese days it sometimes seems agencies change their statutory interpretations almost as often as elections change administrations. How, in all this, can ordinary citizens be expected to keep up—required not only to conform their conduct to the fairest reading of the law they might expect from a neutral judge . . . And why should courts, charged with the independent and neutral interpretation of the laws Congress has enacted, defer to such bureaucratic pirouetting?²

So when are courts likely to pay less deference to the President when there are swings in foreign policy positions? My own hunch is less judicial deference is likely when the following conditions hold: (1) there is a significant foreign policy change or institutional preference reversal without any reasoned explanation (i.e., an implied partisan motivation); (2) a plausible claim that the President ignored statutory or constitutional requirements; (3) prior justifiable reliance by domestic actors on the original policy position such that a sudden change may constitute an unfair surprise; and (4) the ability of such actors to demonstrate concrete economic (and not merely expressive) injury as a result of the policy change.

How empirically plausible are these risks of judicial intervention? There are some recent examples. Take, for instance, the inconsistent positions by various presidential administrations over the merits of adjudication under the Alien Tort Statute (ATS). During one such position reversal in the *Kiobel* case, Obama's Solicitor General Verilli was pressed by a skeptical Justice Scalia during oral argument: "Why should--why should we listen to you rather than the solicitors general who took the opposite position and the position taken by Respondents here in other cases, not only in several courts of appeals, but even up here?"³ Yet another more recent example was when former President Trump abandoned the longstanding practice of presidential restraint on the use of Section 232 of the Trade Expansion Act of 1962, which permits the imposition of tariffs on national security grounds. That decision led to a flood of lawsuits in which some courts proved willing to abandon traditional judicial restraint on foreign affairs and rule against the President on procedural and constitutional grounds. Perhaps in an earlier period, norms of presidential cooperation across electoral cycles on foreign policy would have prevented the kinds of constitutional controversies that would lead courts to reach such decisions on the merits.

Jide Nzelibe is The Benjamin Mazur Summer Research Professor of Law at Northwestern Pritzker School of Law.

—
Author's Acknowledgments: For helpful comments on a previous draft, I am grateful to Sarah Kreps, Douglas Kriner, William Howell, and other participants in the 9/11 Anniversary Workshop hosted by Cornell University.

[1] See Kent Barnett & Christopher J. Walker, *Chevron in the Circuit Courts*, 116 Mich. L. Rev. 1, 64-66 (2017).

[2] *Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 S. Ct. 789, 790-91, 206 L. Ed. 2d 266 (2020) (statement of Justice Gorsuch).

[3] Transcript of Oral Argument at 43-44, *Kiobel v. Royal Dutch Petroleum*, No. 10-1491 (U.S. Oct. 1, 2012) (No. 10-1491), available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2011/10-1491.pdf.

The 9/11 Anniversary Workshop

Co-hosted by IOPGA in New York City in September 2021

After Afghanistan: American Foreign Policy after 20 Years of War

A Congressional Policy Forum. Twenty years after 9/11, America finally ended its longest war. But the precipitous fall of Kabul serves as a poignant reminder that the threats to American national security remain acute and are ever-evolving. Members of Congress reflect on the tumultuous past two decades and offer insight into the future of American foreign policy.

Speakers: Rep. Jim Himes (CT-D) and former Rep. Christopher Shays (CT-R)

Speakers: Former Rep. Steve Israel and Professor Sarah Kreps

The Future of U.S. Grand Strategy

This first of two workshop panels explores the past, present, and future of U.S. Grand Strategy in the two decades after 9/11. Panelists explore how polarization, public opinion, and recent experience will shape the future course of U.S. foreign policy.

Speakers: Dan Drezner (Tufts), Stephen Walt (Harvard), and Kori Schake (American Enterprise Institute)

Discussant: Ricky Clarke (Cornell)

Domestic Politics & U.S. Foreign Policy

This second of two workshop panels explores how domestic politics have shaped American policy since 9/11. Panelists explore how Congress has both abetted, but also constrained presidential conduct of foreign affairs; emerging legal battlegrounds; and how domestic politics has shaped the tools of foreign policy over time.

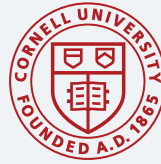
Speakers: Andrew Rudalevige (Bowdoin), William Howell (Chicago), Annie Pforzheimer (Center for Strategic & International Studies), and Jide Nzelibe (Northwestern)

Discussants: Douglas Kriner and Sarah Kreps (Cornell)

Financial support provided by the Charles Koch Foundation.

A publication of the

Institute of Politics
and Global Affairs



Cornell Brooks
Public Policy

Bipartisan Policy Review



Follow us on Twitter
@IOPGACornell.



Visit and subscribe to our
YouTube Channel.

For information on the
Institute of Politics and Global Affairs
at Cornell University,
please contact (516)801-6991
iopga@cornell.edu

The Institute is dually located in the
New York Metro Area and Ithaca, NY.

iopga.cornell.edu