

On Target: Predicting Whether Defense-Related Legislation Will Follow its Intended Purpose

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Abstract

Using the 2001 *Authorization for Use of Military Force*, I create a predictive theoretical framework to determine whether or not defense-related legislation will follow its intended purpose. I articulate the factors of the framework through an organizational approach and test and compare my findings with two other notable pieces of defense legislation: the National Security Act of 1947 and the War Powers Act of 1973. In doing so, I hypothesize triggering events to which new legislation responds, internal actors in the policy stream, and external pressures outside the policy stream are the strongest factors that affect whether or not defense-related legislation will follow its intended purpose when enacted into law. In applying this framework, I find these factors to hold some predictive value, but that internal agents in the policy stream to be the most salient in determining if a piece of defense legislation will detract from its purpose; I find external pressures outside the policy stream hold the least predictive value.

1 Introduction: A Nation Shaken and the 2001 AUMF

“I can hear you! I can hear you! The rest of the world hears you, and the people who knocked these buildings down will hear all of us soon,” President George W. Bush proclaimed just a few days after 9/11 (Williams 2021). Backed by Americans’ unified resolve to defend their country’s interests and values in the face of an unprecedented threat, Bush lobbied Congress for greater autonomy to act to neutralize terrorist threats. Receptive, Congress approved an *Authorization for Use of Military Force* (AUMF), hereafter referred to as the 2001 AUMF.

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The 2001 AUMF has become one of the most controversial pieces of legislation in American history. Namely, because it was/is not used for its intended purpose. It has been used for more than two decades to justify the surveillance of Americans conducting foreign phone calls without a warrant, attack the Islamic State of Iraq and Syria (ISIS) 15 years after the attacks, and conduct strikes on the Syrian government in 2017 – just to name a few. This paper evaluates the circumstances surrounding the passage of the 2001 AUMF and the unique, bipartisan nature between Congress and the executive that enabled its broad application. In doing so, I create a qualitative framework of predictive value. The qualitative variables I utilize include 1) trigger events to which the legislation responds, 2) internal agents in the policy stream, and 3) external pressures outside of the policy stream. I test and apply these variables to my case base, the 2001 AUMF, and to the 1947 *National Security Act* (1947 NSA), and the 1973 *War Powers Act* (1973 WPA). I find hypothesis two is most salient in this framework and that external pressures – proximal distance to the next presidential election – considered in defense legislation to have less predictive value.

2 Literature Review

Triggering events to which legislation responds, internal actors in the policy creation stream, and external pressures on policy creation strongly determine the efficacy of aligning policy creation and implementation. The public and political perception of triggering events affects the extent to which a commensurate response will occur. John Kingdon notes a “focusing event,” such as a crisis or disaster (the triggering event), is required such that it garners attention by the public and policymakers as an indicator of a larger problem (Kingdon 2014). Additionally, in order for a focusing event to gain enough prominence to warrant political action, Kingdon argues any three of the following conditions must already be present to gain public salience: 1) the focusing event already reinforces a pre-existing perception of a problem; 2) the focusing event serves as an early warning for future, similar events to occur; and 3) the focusing event has occurred before and is therefore not merely a coincidence to dismiss (*ibid.*). With this said, there is an element of past or suspected recurrence that exists throughout all these conditions. In addition, Thomas Birkland argues, in order for a focusing event to actually induce change, it must produce a high level of “aggregated harm,” coupled with rarity (Birkland 1997). Said harm must not already be “pre-aggregated;” in other words, it must not already be a harm factored into the public’s psyche, such as (as unfortunate as it is) freak car crashes or plane crashes that produce casualties (*ibid.*). With this said, an event hence qualifies as a triggering event if it features an element of rarity or intense surprise, recurrence, and a noticeable aggregation of harm.

Public views and legislation action expressed by internal actors in the policy stream are affected by the public’s perception of a triggering event (for the purposes of this paper, internal actors will consist of Congress and the executive branch). It is then reasonable to assume highly publicized triggering events will find subsequent non-partisanship among the internal actors, and therefore creates lasting change: this is not always true. The publicized triggering event may find polarization in diagnosis of failure and/or response. Daniel Mallinson argues “polarization introduces greater friction in policymaking, so it’s harder to change the

status quo, but when you do, the change is bigger” (Tutella 2024). In other words, the presence of friction during policy creation (intra-Congress and alongside the executive branch) increases the probability of incremental, narrow change that does not actually address an ongoing problem. Polarization is a normal and expected aspect of “punctuated equilibrium” that marks U.S. politics: legislative periods of small, incremental change or stasis for an extended period of time and then a more drastic change that breaks decades-old status quo politics (ibid.).

To be clear, polarization is not unique to Congress; it can also occur between Congress and the President. The President, for example, can utilize “veto bargaining” in the pre-passage phase of legislation (Guenther and Kernell 2020). Threatening to veto a piece of legislation before it is voted on realigns the content of the bill in favor of the President’s agenda, but later creates inevitable friction as to how, specifically, the bill will be implemented once finally adjusted due to the executive’s disdain for certain language of the bill. In the wake of the COVID-19 pandemic, for example, the White House and Congress were in agreement in their messaging that new legislation must be passed to relieve Americans. Passed by the Senate chamber in a 92-6 vote, this \$1.4 trillion relief bill included almost \$900 billion in COVID-19 related relief to Americans; nonetheless, President Trump threatened to veto it (while ultimately signing it into law) (PBS News 2020). Later, Republicans in Congress alleged President Biden misused these appropriated funds (Budget Committee 2022). Additionally, President Obama threatened to veto (and did veto) the Justice Against Sponsors of Terrorism Act (JASTA), a 9/11-centric bipartisan bill that allowed Americans to sue foreign governments suspected of supporting terrorism and tailored towards Saudi Arabia (The White House 2016). His veto was overridden. As shown, even though a focusing event might render a bipartisan solution, the Congress and President might disagree as to its language and implementation as operationalized through veto bargaining. Polarization and tension, intra-Congress or between Congress and the President, makes long-term solutions less capable of providing an adequate response to the focusing event.

In addition to the internal actors within the policy stream, external pressures on policy creation affects the implementation of policy (for the purposes of this paper, external pressures will be operationalized to “temporal distance to the next election”). First, it is critical to understand how internal actors vote in relation to their status in any given electoral cycle. Sunil Ahuja finds senators who are facing re-election are far more responsive to their constituency’s preferences than when not facing re-election (Ahuja 1994). Further, those senators who are two years away from their re-election are more likely to display greater responsiveness to their constituent’s preferences than when four years away from re-election (ibid.). Charles Cnudde and Donald McCrone likewise find that, when closer to an election, members of Congress more closely align their voting behavior to that of their electorate (Cnudde and McCrone 1966). In doing so, they introduce legislation often regarded as political grandstanding: introducing the legislation for the purpose of scoring political points rather than actually affecting policy. As elections are the most visible form of accountability from the voter to their elected leaders, members of Congress will gain more votes in their next election cycle through this strategic political option (Park 2023). Simply put,

the temporal distance to an any given future election affects how a member of Congress acts. Henceforth, with presidential election years yielding the greatest percentage of voters, members of Congress that introduce pieces of legislation proximally closer (within two years) to the next presidential election are less concerned about the actual implementation of the legislation and more concerned about scoring political points (Leighley and Nagler 2014).

3 Developing a Framework

The passage of legislation occurs in a complex and unpredictable environment of competing priorities between stakeholders. The environment changes rapidly and undeniably affects the speed of passage and implementation and scope of its proposed purpose. As a profession, the military serves the Constitution and follows the legal orders of the commander in chief; however, it is important to recognize and predict when the intended purpose of legislation primarily implemented by the defense establishment might be led astray. This ultimately affects the civil-military relationship that is so critical for the U.S. military's license to protect American interests.

Utilizing an organizational approach of analysis and studying the 2001 AUMF and other defense legislation, I perceive and evaluate the dynamics of that environment. I propose that analyzing three substate factors provides insight into whether legislation will achieve its intended purpose. These three factors – the triggering event to which the legislation responds; policy creation within Congress and alongside the executive in the pre-passage phase; and electoral proximity – will comprise my framework to predict how military-related legislation will be interpreted and enacted compared to its intended purpose, by which I refer to the extent to which the implementation of legislation follows in accordance with the language, wording, and spirit of the legislation when enacted according to Congress.

The first factor is 1) *Trigger events to which the legislation responds*. This includes the events – such as natural disaster, crisis, or attack – that shape the environment and serve as the direct cause for the passage of the new legislation. Typically, these events pose a grave and immediate threat to the loss of American lives but are reactive to singular circumstances. Additionally, for the sake of this paper, I assume these events include some sort of unaggregated harm to catch enough public attention to inspire political change: the American public did not already expect this event to occur.

Because of this, legislatures act rapidly with narrow and relatively inflexible legislation to directly counter the event in a measurable way. Military legislation that is “narrow” are those that specifically names groups to be targeted, DoD or executive branch entities to execute tasks, places general dates of reporting or time frames to Congress (such as sunset clauses) – specific, measurable words that enables a stakeholder to align its implementation to its wording. However, risk of recurrence for these events also has a palpable effect on how legislation is written. If politicians, the American people, or media perceive the threat likely to recur frequently, legislation is more likely to be broadly written. This perception of recurrence exists if there is widespread conversation and/or agreement in public discourse

or in polling. And, broadly written language is assessed as no mention of targets or groups, no mention of DoD or executive agencies to execute tasks, or has language that enables preemptive action.

Narrowly written legislation, if used beyond its initial singular circumstances, is not prone to overstep or misuse from its intended purpose. The converse is true of broadly written legislation. From this, hypothesis one is summarized as follows:

- **Hypothesis 1a:** Triggering events without risk of recurrence will elicit a narrow response and follow its intended purpose.
- **Hypothesis 1b:** Triggering events with risk of recurrence will elicit a broader response and not follow its intended purpose.

The second factor is 2) *the internal agents in the policy stream*. Internal agents include the groups and entities responsible for physically writing and negotiating legislation. For the purposes of this paper, it includes the White House and Congress engaged in passing legislation. In situations where a piece of legislation has bipartisan support (60% (threshold to overcome filibuster in senate) or more of both chambers vote “yea”) intra Congress, it is more likely to follow its intended purpose. The institutional levers of oversight in Congress will outlast a single two-year session of Congress such that continued re-evaluation of the law’s implementation and effectiveness occurs. However, because the executive branch executes and implements the law, cohesion between Congress and the White House is critical in the pre-passage phase. For the purpose of this paper, cohesion and bipartisanship between Congress and the White House includes no threat of veto by the President in the pre-passage phase. If Congress and the White House maintain bipartisan work on a piece of legislation in the pre-passage phase, the law will follow its intended purpose. Conversely, legislation that undergoes a lack of bipartisanship within Congress and between Congress and the White House will not follow its intended purpose. With this, hypothesis two is as follows:

- **Hypothesis 2a:** Legislation that has bipartisan support intra Congress AND between Congress and the President in the pre-passage phase is more likely to follow its intended purpose.
- **Hypothesis 2b:** Legislation that does not have bipartisan support intra Congress and/or between Congress and the President is more likely to be adapted away from its intended purpose.

The third factor is 3) *the external pressures outside of the policy stream*. An external pressure refers to non-policy related compulsion that affects the wording and language of a particular piece of legislation. The temporal proximity to an election or reelection – i.e. how soon the lawmakers involved will be answerable to constituents through re/election – is an example. I define legislation with “close temporal proximity” as that which passed within two years of a presidential election, whereas “distant in proximity” is any time outside this period. This clearly creates different timelines and incentives not only between the executive and legislative branches, but within the legislative branch’s chambers. However, given voter behavior, presidential election years exert the strongest influence.

When officeholders are close to election, they are more concerned about credit claiming and political grandstanding; for this reason, legislation passed closer in proximity to an election will be more likely to be drafted with vague language but addresses popular objectives. Because of this, there is less focus on ensuring the legislation is implemented the way it was meant to be implemented. Put another way, the legislation is passed with more regard for gaining votes than making a lasting difference. Therefore, legislation passed in close proximity to an election is less likely to measurably follow its intended purpose. Conversely, legislation passed in distant proximity to an election is more likely to undergo robust political debate and review, and hence is more likely to achieve its ends. Hypothesis three is summarized below:

- **Hypothesis 3a:** Legislation passed in distant proximity to the next presidential election will follow its intended purpose.
- **Hypothesis 3b:** Legislation passed in close proximity to the next presidential election will not follow its intended purpose.

4 The 2001 AUMF - Intent Versus Implementation

When President Bush entered the White House 2001, foreign policy was low on the list of priorities. The attacks on September 11, 2001, which killed 2,996 Americans, shook the soul of the nation, and heralded a paradigmatic shift in American and global security priorities. Initially, despite a national rally around the flag, Congress was wary of granting President Bush too much authority. The White House submitted an initial draft of the AUMF requesting the authority “to deter and preempt any future acts of terrorism or aggression against the United States,” to which was rejected by Congress, citing its overly broad language (Abramowitz 2002). Members of congress, such as Oregon Congressman Peter DeFazio urged caution on executing military operations indiscriminately and without specific regard for the attackers responsible during open debate, noting that doing so would only perpetuate cycles of violence within the Middle East (U.S. Congress. House of Representatives 2001). With this, the intent of the 2001 AUMF was refocused so that the President could “...use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001” (Congress.gov 2001). Nonetheless, no specific mention to Al-Qaeda was included in the language of the legislation, as their public designation as the 9/11 attackers was not made until six days after the 2001 AUMF passage in President Bush’s address to Congress (The White House 2001). California Congresswoman Barbara Lee was the only “nay” vote in Congress, in which she argued the AUMF provided for insufficient congressional oversight of President Bush’s actions (Lee n.d.). President Bush and the Pentagon could now legally execute missions towards nations or groups that had direct, or tangential, interaction with 9/11.

President Bush refocused U.S. interests on international terrorism launching a “Global War on Terror” (GWOT) with the 2001 AUMF as the enabling legislative vehicle. The opening salvo of the war targeted the Taliban regime in Afghanistan, which had provided tacit support

and shelter for the Al Qaeda hijackers. The U.S. demanded the regime turnover all Al-Qaeda fighters and their leader Osama Bin Laden to the U.S. and terminate terrorist training camps. Following Taliban noncompliance, President Bush announced the first military campaign against Al-Qaeda on October 7, 2001: Operation Enduring Freedom. The U.S. military began the campaign with aircraft operations and strikes on 31 targets; within a week and a half, U.S. and coalition forces established “target zones” within Afghanistan to strike vulnerable areas and regions (Ball 2005). Within months, U.S. and coalition forces had already destroyed 11 training camps and 39 Taliban Command and Control nodes sites (U.S. Department of State Archive n.d.). Though the 2001 AUMF enabled the U.S. military to prosecute targets directly related to 9/11, its intent was quickly sidestepped to achieve ulterior political and military objectives by the Bush Administration.

The 2001 AUMF served as legal justification for the passage of domestic policy objectives, overstepping legal norms and expanding the law’s interpretation. The most notable of which is the highly controversial NSA program dubbed the “terrorist surveillance program” (TSP) (Intel.gov 2013). In 2004 and 2005, reports circulated that the NSA was conducting wire-tapping operations on Americans in an affront to their fourth amendment rights (Risen and Lichtblau 2005). In response, the Department of Justice (DOJ) claimed GWOT was qualification for applying the fourth amendment’s provision for ‘... warrantless searches where ‘special needs, beyond the normal need for law enforcement’...” (U.S. Department of Justice 2006). Above all, the DOJ asserted “... The President’s authority to authorize the terrorist surveillance program is firmly based both in his constitutional authority as Commander-in-Chief, and in the Authorization for Use of Military Force (AUMF) passed by Congress after the September 11 attacks” (ibid.). In other words, the DOJ believed the 2001 AUMF provided legal justification for surveilling law-abiding Americans suspected to be conducting nefarious international calls with potential terrorists loosely connected with Al-Qaeda.

Beyond the Bush Administration, Barack Obama, Donald Trump, and Joe Biden have all legally justified military operations using the 2001 AUMF. President Obama’s administration authorized deployments, airstrikes, and military offensives in June of 2014 to respond to ISIS – a group incepted 15 years after 9/11 – stating these actions were “... taken pursuant to his constitutional and statutory authorities, including the authority provided in the 2001 AUMF” (U.S. Archives 2004). President Obama also relied on the 2001 AUMF to justify the use of attacks by military drones against al-Shabaab in Somalia and the Khorosan Group in Syria (Bradley and Goldsmith 2016). Additionally, President Trump, responding to the Syrian government’s use of chemical weapons against its own people in 2017, launched a series of airstrikes targeting the Syrian state and its military again citing the 2001 AUMF as legal justification (Siemion 2017). Most recently, in 2022 President Biden cited the 2001 AUMF as justification for the raid that killed the leader of ISIS, Abu Ibrahim al-Hashimi al-Qurayshi in Northern Syria (Berger 2022).

5 Applying the Framework: 2001 AUMF

This section explores whether the above hypotheses provide predictive utility to make sense of the distortion of the 2001 AUMF as a case study of legislation that has exceeded its mandate. Treating the 2001 AUMF as the base case, I also apply the framework to two other pieces of legislation to compare my findings. These pieces of defense-related legislation include the 1947 NSA and the 1973 WPA.

To begin applying the framework, I first compare the wording of the law to the actions and/or inactions as a result of its implementation. Then, I test each hypothesis. In the case of the 2001 AUMF, President Bush was authorized to “... use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001” (U.S. Congress. Senate n.d.)

Beginning with hypothesis 1, the horrific terrorist attacks of 9/11 cost thousands of American lives and was one of the largest triggering events in American history. Within a week of the attacks, 73% of Americans believed another terrorist attack would occur “soon” and this belief affected their emotional well-being and behavior (Pew Research Center 2001). The American people expected another 9/11 to occur again. Therefore, hypothesis 1a is null and void, and hypothesis 1b is applied to determine predictive value: triggering events with risk of recurrence will elicit a broader response and not follow its intended purpose. When examining the language of the legislation, there is no mention of specific groups, entities, targets, DoD entities to execute tasks, or timelines to report back to Congress. Hence, it is broadly written.

Continuing with hypothesis 2, the 2001 AUMF enjoyed bipartisan support within Congress. It passed the senate chamber by a 98-0 vote, as well as a 420-1 vote by the House of Representatives (it exceeds the 60% threshold of support by both chambers) (U.S. Congress. Senate n.d.). Although Congress initially rejected the first White House draft language, there was generally consensus and bipartisan effort between both the White House and Congress (no veto threat occurred because an AUMF cannot be vetoed) to pass the AUMF. Because of this, hypothesis 2a is applied: legislation that has bipartisan support intra Congress AND between Congress and the President in the pre-passage phase is more likely to follow its intended purpose. Because hypothesis 1b and hypothesis 2a are both applied, there is a neutral prediction, as of now, as to whether the 2001 AUMF will follow its intended purpose. Now, hypothesis three is applied to break the tie!

Recall that hypothesis concerns the efficacy of a law’s implementation as a function of its proximity to the next presidential election. Because the 2001 AUMF was approved by Congress outside of a two year window of the 2004 presidential election (it has distant proximity to the next presidential election), hypothesis 2a is applied. It would then follow, because 2a is applied, that the 2001 AUMF would follow its intended purpose. The AUMF was signed within a year of President Bush’s first term and – given the severity of 9/11 –

there was no incentive to conduct political grandstanding or gain political points through this period of national mourning. And, though the premise of hypothesis 2a presupposes the legislation undergoes rigorous debate and thorough triage to ensure it is implemented the way congress intends it to be implemented, the 2001 AUMF was approved within 10 days of the attacks. Nonetheless, hypothesis 3a will remain.

To be clear, the application of hypothesis 3a tilted the framework's prediction towards the notion that the 2001 AUMF would follow its intended purpose upon passage. As this legislation is hallmarked as adapting away from its intended purpose, my qualitative framework provided adverse predictive value in this application.

6 Comparison 1: the National Security Act of 1947

To compare the framework's predictive power, I will test it against the National Security Act of 1947. Unlike the 2001 AUMF, I perceive this legislation as following its intent. The National Security Act launched "a major restructuring of the U.S. government's military and intelligence apparatus in the years following WWII" (National Security Archive n.d.) The U.S. position as a leading global superpower after WWII required a national security apparatus: one that could effectively deter the Soviet threat and maintain America's pre-eminence on the world stage. The National Security Act of 1947 created the National Security Council, Central Intelligence Agency, and the office of the civilian Secretary of Defense.

The intent of the National Security Act of 1947 was to: "promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security" (*National Security Act of 1947* n.d.).

Congress and the White House were in accord Communism was a recurring threat to American interests. Some in Congress sounded the alarm over the communist threat through the "Red Scare," fearful that the communist regime sought to actively work and shape policy in the State Department and had waged ideological warfare against capitalism and Christianity (McCarthy 1950). Additionally, President Truman announced the "Truman Doctrine" in 1947, whereby the U.S. would provide extensive military, economic, and political aid to countries seeking to eradicate the threat of communism (Office of the Historian n.d.). It is important to note that, unlike the language of the 2001 AUMF, the 1947 NSA is written much more narrowly, although the threat of recurrence remained. Specific tasks are enumerated to the executive branch as to which departments to create; these departments were mandated to report to Congress, annually, in a national security strategy report and from the director of national intelligence; and limits were placed on the appropriated dollars expendable to conduct these actions. For this reason, neither hypothesis 1a nor 1b can be fully applied - there is a threat of recurrence *and* the law is narrowly written. Therefore, hypothesis 1 is not used for testing.

With the creation of a national secretary, interagency heads within the Department of War feared their departments would lose influence and be ultimately subordinate to the Army (National Security Archive n.d.). Namely, Navy Secretary James Forrestal believed a unified secretary defense, with authority over all departments, would draw away appropriations and weaken the Navy, as well as Marine Corps aviation (ibid.). As a compromise, each department agreed to not merge, but to give general authority to the Secretary of Defense "... with the caveat that individual secretaries would administer the three departments as separate units" (*National Security Act of 1947* n.d.). In other words, each department secretary still retained the ability to independently operate their own department, but the Secretary of Defense would coordinate work between them.

As one can see, there was disagreement as to what a solution to a centralized military looked like, but this occurred largely within the executive branch and not between the executive branch and Congress. Notwithstanding, President Truman strongly recommended its passage by Congress in the pre-passage phase (Truman 1947). Further, the 1947 NSA passed both chambers of Congress through a voice vote, signaling a high degree of bipartisanship (and it certainly crosses the 60% threshold) (Central Intelligence Agency 2003). Because of this, hypothesis 2a is applied: this legislation had bipartisan support intra Congress AND between Congress and the President in the pre-passage phase. Before applying hypothesis three, my qualitative framework currently predicts that the 1947 NSA will follow its intended purpose. Now, for hypothesis three.

The 1947 NSA, in contrast to the 2001 AUMF, was passed within one year of President Truman's presidential re-election in 1948. For this reason, hypothesis 3b is applied. Recall that hypothesis 3b would predict that this piece of legislation will not follow its intended purpose because it is passed in close proximity to the next presidential election. For this reason, there is a "tie" in that, hypothesis 2a predicts that the 1947 NSA will follow its intended purpose whereas hypothesis 3b argues the opposite.

In review, hypothesis 1 was not applied towards the 1947 NSA because the language of the bill was quite specific in actioning tasks for department creation in addition to the recurring threat of communism (the triggering event in this case). Hypothesis 2a was applied because this piece of legislation enjoyed bipartisan support both within Congress and between Congress and the Executive Branch. And, because the 1947 NSA was signed within a year of the next presidential election, hypothesis 3b was applied. Because both hypothesis 2a and 3b are applied, a "neutral" or prediction is rendered.

Historically, the 1947 NSA is lauded as a consequential piece of legislation that enabled the U.S.'s success in the Cold War. In line with its objectives, it successfully unified the defense apparatus, reorganized how intelligence is collected, and created the NSC and CIA. Scholar William Inboden writes "It created the broad institutions for the statecraft of national security while allowing ample latitude for adaptation and evolution across very different eras including the Vietnam War, post-Cold War, the 9/11 age, and beyond" (War on the Rocks 2017).

7 Comparison 2: the War Powers Act of 1973

In addition to the National Security Act of 1947, I apply the framework to the War Powers Act of 1973 (1973 WPA). The 1973 WPA was signed into law in the aftermath of the U.S. invasion of Cambodia. In March of 1970, Prince Norodom Sihanouk, the Cambodian head of state, was overthrown (Drivas 2011). The Nixon administration felt Cambodia was at risk of falling into Communist hands and would ultimately reduce the bargaining position of the U.S. in settling the Vietnam war (ibid.). President Nixon failed to consult Congress before committing ground troops to Cambodia; and, not only was Congress not notified beforehand, but the invasion was a violation of territorial sovereignty of a state considered neutral during the Vietnam War (Willmott 1967). The executive's flagrant regard for Congress's constitutional role as the sole body for declaring war flustered the body, and, in turn, demanded that the president's power to commit acts of war be more accountable to Congress. For, prior to this time, presidents had occasionally made acts of war without the expressed approval of Congress - but never had the White House at such scale skirted Congress or ignored the American people in doing so (Redmond 2015). A series of executive failures to notify Congress of acts of war - the Gulf of Tonkin, invasion and air campaign of Cambodia, and the Vietnam War - exacerbated Congress's trust. In response, Congress sought to limit the President's ability to wage war without the expressed consent of Congress through the 1973 WPA (Richard Nixon Museum and Library n.d.).

The stated intent of the 1973 WPA was "to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations" (*STATUTE-87-Pg555.Pdf* n.d.).

The legislation reasserted Congress's authority in foreign wars and to limit the president's ability to take military action by requiring the President to notify Congress within 48 hours of military action and prohibits armed forces from remaining for more than 60 days.

What is peculiar about this piece of defense legislation is that is what not written in response to an immediate, externally-inducing triggering event. Though one could argue that there was, indeed, an indirect, ongoing threat that a future President's reckless actions might endanger American lives because he did not receive congressional authorization to inject U.S. forces into conflict, I would argue that this surely would satisfy the "internal agents in the policy stream" hypotheses and does not satisfy the spirit of applying hypothesis one. The internal agent - the executive branch - caused a crisis of institutional trust, not of American lives, respectively. With this said, the 1973 WPA passed the House of Representatives with 59% voting "yea" and 79% voting "yea" from the Senate (Congress.gov 1973). Though not fully 60% approved in the House as articulated in hypothesis two, I believe one can assume risk and say that any margin of error for the hypothesis would accept this. Now, to the executive. A presidential veto! For this reason, hypothesis 2b is applied: there was

not bipartisan work both between Congress and the executive branch in the pre-passage or passage phase.

Examining hypothesis 3, the 1973 WPA was passed 3 years away from the presidential election of 1976. From this, hypothesis 3b is accepted and applied. To be fair, there was tremendous political capital to be gained by Congress; this law was popularly supported among their constituents and allowed them to stomp on the message that they would prevent another Vietnam from happening. Nonetheless, the inflexible nature of hypothesis 3b ensures its application.

As a review, hypothesis one was not applied because the event taking place is induced by the internal agent, and not the external circumstances. Hypothesis 2b was applied as President Nixon vetoed the legislation - the strongest indication of a lack of bipartisanship between Congress and the executive branch. Recall this predicts the legislation will not follow its intended purpose. Then, hypothesis 3b was applied; the 1973 WPA was passed in distant proximity to the next presidential election, which predicts the legislation will follow its intended purpose. We are at a "theoretical tie" with no tiebreaker. Thus, a neutral rating is given.

In retrospect, presidents have routinely circumvented the intended purpose of the WPA legislation. In 1981, President Reagan failed to properly notify Congress about committing U.S. troops to El Salvador; in 1999 Bill Clinton continued a bombing campaign in Kosovo beyond the 60-day limit; and President Obama initiated military action in Libya without congressional authorization required by the War Powers Act (Richard Nixon Museum and Library n.d.). And, this is just a start of major violations of the law. Though this law undoubtedly moved the goalposts with regard to executive transparency in times of war (the President has notified Congress pursuant to the 1973 WPA 130-plus times) his law failed and continues to fail in following its intended purpose (Elsa 2022).

8 Analysis and Implications

Upon examination of the 2001 AUMF, 1947 NSA, and 1973 WPA, it appears hypothesis two is the most salient predictor, and has a clear, outsized impact on the probability a piece of defense-related legislation will follow its intended purpose. There are a multitude of reasons that this hypothesis seems to be more predictive than the others. Beginning with hypothesis one, though a triggering event undoubtedly affects the volume of defense-related legislation, clarity as to the likelihood of recurrence is often not agreed upon in a straightforward manner between the legislature and the executive branch – blurring the intent of the legislation, and later, its implementation. For example, though the nation felt another 9/11-type attack was imminent, no one knew what this attack would look like. Although there are clear differences in a legislation's language (i.e. narrowly or specifically written) that makes predicting its implementation possible, the shared understanding of recurrence to the triggering event is not straightforward to quantitatively measure.

Hypothesis three is not as predictive as hypothesis two because the unique, (mostly) nonpartisan nature of defense legislation better insulates itself from political grandstanding. While most politicians might try to gain political capital through a large, omnibus fiscal appropriations bill, defense-related legislation is treated differently by members of Congress. The gravity of protecting America's national security associated with defense legislation ensures gaining political points is limited - though not entirely. Because of this, I believe the temporal proximity of the passage of defense-related legislation to the next presidential election is not as critical to determining whether or not a piece of defense-related legislation will follow its intended purpose. Finally, I believe hypothesis two - discerning whether or not there is bipartisan intra-Congress *and* between Congress and the executive - to be the most salient predictor of whether or not defense-related legislation will follow its intended purpose because, above all, the executive branch is the sole agency charged with enforcing and implementing law. A veto, or veto-threat by the President, will strongly correlate to a piece of legislation that does not follow its intended purpose upon passage. This is certainly the case with the 1973 WPA; Nixon's veto indicated his desire to guard the executive's institutional and informational advantage and tools in wartime - a desire every subsequent commander in chief has shown through their violation and rationale. A united Truman administration and Congress led to the overwhelming success of the 1947 NSA in creating the necessary apparatus to defend America's interests against the Soviet Union in the Cold War, as well as ubiquitous threats of today. To be fair, there was intense agreement between the White House and Congress through the 2001 AUMF passage and yet, this piece of legislation has not followed its intended purpose. I argue this piece of legislation is a "wildcard" of sorts in the realm of defense-related legislation because of the incredibly broad nature in which it was written.

Future research could address this question by exploring these themes more deeply and directly through quantitative methods. Additionally, expanding the number of case studies (i.e. defense-related legislation) could make the results clearer and more robust. Because of the narrow application of only these three initial trial cases, I recommend this framework undergo more rigorous testing to confirm the validity of these three hypotheses and implications of their interaction. Further, given the tightly coupled nature of defense legislation to other policy areas, potential avenues for future research using a similar framework could address other salient issues, such as healthcare, social security, immigration, and tax reform. Ultimately, it seems likely that these or similar variables will be indicative of legislative success for a variety of interests with diverse implications for the health of America's legislative legitimacy.

9 Conclusion

Research into whether defense legislation is used according to its intended purpose is important because it affects the civil-military relations that are critical for the U.S. military to operate. Because of this, policymakers play an integral role in how the American people trust and view the military, fair or not. Amidst topical concern that alleges of a more political military, predicting the future of whether defense legislation will accomplish its intended

purpose has never been more important. To better democratize how the U.S. military conducts its operations, it is imperative pieces of legislation include narrowly tailored language such as sunset clauses, reauthorizations, specific mention of agencies to implement tasks, and reporting requirements. This will allow the American people to be informed when going to the ballot box.

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