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HEIRS TO THE NIGHTMARE: GERALD FORD, JIMMY CARTER,  
AND THE POST-IMPERIAL PRESIDENCY

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JASON MAXWELL FRIEDMAN

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of the requirements for the

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HEIRS TO THE NIGHTMARE: GERALD FORD, JIMMY CARTER, AND THE  
POST-IMPERIAL PRESIDENCY

By

Jason Maxwell Friedman

A DISSERTATION

Submitted to  
Michigan State University  
in partial fulfillment of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY

History

2009

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**2009**

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## **ABSTRACT**

### **HEIRS TO THE NIGHTMARE: GERALD FORD, JIMMY CARTER, AND THE POST-IMPERIAL PRESIDENCY**

By

Jason Maxwell Friedman

The American Presidency faced a fundamental crisis in the 1970s as questionable domestic and international endeavors sullied its reputation in the eyes of the American public. My dissertation is a thorough-going revision of the way historians have looked at the Ford and Carter presidencies. I argue that after the twin traumas of Watergate and the failures of the Vietnam War, the American Presidency faced a fundamental crisis. Gerald Ford and Jimmy Carter faced the three-fold task of restoring domestic comity in government, restoring the separation of powers in government, and restoring Americans' faith in government. I conclude that Ford and Carter offered reconciliation after a long series of abuses. My work rejects the prevailing caricature of Ford and Carter as weak aberrations between the strong presidencies of Nixon and Reagan. They understood that Americans needed reassurance that they still lived in a republic – not a monarchy – where no one was above the law.

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I am grateful to the  
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ment and abroad. I  
want to thank my friend  
for feedback on my  
work they offered me  
Zena, Ted and John  
it has been with me

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I also want to thank Kirsten Fermaglich and David Bailey. Over the years they have read numerous chapter drafts and were invaluable as dissertation committee members. They helped me work out questions about political symbolism and the bigger picture of 1970s America. Along with the other committee members, Gordon Stewart and Sandra Schneider, they helped me collect my thoughts and transform my research into my dissertation.

I am also grateful to the history department at Michigan State University for its financial support. The department has been extremely helpful and supportive as I traveled the country and abroad, conducting my research and presenting my findings. Furthermore, I want to thank my friends and family who have helped me along the way. I appreciate all the feedback on my research my friends have provided over the years as well as the escape they offered when I needed a break from my work. Lastly, I want to thank my parents, Ted and Iris Friedman, for their encouragement, and my wife, Sandra Friedman, who has been with me ever since I first decided to go to graduate school.

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CHAPTER 2

Jeff Ford and the War of 1812.....

CHAPTER 3

Jeff Ford and the War of 1812.....

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## CHAPTER 1:

### Introduction

In 2001, Texas Governor George W. Bush moved into the White House as America's forty-third president. Elected with a razor-thin mandate (especially in light of the Supreme Court battle that precluded his victory), President Bush sought to unify a nation preoccupied with the sexual mores of his predecessor, Bill Clinton. However, as Bush's presidency progressed, Americans discovered a presidential attribute far worse than an overactive libido. Now in 2009, in the wake of Bush's eight years in office, Americans are again recovering from an imperial presidency. The list of power assertions and imbroglios during the past eight years rivals Richard Nixon's dirty tricks and the parallels between the Iraq War and the Vietnam War are ubiquitous amongst pundits and politicians alike. From questions over abuses of executive privilege to questionable foreign policy decisions, the new millennium bares striking resemblances to the Johnson and Nixon years. With America looking to Barack Obama for reconciliation, the time is right to re-examine the two presidents who last inherited an imperial presidency and how they moved towards reconciliation.<sup>1</sup>

Thirty-five years ago the institution of the American Presidency faced a fundamental crisis as questionable domestic and international endeavors sullied its reputation in the eyes of the American public. Though from different political parties the two presidents of the late 1970s, Gerald Ford (1974-1977) and Jimmy Carter (1977-1981), both faced a public distrustful of the White House. They also faced Congresses

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<sup>1</sup> The headlines are riddled with stories of the imperial Bush presidency. For example, James Risen and Eric Luchtblau, "Bush Lets U.S. Spy on Callers Without Courts", *New York Times*, (December 16, 2005), A1; Sheryl Gay Stolberg, "Bush Asserts Executive Privilege on Subpoenas", *New York Times* (June 29, 2007), A1; Jim Rutenberg and Steven Lee Myers, "Rove Will Resign as Bush Adviser at End of Month", *New York Times* (August 14, 2007), A1.

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**inclined** to act on its own, taking a more engaged and proactive role in government. **These** two Presidents presented a vision of government that respected the separation of **powers**, regardless of party lines, and recognized that the powers of the President had **been** stretched too far. However, such endeavors required more than a change of leaders; **they** required a change in leadership style and in the choices leaders made.<sup>2</sup>

While presidential power is not inherently bad, by 1974 it had been used too frequently for nefarious ends. Together Vietnam and Watergate represented the epitome of efforts by sitting presidents to use the reach of the government for political gain. Though many in Congress remained divided on where the nation should go next, they understood that America was in turmoil and redress was needed. These events and others made Americans and politicians aware of a disturbing trend: the power of the president, which had been in a state of steady expansion for some time, had reached crisis levels. Just how long is a question of historical debate however most scholars argue that Lyndon Johnson's deceptions and Richard Nixon's hubris were only the tail end of a long series of abuses and power expansions.

Gerald Ford and Jimmy Carter took office at a time when Americans were frustrated and unsure of their government. Inspired by the language of President Abraham Lincoln's second inaugural address, Ford and Carter once again sought to "bind

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<sup>2</sup> For a discussion of the ebb and flow of Congressional power see for example, Gordon S. Jones and John A. Mariani, eds., *The Imperial Congress*, (New York: The Heritage Foundation, 1988). Ford sought from the beginning of his time in office to be as accessible as possible. Ford noted, "It's the quality of the ordinary, the straight, the square that accounts for the great stability and success of our nation. It's a quality we be proud of. But it's a quality that many people seem to have neglected." Though Ford said this before he took office, *Time* magazine cited this in August after Ford took office as evidence that Ford knew what was right for the nation. See "A Man for this Season", *Time* (August 19, 1974), 27-33; "Off to a Helluva Start", *Time* (August 26, 1974), 52-53.

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up the nation's wounds."<sup>3</sup> I argue there were three points of tension that emerged from the imperial presidency, three rifts that required reconciliation. The first factor is domestic comity, there needed to be a return of cordiality and respect amongst the branches of government.<sup>4</sup> During Lyndon Johnson and Richard Nixon's tenures in office, the president did not fully respect Congress and the Courts, and in Nixon would often not even acknowledge Congress' right to be heard. Gerald Ford spent his entire Washington career as a member of Congress, building a reputation as a courteous and polite politician. As president, Gerald Ford brought that attitude to the White House.

Gerald Ford reflected,

Coordination between the two branches was obviously to be encouraged. The brilliant system of checks and balances which the Founding Fathers devised was not meant to breed constant,

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<sup>3</sup> Often times Ford and Carter would quote Lincoln or employ his line in their efforts. For example, when Ford introduced his earned reentry program from draft resisters, he said his actions stemmed from his determination "to do everything in my power to bind up the nation's wounds." Like Lincoln before them, Ford and Carter recognized the need for national reconciliation. The nation as a whole needed to move past dark times and they needed to lead the nation through the shift. See Gerald Ford's, Remarks, "Program For The Return of Vietnam Era Draft Evaders and Military Deserters: The President's Remarks Announcing The Program. September 16, 1974," *Weekly Compilation of Presidential Documents* Volume 10, number 38 (20 September 1974): 1149-50.

<sup>4</sup> Comity is an antiquated term meaning civility and urbanity. Politically it means the courtesy by which political actors respects the laws and powers of other actors. For the purposes of this dissertation, I use it in a domestic context, where members of American government, i.e. the president and congress, respect the separation of powers and each other. For a cogent discussion of comity and a concrete definition of the word's denotation and political connotation see Eric Uslaner, "Comity in Context: Confrontation in Historical Perspective," *British Journal of Political Science*. (January 1991), 47-53, especially 48. Though not relevant to this dissertation, it is important to note that the legal concept of comity is not confined to the American context. Any time two legal actors interact, the question of comity can be raised. For example, in *An Imperfect Union: Slavery, Federalism, and Comity* (1981). Paul Finkelman added further context for the concept of comity. Finkelman discussed the development of comity between northern freedom law and southern slave law in antebellum America. When judges heard cases of runaway slaves the notion of comity struck a balance as judges were torn as to which state's laws to apply. His book applied a legal analysis of the right to travel (with property) and the balanced application of state laws necessary for national harmony. With this he discussed the gradual breakdown of interstate comity as the union developed (continuing to the Civil War). See Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity*, (Union, New Jersey: The Lawbook Exchange, Ltd., 1981). Similarly, in "Constitutional Comity; Mediating the Rule of Law Divide" (2001), Catherine Adcock Admay discussed the balance struck in South Africa between international and domestic law developed over time. See Catherine Adcock Admay, "Constitutional Comity; Mediating the Rule of Law Divide," *North Carolina Journal of International Law and Commercial Regulation*, 26:3 (Summer 2001), 723-742.

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Coordination does not mean deference or even cooperation but does connote respect for other duly elected representatives of the people. Ford and Carter did not always agree with Congress but they made a distinct effort to respect their Congressional counterparts.

The second factor involves the breakdown of the boundaries of power between the president and congress. The separation of powers in American government can be seen as a harmony between the branches or as a tug of war where no branch truly trusts the other because all want to have as much power as possible. Publius [James Madison] suggested in *Federalist #51* (as many others have since), that the latter better reflected the intention of the founders and premise of the constitution.

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.

Madison further added, "If men were angels, no government would be necessary." Checks on power rein in the hubris of human nature. Regardless of the model, either cooperation or confrontation, over time a equilibrium developed whereby the branches Powers came to be defined. However, as the powers of one branch – the presidency – gradually began to expand in the Twentieth Century, that equilibrium destabilized.<sup>6</sup>

<sup>5</sup> Congress, Senate, Committee on Foreign Relations, *A Review of the Operation and Effectiveness of the War Powers Resolution*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, Hearing, page 326.

<sup>6</sup> For more discussion of the founders' intentions, see for example Charles L. Black, Jr., "The Presidency and Congress," *Washington and Lee Law Review* 32:4 (Fall 1975) 841-854; W. Taylor Reveley III, *War Powers of the President and Congress: Who Holds the Arrows and Olive Branch?* (Charlottesville: University of Virginia Press, 1981); David Adler and Larry N. George, eds., *The Constitution and the Conduct of American Foreign Policy*, (Lawrence: The University of Kansas Press, 1996).



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Presidents Johnson and Nixon represented the tail end of a long series of presidents extending the power and encroaching on congressional power. The lineage of expanding and aggrandized presidential power can be traced back long before Johnson and Nixon. Most scholars go back to Theodore Roosevelt; some go back to Abraham Lincoln and others all the way to Thomas Jefferson. However, whether the trend began with the Louisiana Purchase, a naval blockade or the annexation of Pacific and Caribbean islands, it is clear that the presidency reached crisis levels in the early 1970s.<sup>7</sup>

The third factor involves discord between the president and the public. By 1974, the Vietnam War and Watergate, extreme manifestations of aggrandized presidential power, were ubiquitous news stories and dominated conversations from the most remote and apolitical corners of the country to the halls of the United States Congress. Vietnam developed from a limited engagement to a quagmire as deceptive reporting and leadership betrayed the public's trust and faith in both the military and the government. Similarly, when Daniel Ellsberg leaked the Pentagon Papers, he exposed a long series of cover-ups and bad decisions dating back to the 1950s. Indeed Johnson was at fault but he did not act alone. Dwight Eisenhower and John Kennedy deserved some of the blame.<sup>8</sup>

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<sup>7</sup> Historian Joan Hoff Wilson argued that Herbert Hoover predicted the imperial presidency as the logical extension of the build up of presidential power beginning with the New Deal in the 1930s. See Joan Hoff Wilson, *Herbert Hoover: Forgotten Progressive*, (Boston: Little, Brown and Company, 1975), 213. For the history of expanding presidential power from America's inception through the Nixon administration see especially Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973). For other accounts of the broader trend of aggrandized presidential power, see for example, Michael A. Genovese, *The Power of The American Presidency, 1789-2000*, (New York: Oxford University Press, 2001); David Gergen, *Eyewitness to Power: The Essence of Leadership, Nixon to Clinton*, (New York: Simon & Schuster, 2000); Fred I. Greenstein, *The Presidential Difference: Leadership Style From FDR to Clinton*, (New York: Martin Kessler Books, 2000); Ann Van Wynen Thomas and A. J. Thomas, Jr., *The War-Making Powers of the President: Constitutional and International Law Aspects*, (Dallas: Southern Methodist University Press, 1982); Christopher Capozzola, "It Makes You Want to Believe in the Country" Celebrating The Bicentennial in an Age of Limits", *America in the Seventies*, Beth Bailey and David Barber, eds., (Lawrence: University Press of Kansas, 2004), 36.

In fact, *Time* magazine made the case that the two were actually connected; that the expansion of the

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Just as the nightmare of Vietnam began to wane, the nightmare of Watergate ballooned. Americans stood agape as *Washington Post* reporters Bob Woodward and Carl Bernstein broke the story. With the help of their secretive informant, Deep Throat (now known to be former Assistant Associate Director of the Federal Bureau of Investigation, Mark Felt), they exposed the unthinkable news unfurled about the botched cover-up of attempts to break-in and subvert the opposition party's presidential campaign headquarters. When the Watergate burglars, 'the plumbers', were caught midway through their act of espionage against the Democratic National Committee headquarters a chain reaction ensued that ultimately resulted in America's first president to resign from office. Had he stayed in office he would have likely become America's second president to be impeached (Bill Clinton now holds this infamous honor).<sup>9</sup>

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Watergate investigation made Nixon less likely to pursue unpopular missions in Vietnam. See "The Watergate Connection", *Time* (May 5, 1975), 14.

Since its occurrence over thirty years ago, the nadir of aggrandized presidential power, Watergate, has been the subject of a myriad of books. There is a wealth of scholarship on the abuses of Watergate, from the hotel break-in to the fight over ownership of Nixon's audio-tapes. Indeed Nixon's dirty tricks – and the books about them – are voluminous. Richard Nixon used the loose language of the Gulf of Tonkin Resolution to justify expanding the Vietnam War into Cambodia and Laos. He impounded congressional funds earmarked for specific destinations. He tape recorded White House conversations – a move he lived to regret – and, in general, spied on his enemies and anyone who might do him ill. These endeavors and others are well known and have been well covered in the existing literature. The most comprehensive book on the subject is Stanley I. Kutler, *The Wars of Watergate: The Last Crisis of Richard Nixon*, (New York: A. A. Knopf, 1990). For other accounts of Watergate and Nixon's other dirty tricks see for example, Carl Bernstein and Bob Woodward, *All The President's Men*, (New York: Simon and Schuster, 1974); Kim McQuaid, *The Anxious Years: America in the Vietnam-Watergate Era*, (New York: Basic Books, 1989); Sherri Cavan, *20th Century Gothic: America's Nixon*, (San Francisco: Wigan Pier Press, 1979). Cavan cogently demonstrated Nixon's betrayal and dirty tricks by the attitude he instilled on his chief henchman, Harry Roberts [H. R.] Haldeman. "No holds were barred unless something was explicitly illegal, and if a secure cover could be devised, even those limits were open." This attitude brought Haldeman to spy on political opponent Nelson Rockefeller and on the Democratic convention for the Nixon campaign in 1968 and do various more dirty tricks after that. See pages 168-9. For a discussion of the two major parties in late 1970s see John F. Bibby and Robert J. Huckshorn, "The Republican Party in American Politics" and John G. Stewart, "The Democratic Party in American Politics", in *Parties and Elections in an Anti-Party Age: American Politics and the Crisis of Confidence*, Jeff Fishel, ed., (Bloomington: Indiana University Press, 1978); Barbara Sinclair, *Congressional Realignment 1925-1978*, (Austin: University of Texas Press, 1982), chapters 6 and 7. For a discussion of the activism of Congresses see for example, Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 3rd ed., (Washington, D.C.: Congressional Quarterly Press, 1989), 275-7. Deep Throat's identity was kept secret until 2005 when Felt chose to make his secret identity known. Felt died in 2008 with an epitaph as one of the most famous

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The official end to Nixon's presidency and the "nightmare" was 12:00pm, August 9, 1974 when Ford took the oath of office. However, in a dissertation dealing with the perception of the presidency I suggest a more fitting and symbolic transitional moment was marked by Nixon's flight home to San Clemente, California from Washington, D.C. Flying on Air Force One, the plane changed its call sign over Jefferson City, Missouri to SAM 27000 when Ford became president. Air Force One is the Federal Aviation Administration's designation for any fixed wing aircraft carrying the President of the United States. Thus it was that moment that the imperial presidency ended. No longer the proverbial leader of the free world, Nixon was – once again – just an ordinary citizen.<sup>10</sup>

By the time Richard Nixon resigned from office, Americans had lost faith in the White House and had come to distrust the leaders within. Gerald Ford would try to restore this faith but even his squeaky-clean image would be irrevocably tarnished by his pardon of Richard Nixon. Though Ford framed the pardon in terms of "healing the nation" and helping the nation move past the dark days of Watergate, the American public only saw absolution for a man who narrowly escaped impeachment and who they believed did not deserve amnesty. Ford learned that resolution and reconciliation cannot be achieved on intent alone. Ford assumed the presidency mid-way through the mid-term congressional election cycle. That November, Americans sent the "Watergate class" to

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whistleblowers in history. See Tim Weiner, "W. Mark Felt, Watergate Deep Throat, Dies at 95", *New York Times* (December 19, 2008), 1.

This information is available in many places. One such site is online, "Air Force One: Facts and History of 707 as Air Force One", available online at <http://www.707sim.com/air-force-one.html>, (accessed March 27, 2007). See also online, "Military: VC-137B/C Stratoliner", available online at <http://www.globalsecurity.org/military/systems/aircraft/vc-137.htm>, (accessed March 27, 2007). (The VC-137 is a version of the Boeing 707 modified for use by Presidents and other high-ranking officials. For more discussion of Nixon's exit flight, see "Exit Nixon" *Time* (August 19, 1974), 13B – 14.

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Washington, a notably dovish and liberal (and mostly Democratic) set of freshmen Senators and Representatives who were elected in part on anti-Nixon coattails.<sup>11</sup>

This carried into the next presidential campaign cycle, which proved to be a referendum on not only Ford's job performance but on all the events that brought him to office. His opponent, Jimmy Carter, also campaigned on a reconciliation platform in an attempt to out-heal the healer. Thus in the 1976 presidential election, Jimmy Carter ran a campaign that was in many ways more against Nixon than Ford. Carter presented himself as a Washington outsider, a sales pitch designed to remind voters that he came to office *tabula rasa*, unscathed by the scars of scandals past. Carter would continue Ford's efforts to restore the Americans trust, and as Political Scientist Douglas Kriner would

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<sup>11</sup> *Time* magazine published many stories about the status of Ford's moral authority. When he first took office hopes were high provided he did not squander his public consensus. Many argue that precisely such a scenario occurred when Ford pardoned Nixon. I agree his pardon of Nixon did irrevocable damage to his reputation and public perception however I think there were many other moments where he carried out his mission of reconciliation. In general, Ford's tactics relied on a frankness and openness that transcend Nixon's pardon. *Time* reported that Ford was creating a "mood of good feeling and even exhilaration" around Washington as he brought sunshine to the White House after the dark times of the Nixon administration. *Time* reported about Ford's commitment to an open door "My motto toward the Congress is communication, conciliation, compromise and cooperation . . . I do not want a honeymoon with you—I want a good marriage." See "Where America Goes Now", *Time* (August 19, 1974), 64-67; "Notes from an Open White House", *Time* (August 26, 1974), 16. For the healing the nation quote see "Gerald Ford: Off to a Fast, Clean Start", *Time* (August 26, 1974), 9-11. Similarly, *Time* Reporter Godfrey Sperling asked Ford, "Do you plan to have a code of ethics for the Executive Branch?" to which the new President replied, "The code of ethics that will be followed will be the example that I set." Ford added "I will be as candid as forthright as I possibly can [and] I will expect any individuals in my Administration to be exactly the same. There will be no tightly controlled operation of the White House staff... I will make the decisions and take the blame for them or whatever benefit might be the case." This exchange represented a sharp turn and a ideological split from his predecessor's style and relations with the press. See "Ford: Plain Words Before an Open Door", *Time* (September 9, 1974), 11-13. In general, Ford warned against an overactive congress: "Frankly, I believe that Congress recently has gone too far in trying to take over the powers that belong to the president and the executive branch. This probably is a natural reaction to the steady growth of executive branch power over the past forty years. I'm sure it is a reaction to Watergate and Vietnam. And the fact that I came to this office through a Constitutional process and not by election also may have something to do with current efforts by the Democratic Congress to take away some of the powers of the president. As a member of Congress for 25 years, I clearly understand the powers and obligations of the Senate and House under our Constitution. But as president for 18 months, I also understand that Congress is trying to go too far in some areas." See Thomas E. Cronin, "An Imperiled Presidency?", in *The Post-Imperial Presidency*, Vincent Davis, ed., (New Brunswick: Transaction Books, 1980), 139. For stories about the Watergate class see "A Whiff of Rebellion in the 94<sup>th</sup>", *Time* (January 27, 1975), 26-28; "A Manic-Depressive Six Months", *Time* (July 14, 1975), 10-13; "Mixed Notices for the Fighting 94<sup>th</sup>", *Time* (January 5, 1976), 34-39; "A Bold and Balky Congress", *Time* (January 23, 1978), 8-16.



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later say, “tame the imperial presidency”. Though both presidents failed to secure a second term in office, I argue their successes should not be measured solely on a quadrennial performance referendum. Together, both presidents succeeded in restoring credibility to the oval office and a modicum of respect and cooperation for all those in Washington.<sup>12</sup>

The literature on presidential power is vast and is broader than just this particular time period. As presidents became more powerful and especially as the cold war raised the stakes of presidential decision-making, scholars delved deeper into the origins and implications of presidential power. The preeminent example of this trend is Richard E. Neustadt’s 1960 book, *Presidential Power: The Politics of Leadership*. His monograph is

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<sup>12</sup> See Douglas L. Kriner, “Taming the Imperial Presidency: Congress, Presidents and the Conduct of Military Action”, PhD Dissertation, Harvard University, 2006. Kim McQuaid argued that Ford and Carter paid the ultimate price for their avant-garde notions of federal comity. Rebuffed at the polls and limited to one term apiece, she argued that the American public quickly forgot that “grand style” presidents are a double edged sword. More specifically she said, “Congress, however, was not august enough for many, including many intellectuals who accounted themselves far more sophisticated than the norm. Congress was committees and subcommittees, but two generations of Americans had been nurtured – by their political and intellectual leadership not least – on “great men” who heroically and individually embodied the nation’s greatest ideals while, as politicians-in-chief, they also kept a sharp eye out for interests. Gerald R. Ford and James Earl Carter paid the price for failing to preside over national and international affairs in the grand style. Carter, in addition, was cordially despised for nattering away about a burgeoning “crisis” and about “national malaise” towards the end of his plagued term of office. Carter blamed the American people for their ills, and the American people disliked him intensely for it.” See Kim McQuaid, *The Anxious Years; America in the Vietnam-Watergate Era*, (New York: Basic Books, 1989), 320. For other talk of Ford and Carter’s failure to secure a second term in office see David Farber, “The Torch Had Fallen”, *America in the Seventies*, Beth Bailey and David Farber, eds., (Lawrence: University Press of Kansas, 2004), 10, 14; Eric Porter, “Affirming and Disaffirming Actions Remaking Race in the 1970s”, *America in the Seventies*, Beth Bailey and David Farber, eds., (Lawrence: University Press of Kansas, 2004), 66. For discussions of how Watergate remained an issue, see for example “Watergate: Still an Issue?”, *Time* (August 23, 1976), 20. Regarding Ford’s inability to secure reelection, while most scholars and historians tie causality to the fallout from his pardon of Nixon, another theory points to Ford’s inability to carry New York State and its large electoral voting bloc. Ford himself blames his shortcoming– in part – due to the fallout that developed in 1975 when Ford declined to bail out New York City. Many New Yorkers painfully remembered the infamous *Daily News* headline covering his decision: “Ford to New York: Drop Dead”. See Rachel Sklar, “Ford Coverage: Nixon, Chevy Chase and Football, But Something’s Missing”, *Huffington Post* (December 27, 2006). Available online at [http://www.huffingtonpost.com/eat-the-press/2006/12/27/ford-coverage-nixon-chevy\\_chase\\_37200.html](http://www.huffingtonpost.com/eat-the-press/2006/12/27/ford-coverage-nixon-chevy_chase_37200.html). Accessed January 17, 2009. For discussions of “outsider” status see Farber, 17. Farber points out that every president since Carter (George H.W. Bush being the possible exception) ran as an “outsider” though none did it with comparable conviction.

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a classic – yet still influential – account of how presidents manage the power of their office. Neustadt argued the key issue was not formal power versus informal power but the way presidents wield the power they have. How they perform as a leader tells how strong they are. More fundamental than clout or political capital, Neustadt addressed the nature and source of that influence. Neustadt concluded, “the question is not how [the president] masters Congress in a particular instance, but what he does to boost his chance for mastery in any instance”.<sup>13</sup> The crisis of the American presidency stemmed from Presidents expanding the reach and scope of their power. This expansion – and the efforts to preserve, protect, and expand it – brought the American presidency to the brink of disaster. However, Neustadt’s model also explains Ford and Carter’s actions. After a tumultuous decade these two men sought to wield their power in a more respectable and responsible manner, but nevertheless one that still preserved their power and prestige as President of the United States.

Ten years later, George E. Reedy published one of the most influential books—both for this dissertation and the field as a whole, *The Twilight of the Presidency* (1970).

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<sup>13</sup> Richard E. Neustadt, *Presidential Power: The Politics of Leadership*, (New York: John Wiley and Sons, Inc., 1960), 2. Citing Richard Neustadt’s argument in his article on presidential power, Norman Ornstein added, “Neustadt’s point in his book *Presidential Power* was that a president cannot rely on a surfeit of formal powers to force action on policy or to make others do things. Instead, to succeed, the president has to pull together fragments of formal power and use his dominance of the bully pulpit, his position of prestige, his partisan loyalists, his electoral legitimacy, and his wiles.” See Norman Ornstein, “Can Clinton Still Emerge a Winner; Here’s What to Do.” *Roll Call* (May 27, 1993). Lexis-Nexis Academic (Accessed September 19, 2006). For an updated version of Neustadt’s argument see Richard E. Neustadt, *Presidential Power and The Modern Presidents: The Politics of Leadership From Roosevelt to Reagan*, (New York: Free Press, 1991). Similarly, in his book, *Undeclared War: Twilight Zone of Constitutional Power* (1982), Edward Keynes dealt with the history of presidents circumventing the war power. This includes the efforts of Congress to curtail such practice and their failure during and after Vietnam to successfully do so. Keynes frames this analysis of the modern king-general president against the view of the limited executive view outlined in the constitution and envisioned by the framers. Keynes describes the new doctrine of power distribution and warfare as a twilight zone. Keynes also notes the eggshells the Courts walk on when weighing in on issues of the executive-legislative power debate. See Edward Keynes, *Undeclared War: Twilight Zone of Constitutional Power*, (University Park: The Pennsylvania State University Press, 1982).

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He argued American politics was shifting toward more insulation of the President from reality and the rest of government; specifically towards more monarchical tendencies.<sup>14</sup> A former Lyndon Johnson White House Staffer and Press Secretary, Reedy argued that the founders' intention "was a solution which placed in office a monarch but limited the scope of the monarch's activities." However over time Congress abdicated part of its power to check the president as presidents made support their only option. Reedy concluded that by the 1960s circumstances had turned the democratic election of presidents into an "apotheosis" – the elevation of one to divine rank – and that the institution of the presidency was in danger.<sup>15</sup> Though there have been crises before (e.g. the Civil War) and since (e.g. the Republican Revolution and government shutdown of 1996), none have so fundamentally challenged the premise of the American presidency.

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<sup>14</sup> Though arguing why he understood monarchical presidents are understandable, Reedy nevertheless conceded that increased power comes with increase responsibility. See George E. Reedy, *The Twilight of the Presidency*, (New York: New American Library, 1970), 16, 32, 54. Former presidential candidate and Washington political leader John Dean noted, "President Gerald Ford... found [Reedy's] book so instructive and insightful he insisted - when he became president following the Watergate-forced resignation of Richard Nixon - that his White House staff read it. At the time, Ford was not only dealing with the final phases of the Vietnam war, but also the aftermath of Watergate." Dean added that the book remained important and was the single book he believed George W. Bush ought most to read. See John W. Dean, "The Best Book On the Presidency: Comments on a Classic That Is Particularly Trenchant In Times Of War," Findlaw Legal News and Commentary (March 14, 2003), available online <http://writ.news.findlaw.com/dean/20030314.html> (accessed July 13, 2006).

<sup>15</sup> Reedy further explained, "The president, for example, was forbidden to legislate or adjudicate, but there was remarkably little definition of his executive powers. As a result, the size of the president in office at any given time determined the extent of what he regarded as his mandate." For the initial quote see Reedy, 5. For the further explanation see page 6. On the subject of apotheosis Reedy later elaborated, "The trend is clear. Over the passage of the years, what was little more than managerial authority has become power over the life of the nation itself. The right to check this power still rests in Congress and the courts. But the ability to check assumes the capacity to offer alternatives, to explain them to the public, and to manage a structure that carries them out. In the modern age, when action with little time for reflection becomes increasingly urgent, these capabilities are lessened with each passing day for every arm of the government except the presidency." See Reedy 39-46 (for the quote see page 46). Focusing specifically on the 1972 election and written at the nadir of presidential power, Samuel Lubell's published his 1973 book, *The Future While it Happened*, a year before Watergate precipitated Nixon's resignation. Based predominantly on interviews with voters, Lubell alleged manipulation by Nixon, but referred more to election strategies than dirty tricks. However, it does offer glimmers of the rise of the imperial presidency. "[W]here Nixon's policies failed, they actually brought an expansion of presidential power." Ultimately, Lubell called for a rebalancing of federal power and a taming of the imperial presidency. See Samuel Lubell, *The Future While it Happened*, (New York: W. W. Norton & Company, 1973), 130.

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As influential as Neustadt's and Reedy's books were and are, the most powerful and influential book on presidential power remains Arthur Schlesinger's *The Imperial Presidency* (1973). The book's title is also the term Schlesinger coined to describe the gradual aggrandizement and usurpation of presidential power heightened by congressional abdication of their power. Schlesinger however did not advocate weak presidents either. He called for a middle ground between pushover and czar. The president must be strong, especially in war, but Congress must keep him from getting out of control. Thus Schlesinger described the development of presidential power in American history culminating in the dire situation the presidency faced in the early 1970s. Written against the backdrop of Richard Nixon's dirty tricks, Schlesinger built to a climax of the still unfolding Watergate scandal. In a later edition of his book, Schlesinger reflected that Nixon brought America to the brink of the imperial presidency.<sup>16</sup> My work addresses two Presidents who understood this debate over presidential power and conducted themselves in office in a manner indicative of Schlesinger's middle ground.

It is important to also understand this project in terms of the larger context of political history. Over the past thirty years since Ford and Carter's presidencies, social

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<sup>16</sup> Schlesinger also couched the changes that culminated with Nixon in terms of how he presented his office to the public. Schlesinger described some of the added pomp Nixon brought and the changes he made to the way press conferences and cabinet meetings were conducted. In general, Nixon preferred to control the environment for his interaction with the press – this meant fewer meetings and more control over how and when those that did occur, came to pass. Nixon also assumed many other procedural powers, including the pocket veto and blanket immunity. His efforts were eventually curtailed but they exposed a huge aggrandizement of federal power. In a later edition of his book, Schlesinger added that the question of Watergate ultimately came down to whether the president was sovereign – whether he was above the law. Schlesinger noted, "Watergate's importance was not simply in itself. Its importance was in the way it brought to the surface, symbolized and made politically accessible the great question posed by the Nixon administration in every sector – the question of presidential power. The unwarranted and unprecedented expansion of presidential power, because it ran through the whole Nixon system, was bound, if repressed at one point, to break out at another. This, not Watergate, was the central issue." See Arthur Schlesinger, 270-7 (for the quote see page 275).



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and cultural history has eclipsed political history, particularly political history that looked at the formal structures of government and elected leaders. American historians have paid relatively little attention to the machinations at the top levels of government, leaving Washington politics to the purview of political scientists and journalists. My project is firmly grounded in history but reflects my strong belief that our discipline needs to rejuvenate the study of political history which includes a greater understanding of other disciplines.

The call to rejuvenate political history is not a new one. William Leuchtenburg wrote in 1986 that the historian's next frontier is political history. Two decades after he said this, I believe the frontier is still being traversed. Indeed Leuchtenburg advocated what Theda Skocpol once called "bringing the state back in." Leuchtenburg envisioned the resurgence of political history to be new studies of the state. More broadly he suggests that political history – beyond its own intrinsic value – is inherently in the background of other subjects and fields. He cited Christopher Tomlins' work on the New Deal Era. When Leuchtenburg wrote his article, Tomlins had just finished his PhD, but he has since published a book, aptly titled, *The State and the Unions*. As I write this dissertation in the wake of the Bush administration in Washington, the depth and breadth of the impact of politics on the national level, particularly the presidential level, is all the more evident and Leuchtenburg and Skocpol's call for historians to bring the state back in all the more important.<sup>17</sup>

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<sup>17</sup> William E. Leuchtenburg, "The Pertinence of Political History: Reflections on the Significance of the State in America," *Journal of American History* 73, 3 (Dec. 1986): 585-600; Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960*, (Cambridge: Cambridge University Press, 1985); Theda Skocpol, "Bringing the State Back In", *Items* 26 (June 1982), 1-8. See also Julian Zelizer, "Introduction", *New Directions in Policy History*, (University Park, Pennsylvania: Pennsylvania State University Press, 2005).



While my dissertation addresses the role of the presidency in modern America, my research focuses on a specific time span, 1974 to 1981. As such it is imperative to also ground my study in the larger narratives of the decade. Understanding this literatures help explain how these two men were the right leaders for the time and how their solutions were apropos given the national climate and prevailing trends of the 1970s.

Another important thread of historical scholarship looks at the time period of the 1970s in a broader fashion. Scholars have recently begun to distinguish the decade as more than a hangover from the 1960s or a prelude to the 1980s but as a unique time period with a distinct identity, character and culture. The most comprehensive work to date on the period is Bruce Schulman's book, *The Seventies: The Great Shift in American Culture, Society, and Politics*. Rather than seeing the 1970s as a derivative of the decades it falls between, Schulman explains how the 1970s were a transformative period. Discussing concepts such as the "Southernization" of American in the 1970s, Schulman examined some of the larger political, religious, and social factors of the era.<sup>18</sup> Literature such as Schulman's work provides context for the issues and events that surround my topic.

Similarly important to grounding my topic in the broader synthesis of 1970s America, it is also important to situate my topic in the existing literature on the two

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<sup>18</sup> Bruce Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics*, (New York: Free Press, 2001), 257. For other synthetic accounts of the 1970s see Beth Bailey and David Farber, eds, *America in the Seventies*, (Lawrence: University Press of Kansas, 2004); Edward Berkowitz, *Something Happened: A Political and Cultural Overview of the Seventies*, (New York: Columbia University Press, 2006); Bruce Schulman and Julian Zelizer, eds., *Rightward Bound: Making America Conservative in the 1970s*, (Cambridge, Massachusetts: Harvard University Press, 2008); Van Gosse and Richard Moser, eds., *The World the Sixties Made: Politics and Culture in Recent America*, (Philadelphia: Temple University Press, 2003).

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Presidents I study. Understanding the prevailing scholarship on Ford and Carter helps explain why their tenures in office and leadership styles have been criticized. For example, James M. Cannon argued in his book, *Time and Chance: Gerald Ford's Appointment With History* (1994), that Ford's effort to restore the presidency were seemingly driven by Ford's merits and qualifications. Cannon's book was about Nixon and Ford and the circumstances that brought one to office after the follies of the other and how the presidency changed in the process. This book starts at Ford's birth and continues through his presidency but only dedicating three chapters out of twenty one to his presidency (and really only one to his "post-pardon" tenure). The biography focuses on Ford's character and his life as a member of Congress more than his tenure as President. This is consistent with Ford the man, as he was a Representative first, and a President second. However, for all Cannon's discussion of Ford's character, he effectively ignores his reconciliation efforts.<sup>19</sup> His book aptly presents the stereotypical characterization of Ford that solidified after he left office. Cannon quipped that Gerald Ford "healed the nation", but in his account this amounted to a polite euphemism for the accidental president turned caretaker who cleaned up after Richard Nixon. The label of the accidental president (or as Jerald F. terHorst dubbed it, a "happy accident"), fuelled by Ford's unique ascension to the presidency, augmented the caretaker mentality.<sup>20</sup>

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<sup>19</sup> James M. Cannon, *Time and Chance: Gerald Ford's Appointment With History*, (New York: Harper Collins, 1994).

<sup>20</sup> In a rare early refutation of this stigma, Alfred J. Schweppe argued in a letter to the editor of the *American Bar Association Journal*, argued that President Ford was in fact just as elected as any other President. He reasoned that since Ford was confirmed to the Vice-Presidency by a vote from both houses of Congress and every President since had been elected by a vote from the Electoral College – a body whose size is defined by the number of members of Congress – Ford was not in fact an "appointed President". Ford was elected to his position by precisely the same size body of electors as every President before him. Schweppe forward a copy of the article to Phil Buchen who then sent it to John Marsh, Robert Hartman and Dick Cheney. Schweppe wanted Ford to know he was by no means appointed or accidental.

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John Robert Greene sought to refute the “caretaker” stigma of the Ford presidency in his 1995 book, *The Presidency of Gerald R. Ford*. Greene presented his book as a larger view of Ford, encompassing the whole presidency – as most presidential histories do – but to move the story of Ford to a context larger than just the wake of Watergate. Greene argues – as I do – that Ford’s presidency should not be confined or dominated by discussions of the conditions that brought him to office. Greene discusses Ford’s time in office in terms of his accomplishments and his efforts towards healing the nation. Even still, Greene concluded that Ford’s efforts did not fully restore faith in government. That he argued came with Carter. In fact he argued that the pardon prevented healing and set up Jimmy Carter – a candidate who Greene derided – as an easy victor in 1976.<sup>21</sup>

Recently, Yanek Mieczkowski similarly revisited the traditional conception of Ford’s presidency. In his book, *Gerald Ford and the Challenges of the 1970s* (2005), he argued that public trust (in the wake of Watergate) was a major concern of Americans that Ford faced, but it was one of many, buttressed by concerns about the economy and energy. Mieczkowski argued Ford displayed leadership through adversity but argued that

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However, after Buchen’s forwarding there was no correspondence on the issue beyond this. See Alfred J. Schweppe, “An Elected President”, *American Bar Association Journal* 62 (May 1976), 548; Memorandum, Phil Buchen to Jack Marsh, et al, June 3, 1976, “Buchen, Philip 6/76 – 7/76” Folder, Box 75, John O. Marsh Files, Gerald Ford Library. For terHorst’s comment see Jerald F. terHorst, *Gerald Ford and the Future of the Presidency*, (New York: Third Press, 1974), vii.

<sup>21</sup> On the issue of restoring faith in government, Greene added, “Although Ford’s fundamental decency restored much of the luster to a badly tarnished presidency, one should not conclude that at the end of his tenure the nation had fully regained trust in its government. As future developments would demonstrate, it had not, and it was the pardon that kept Ford from completely healing this breach of faith. It spotlighted his past relationship with Nixon, provided Nixon with an avenue of escape from any act of contrition, and revealed Ford’s penchant for secretive decision making that roughly paralleled that of his predecessor. By granting a pardon on Nixon’s terms, Ford had wasted a golden opportunity begun in his honeymoon month to erase the breach of faith. Thus, even though the pardon was not an over issue in the 1976 campaign, it perpetuated a political climate in which and unknown candidate, with no other assets save his promise to eliminate all vestiges of past Republican misdeeds from Washington, could become a viable candidate. Ford’s own miscalculations of strategy lost him a close election, but the pardon made Jimmy Carter’s victory possible.” See John Robert Greene, *The Presidency of Gerald R. Ford*, (Lawrence: University of Kansas Press, 1995), xii., 192-3.



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his triumph was in the face of unlucky circumstances. Mieczkowski further argued that Ford faced the “credibility gap” and tried to roll back the tide of distrust – a wave that had been cresting even before Richard Nixon came to office. Mieczkowski also spoke of a “constitutional crisis”. He used this term conservatively – not to lament about the presidential succession or the “accident” of Ford’s ascension to the presidency, but referring to the shift from the age of Camelot to the age of Watergate. To him, this shift meant moving from a time of near universal admiration and respect for the President to a time of the polar opposite. Watergate solidified public distrust in the President and the institution of the presidency – a crisis of confidence in American government.<sup>22</sup>

My interpretation of Ford’s presidency coincides more with Greene and Mieczkowski than it does with Cannon. Ford made inroads to reconcile the nation after the Vietnam War and Watergate but he met with mixed success and was ultimately unable to recover the political capital and public respect lost from his pardoning of Nixon. Though by the 1976 election Ford proved unable to revive the economy and exorcize the ghosts of Watergate, he accomplished much during his time in office to restore dignity to the office and cooperation with Congress. I too argue he served as more than a caretaker; he left a positive impact on the office despite his short tenure.

Also in recent years, two books have brought the assessment of Gerald Ford into the context of the George W. Bush years. The title of Barry Werth’s 2006 book, *31 Days: The Crisis That Gave Us The Government We Have Today*, refers to the period

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<sup>22</sup> Regarding Ford’s luck Mieczkowski quoted a display at the Gerald R. Ford Presidential Museum in Grand Rapids, Michigan that read “Gerald Ford may have been among the unluckiest presidents of the 20<sup>th</sup> century.” As for the comparison between Camelot and Watergate, Mieczkowski quoted William Hungate (D-MO), “Politics has gone from an age of ‘Camelot’ when all things were possible to the age of ‘Watergate’ when all things are suspect.” See Yanek Mieczkowski, *Gerald Ford and the Challenges of the 1970s*, (Lexington: University of Kentucky Press, 2005), 3. For his talk of a congenial presidency as opposed to an imperial one see pages 45, 69-72.

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from when Nixon resigned from office to when Ford pardoned him. More about the transition than the scandal, he described how Ford assumed the power of the Presidency at the precise moment that presidential power was on the brink of bringing irreparable harm and shame on the office. Ford took office as Nixon left in shame. Ford then proceeded to redefine the White House and pardon his predecessor so the nation could move on. Werth ends with the legacy of Ford's appointments and their future success, focusing especially on George W. Bush. Graeme S. Mount with Mark Gauthier argued in *895 Days That Changed The World: The Presidency of Gerald R. Ford* (2006) that Ford played a vital role in restoring the credibility of the American presidency and the prestige of the American President. However, he also noted, that since Ford gave George H. W. Bush his big political break as quasi-ambassador to China, he launched his presidential bid in 1980 and all political accolades afterwards. Thus by extension, Ford launched George W. Bush's career. Mount's focus was foreign policy (especially cold war policy), discussing both Ford's impact while he was in office and all the groundwork he laid for his successors. While I believe this is important, I think what is also important is the precedent for Ford set in his treatment of the War Powers Resolution and how that precedent effected the foreign policy decisions of presidents who served after him.<sup>23</sup>

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<sup>23</sup> While today many scholars and pundits draw arrows from George W. Bush backwards trying to explain the historical origins of the current administration, many arrows point to his father, George H. W. Bush or to the bravado and cowboy diplomacy of Ronald Reagan. Mount and Gauthier present a third option. They trace the origins of the current administration – its leaders and their political breaks – came in the mid 1970s during Gerald Ford's presidency. Ford had two chiefs of staff, Donald Rumsfeld and Dick Cheney. Dick Cheney served as an assistant to Donald Rumsfeld in the Office of Economic Opportunity and then followed Rumsfeld to the White House. When Rumsfeld was made Chief of Staff, Cheney became a deputy assistant to the President. Later when Rumsfeld stepped down it was Cheney who became Ford's second and final Chief of Staff. See "Cheney: Loyal Deputy", *Time* (November 17, 1975), 26-29. Donald Rumsfeld had been a counselor to Richard Nixon and a man who Nixon thought would make a great President some day. In 1968 then Congressman Rumsfeld (R-IL) resigned from Congress to head the Office of Economic Opportunity (at Nixon's request and behest). See "'These Are My Guys'", *Time* (November 17, 1975, 25-26. Between the Office of Economic Opportunity and the Chief of Staff position,

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Beyond the literature reflecting on Ford's presidency from the outside in, there is also a body of literature that examines his White House from the inside out. The most scholarly account, though one still tainted by personal bias, comes from Henry Kissinger's tome on Gerald Ford. Henry Kissinger wrote one of the most comprehensive books to date on Gerald Ford in his 1999 monograph, *Years of Renewal*. Kissinger argued that Ford's tenure in office is better viewed as a start to a new world order than the remnants and carry over from the last. Based on his time in service to Gerald Ford – both during his time in office and in the crucial lead-up before – Kissinger wrote a detailed monograph on the thirty-eighth president. A massive one volume work, the book is still only half as long as his book on Richard Nixon (perhaps fitting since Nixon spent about twice as long in office). Kissinger noted that while most presidents have three months from election to inauguration and even promoted Vice-Presidents almost always have the experiences of the campaign and significant time in office to bolster their relationship with the establishment, Ford had neither. Thus Ford deserved more patience and more credit for his work in the executive branch, both as vice-president and as

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"Rummy" (as his friends and colleagues call him) was the ambassador to NATO. In late 1975 when Ford shook things up in his administration, Rumsfeld was promoted to Secretary of Defense. (Rumsfeld served in this position again under George W. Bush, making him the only person to serve two non-consecutive Presidents at the position.) See "Ford's Costly Purge", *Time* (November 17, 1975), 9-11; "Scenario of the Shake-Up", *Time* (November 17, 1975), 12-19. Other Ford people who went on to have careers in – or around – the Bush administration include Antonin Scalia and Rudy Giuliani who worked in the Justice Department. Carl Rove was the leader of the College Republicans and writing the Ford administration for a job on his Presidential Clemency Board. Perhaps most telling of all – especially for those that do see George W. Bush as riding his father coattails – is that Ford gave George H. W. Bush his big break. A backbencher member of Congress from Texas Ford made Bush Sr. CIA director and later chief of the Liaison Office, the unofficial embassy to the Peoples Republic of China. For a larger discussion of Ford's staff and their connections to the Bush administration, see Graeme S. Mount with Mark Gauthier, *895 Days That Changed The World: The Presidency of Gerald R. Ford*, (Montreal: Black Rose Books, 2006); Barry Werth, *31 Days: The Crisis That Gave Us The Government We Have Today*, (New York: Nan A. Talese, 2006).

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president. Ford got up to speed in weeks while others had been afforded years (or at least they had years to do the same).<sup>24</sup>

The most important literature from those working inside the White House comes from the President himself. In his autobiography, *A Time to Heal: The Autobiography of Gerald R. Ford* (1979), Ford added his perspective on his “caretaker” career. However, even Ford understands how much Watergate defined his legacy. He began his first chapter with the conversations with White House Chief of Staff Alexander Haig the day he found out that the tapes would go public and that Nixon had been lying to everyone – the public and his new Vice-President. On August 1, 1974 Haig told Ford that Nixon planned to resign.<sup>25</sup> Even though Ford was a congressman first and a president second (chronologically and personally), he recognized that one of the most pivotal moments in his career was when he found he would soon sit in the oval office.

Through the literature by Kissinger and Ford, the intent and genuine desire for reconciliation becomes clear. However, also clear is that the legacy of the Watergate scandal tends to dominate the historiography. While my discussion of Ford begins with how he succeeded Nixon, I see what he did after those first thirty-one days as more important. Similarly, I present my discussion of Carter as a break from scholars who

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<sup>24</sup> Henry Kissinger, *Years of Renewal*, (New York: Simon and Schuster, 1999). Some other Ford aids wrote about the service in the administration however they are predominantly introspections into their personal relations with Ford more than Ford’s relationship with anyone else or his politics while in office. See for example, Jerald F. terHorst, op cit; Ron Nessen, *It Sure Looks Different from the Inside*, (New York: Playboy Press, 1978).

<sup>25</sup> Of particular importance in this conversation was when Haig mentioned that there were those in the White House kicking around the idea of a deal, resignation for pardon; Nixon resigns and his successor pardons him. Ford’s attitude in retelling of the events appears defensive and verily so as this question – was there a deal – was one that haunted him until his death in 2006. See Gerald Ford, *A Time to Heal: The Autobiography of Gerald R. Ford*, (New York: Harper and Row, 1979), chapter 1. For the idea that was “kicked around”, see page 6.



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focus on his failures. My dissertation refutes the conclusions often made that characterize their administrations as unsuccessful.

Soon after Carter left office, political scientists and historians alike rushed to characterize and place the 'Carter years'. For example, Stanley Hoffman argued his 1981 article, "Requiem," that Carter's penchant for what manifested as a near "total addiction to erratic tactics" begat a flawed leadership style. Hoffman, in his own words, conceded that Carter's style fell flat and Reagan's victory marked a return to an older incarnation of the *status quo*.<sup>26</sup>

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<sup>26</sup> Hoffman further noted, "Carter, by his understated manner and his reluctance towards grand imperial moves, his apparent meekness towards the challenged of pygmies, his willingness to accept not only military equality but also certain kinds of inequality with the Soviet Union, made people believe that he too accepted decline as inevitable. In the process, he allowed them to forget how much of the missionary archetype could be found in his original approach to world affairs. The Reagan victory was a revenge of exceptionalist faith." See Stanley Hoffman, "Requiem," *Foreign Policy* 42 (Spring 1981), 9, 24, 26. Before he had even left office, former White House Staffer James Fallows was already writing his account of what he saw as "The Passionless Presidency". Published as a two part series in the *Atlantic Monthly*, Fallows critiqued Carter's presidency, reflecting on his time in the White House and this poor transformation from positive prospects to paltry results. Fallows argued that Carter's outsider advantage eroded as the sophistication of the office got the better of him. Fallows explained, "I felt that he, alone among the candidates, might look past the tired formulas of left and right and offer something new... But there were two factors that made many of us ignore these paper limitations. One was Carter's remarkable charm in face-to-face encounters... The other factor was a subtler thing, though clearly visible in retrospect. I always thought Carter awkward at the deliberate manipulation of symbols, but he was a genius as using a phrase, a gesture, a code word that his listeners assumed to be of greater significance than it was." See James Fallows, "The Passionless Presidency," *Atlantic Monthly* 243:5 (May 1979), 35. Fallows also added, "For certain aspects of his job – the analyst and manager parts – Carter's methods serve him well... But for the part of his job that involves leadership, Carter's style of thought cripples him. He thinks he "leads" by choosing the correct policy; but he fails to project a vision larger than the problem he is tackling at the moment." See Fallows, 42-3. Similar questions were raised even before Carter took office. For example, Joseph Kraft questioned whether Carter's symbolism was genuine or just manipulation. On one hand, Kraft points to the signs visible from the campaign. Carter wore denim, carried his own bag, and attacked the Washington establishment. "Stressing these themes cost Carter absolutely nothing and while they may not be bogus, they certainly do not pass the test of authenticity. Moreover, the same stress on cut-rate, if not costless, symbols of openness had continued in office." Kraft then noted Carter's moves in office, including the Inauguration Day walk down Pennsylvania Avenue, the rollbacks of limousine use and lowering the thermostat in the White House. However, Kraft noted there was still some secrecy in how Carter played Washington Politics and he critiqued the President for not pushing his austerity campaign into the private sector. Kraft concluded Carter's style was one big ruse and come the first big crisis, it would be business as usual. See Joseph Kraft, "The Carter Style: Sincere or Phony?" *Washington Post*. (February 17, 1977), A19.

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As time elapsed and historians gained more perspective on Carter's style, the tendency towards criticism persisted. As the title of Donald S. Spencer's *The Carter Implosion: Jimmy Carter and the Amateur Style of Diplomacy* (1988) suggests, he blamed Carter's problems on an "amateur" style of diplomacy based in his outsider mentality and "anti-intellectual approach to statecraft". Spencer's focus is on diplomacy, i.e. presidential foreign relations (not federal comity). He argued that Ford failed because his approach was not unique enough and adopted too many elements of Nixon's tainted administration and administrative style. However, Carter's acceptance of "outsider" status led to extravagant foreign policy promises he could not keep.<sup>27</sup> In the same year and in a similar vein, Erwin C. Hargrove's, *Jimmy Carter as President: Leadership and the Politics of Public Good* (1988), provided abstract descriptions of Carter's leadership style. Hargrove argued that Carter's steadfast strategy of doing what he thought was right led to problems. "Carter made little initial efforts to get along with Congress because he did not think it was necessary." The Georgian frequently sacrificed political feasibility and "strategic" leadership in the name of his stubborn policy attitude. Carter campaigned on an open executive office: unlike Nixon, he would never have a staffer between him and his cabinet officers. Thus Hargrove described Carter (though only in passing) as antithetical to a Schlesinger-esque imperial presidency.<sup>28</sup>

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<sup>27</sup> Donald S. Spencer, *The Carter Implosion: Jimmy Carter and the Amateur Style of Diplomacy*, (New York: Praeger, 1988), vii-ix, 24-7.

<sup>28</sup> Erwin C. Hargrove, *Jimmy Carter as President: Leadership and the Politics of Public Good*, (Baton Rouge: Louisiana State University Press, 1988), 17, 21, 24, 171. On the subject of the imperial presidency Hargrove added, "And though his style of leadership coincided with the reaction against the "imperial" presidency that carried him to the White House, the presidency must promise the effective use of power rather than merely presenting a set of norms against the abuse of power. The reaction against the imperial presidency was therefore sure to be temporary. Carter, with his democratic style of leadership, benefited from that reaction in winning the presidency but suffered when popular expectations inevitably shifted back to demand effectiveness. Finally, Carter incorporated but failed to transcend the policy contradictions of

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Recently, Gregory Paul Domin argued in his book, *Jimmy Carter, Public Opinion, and the Search for Values* (2003), that Carter's anti-Washington (outsider) mentality hindered his ability to work with Congress because he rebuked all the insider politics, pomp and reciprocity that go on inside the Beltway. Domin argued that Jimmy Carter opposed the Lyndon Johnson view of incorporating Congress at all levels of the legislative process. Carter rebuked congressional inclusion in proposal shaping. Domin added that Carter often did what he thought was right not what was politically advantageous.<sup>29</sup>

I explore this problem more in chapter five when I discuss Carter's decision to sell the Presidential yacht *Sequoia*. Carter did not understand that political leverage the boat created when members of Congress were invited for cruises, focusing instead on the stigma of such an ostentatious perquisite of office. I agree that Carter started out with an agenda that at times disregarded Congress but I believe that Carter improved over time –

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his time. His virtues and shortcomings were an almost perfect match for the period in American history in which he was president of the United States." See Hargrove, 193. Similarly, Charles O. Jones argued in *The Trusteeship Presidency: Jimmy Carter and the United States Congress* (1988) that Carter was trying not to be the covertly influential ("hidden-hand") Eisenhower, the "imperial" Nixon or the imperial Congress under Ford (reacting to Nixon and Watergate). Jones also noted that unlike his democratic predecessors, Carter proposed a conservative agenda, opting to retool social problems and not expand them. Carter was anti-politics and by extension, anti-politicians. He knew there were all sorts of politicians, but he wanted to have nothing to do with them. Carter considered himself more as a trustee of the public interest than an elected politician. Unlike presidents like Johnson and Ford who were former members of Congress and sympathetic to the "electoral connection" (reelection), Carter was less willing to pander to the political jockeying. Carter viewed himself as the answer to Congress dominated by special interests and reelection. Carter preferred "doing what's right over doing what's political." Jones concluded that because of his decisions and mode of operation, Carter doomed himself to ridicule and tense relations with Congress. Charles O. Jones, *The Trusteeship Presidency: Jimmy Carter and the United States Congress*, (Baton Rouge: Louisiana State University Press, 1988), xx, 7-8; For a discussion of re-election as the "electoral connection" see especially David R. Mayhew, *Congress: the Electoral Connection*, (New Haven: Yale University Press, 1974).

<sup>29</sup> For example, Domin noted Carter's criticism of the Washington establishment and reluctance to stump for members of Congress. Gregory Paul Domin, *Jimmy Carter, Public Opinion, and the Search for Values, 1977-1981*, (Macon, Georgia: Mercer University Press, 2003), 1-2, 65-7, 70-3. Garland Haas reached a similar conclusion in his 1992 book, *Jimmy Carter and the Politics of Frustration*, arguing Carter's presidency failed but that some of the blame owed to the impossibility of working with two "intractable" congresses. See Garland Haas, *Jimmy Carter and the Politics of Frustration*, (Jefferson, North Carolina: McFarland & Company, Inc., 1992), 2.

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David S. Broder, *Washington Post*

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albeit perhaps too late – as he learned how to better mingle in Washington. Chapter six shows his progression on a single issue – legislative vetoes – and how even when he disagreed with Congress, he developed a respect for federal comity. However, Carter’s relations with Congress are only one of the flaws historians have honed in upon. Historians also have taken aim at his foreign policy legacy.

Despite Carter’s herculean and Nobel success at Camp David (though he himself did not earn the coveted ward for his efforts) and his normalization of relations with the People’s Republic of China, fifteen years after Carter left office, negative characterizations of his foreign policy still continued to dominate the literature. David Skidmore argued in his 1996 book, *Reversing Course: Carter’s Foreign Policy, Domestic Politics, and The Failure of Reform*, that Jimmy Carter rebuked traditional rationales for foreign policy and tried to usher in reform. However, he argued that Carter’s efforts backfired and his enthusiasm and sensitivity translated into failure and domestic criticism. He was attacked for not prosecuting the Cold War vehemently enough and for abandoning “liberal internationalism”. Skidmore’s book explained how Carter’s reforms failed in part because of how he framed national malaise to the public.<sup>30</sup>

To be fair, not all assessments of Carter’s presidency have been negative. Based especially in Carter’s actions after leaving office and the follies of Carter’s successors, by the 1990s some scholars revised their assessment of America’s thirty-ninth president. John Dumbrell praised Carter’s competent and compassionate leadership style in his book, *The Carter Presidency: A Re-Evaluation* (1993). Focusing on Carter’s human rights policy, Dumbrell contested the prevailing negative assessment of the Carter years,

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<sup>30</sup> David Skidmore, *Reversing Course: Carter’s Foreign Policy, Domestic Politics, and The Failure of Reform*, (Nashville: Vanderbilt University Press, 1996). For the quote see page xii.



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exploring how Carter applied his populism and attitudes towards reconciliation to his liberal rights theory. Dumbrell sought to shift the discussion of Carter from his Cold War record to his human rights record.<sup>31</sup>

Recently another historian has taken aim at the overly negative assessments of the Carter presidency. Burton I. Kaufman presented a revised view in his 2006 book, *The Presidency of James Earl Carter, Jr.* Kaufman applauded Carter's efforts to continue the work of Gerald Ford towards healing the nation after the Vietnam War and Watergate. However, Kaufman accepted the poor marks past historians (such as Jones and Hargrove) gave Carter's tenure in office. He argued that rescoring Carter based on his work after he left office does not refute the fact that during his tenure in office he failed to translate his stance as a "public trustee" into an articulated "purpose and direction for his administration". Thus failing to establish the requisite support and base, Kaufman argued that Carter did indeed fail and the initial assessment of his failure was accurate.<sup>32</sup> In essence Kaufman does not reject the critiques of the Carter administration but argues – as I do in this dissertation – that there are meritorious positive moments in his presidency as well.

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<sup>31</sup> John Dumbrell, *The Carter Presidency: A Re-Evaluation*, (Manchester: Manchester University Press, 1993). Another positive account of Jimmy Carter – though a non-scholarly one – is Patrick Anderson's book, *Electing Jimmy Carter: The Campaign of 1976*. A manuscript that was written in 1977 but not published for seventeen more years, the account is more consistent with the honeymoon enthusiasm for Jimmy Carter than any reflationary or revisionary work. This book is useful for understanding Jimmy Carter as a person but not as useful for gleaming scholarly insight into his Presidency. See Patrick Anderson, *Electing Jimmy Carter: The Campaign of 1976*, (Baton Rouge: Louisiana State University Press, 1994). It should be noted that while most historians have now accepted the application of the populist label to Carter, in the 1970s this was not a foregone conclusion. See for example "How Populist is Carter?", *Time* (August 2, 1976), 13-15; Thomas Griffith, "Pop, What's a Populist", *Time* (October 4, 1976), 67; "Pleasures – and Perils – of Populism", *Time* (March 21, 1977), 25-26.

<sup>32</sup> Burton I. Kaufman, *The Presidency of James Earl Carter, Jr.*, (Lawrence: University of Kansas Press, 2006), 1-3.

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As with Ford, in addition to the literature on the ex-president, it is important to address the literature by Carter himself. Carter's main autobiography of his time as president was published in 1982. *Keeping Faith: Memoirs of a President*, described how from his first walk to the White House though his last day in office, he vied for a special style. Carter described his walk to the White House as more than a show of his vigor and support for the nation's physical fitness program. Carter wrote,

I remembered the angry demonstrators who habitually confronted Presidents and Vice Presidents, furious over the Vietnam War and later the revelations of Watergate. I wanted to provide a vivid demonstration of my confidence in the people as far as security was concerned, and I felt a simple walk would be a tangible indication of some reduction in the imperial status of the President and his family.<sup>33</sup>

Carter meant the walk to have symbolic value as well, showing the nation his transparency and approachability. Carter recognized that Watergate (and Ford's pardon of Nixon) were omnipresent issues in the campaign, even if they were rarely formally addressed.

Watergate had been a largely unspoken though ever-present campaign issue, and the bitter divisions and personal tragedies of those recent events could not quickly be forgotten. So, in spite of Ford's healing service, the ghosts of Watergate still haunted the White House. We wanted to exorcize them and welcome friendlier spirits. However, in reducing the imperial Presidency, I overreacted at first. We began to receive many complaints that I had gone too far in cutting back the pomp and ceremony, so after a few months I authorized the band to play "Hail to the Chief" on special occasions. I found it to be impressive and enjoyed it.<sup>34</sup>

Here Carter is also describing some of the subtle moves he main to reinforce his commitment to undue the imperial presidency.

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<sup>33</sup> Jimmy Carter, *Keeping Faith: Memoirs of a President*, (Toronto: Bantam Books, 1982), 3-14, 18.

<sup>34</sup> Ibid, 27.

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Like Domin, Carter remembers his tension with Congress however the ex-President puts more of the blame on the Legislature. "One campaign commitment I considered essential was my promise to work well with Congress." White House Domestic Policy advisor Stu Eizenstat once remarked that "Moses would have difficulty getting the Ten Commandments through [Congress] today." The Carter administration placed a high value on restoring cooperation and respect for Congress.<sup>35</sup> Carter reflected on the various members of Congress who passed through the Governors mansion in 1972 during their bids for the presidency. He recalled many were quite different when he met them as adversaries in Congress during his presidency. No longer were they on "their best behavior". On the other hand, Carter noted the "insatiable" need of Congress to be consulted, hounding Carter about everything, even before his first week in office was done. Carter cooperated with Congress but not always to his ultimate benefit. Sometimes he had to settle for less than he would have liked.<sup>36</sup>

Though Carter proved less able to cooperate with Congress than Ford, they both worked better than Nixon. Conversely, while Ford's pardon of Nixon left him unable to reconcile with many Americans at large, Jimmy Carter's outsider status allowed him to restore some of the public's faith in the White House. In this dissertation, I present different facets of the larger story of late 1970s politics and the history of presidential power. Ford and Carter tried to de-imperialize the American presidency; they tried to put

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<sup>35</sup> *Congressional Quarterly Weekly Report*, 37:40 (October 6, 1979), 2199.

<sup>36</sup> Jimmy Carter, *Keeping Faith*, 66-7, 71. Carter further added, "Since I had run my entire campaign on the very popular political theme that I was not part of the Washington "mess," I understood that much of the responsibility would have to be mine in developing better rapport. In the Ford Administration, the relationship of the branches had primarily been one of confrontation and a series of overridden vetoes, with little substantive consultation and a few results. I was determined not to repeat this practice, but I quickly learned that it is a lot easier to hold a meeting, reach a tentative agreement, or make a speech than to get a controversial program through Congress." For the quote see page 69. See also Don Richardson, Ed., *Conversations With Carter*, (Boulder: Lynne Rienner Publishers, 1998), 164-5.

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Humpty Dumpty together again after his great fall. Contrary to the interpretations of some other historians, I argue that Ford and Carter tried to reconcile power with Congresses eager to act on their own. Each chapter shows a different confrontation that arose as a result of the imperial presidency and the imperialism of past presidents. Though not every chapter begins explicitly – or even implicitly – with the Vietnam War or Watergate, the conflict behind each chapter was inspired by larger issues that occurred in the years leading up to late 1970s. Based on extensive archival research, this project rejects the prevailing caricature of Ford and Carter as place holders between the strong presidencies of Nixon and Reagan.

My research is based directly in the presidential archives, specifically at the libraries of the two Presidents that comprise the period in question. One of the challenges of presidential history is the sheer volume of archival material. Presidents and their staff are deputized pack rats. They are legally expected and bureaucratically encouraged to make a record of everything they do and say – and it is often said and done in triplicate with many carbon copies. There are also drafts of memos and speeches – old drafts are not tossed away but rather saved and filed and archived. In addition to the memorandums and letters that tell the story of how these Presidents conducted themselves in office, the libraries have the papers of their staffs, demonstrating how Ford and Carter's example was carried through the White House's West Wing. Additionally, the internal and external correspondence these individuals received provides an important barometer for the reconciliation effort. Beyond Presidential material, this project also incorporates Congressional research. Federal comity is a two-way street of cooperation and a study



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based entirely on presidential sources would therefore be incomplete. To understand how Congress received these presidential efforts it is imperative to explore their debates.

Chapters two and three address the War Powers Resolution and how it played out for the first President to deal with its Requirements. Before it came to be an excuse for military action without consultation under Ronald Reagan, it was a limiting check on presidential powers of Gerald Ford. Having been a part of the Congress that voted for the measure (though he himself voted against the bill), Ford understood firsthand how the War Powers Resolution came to be. Ford later explained,

Members of congress ... would argue that the presidency itself had grown too powerful, that a usurpation of powers by the President from the Congress was chiefly to blame for our disillusioning involvement in Vietnam. These concerns found legislative expression in the War Powers Resolution of 1973.<sup>37</sup>

Specifically, as tensions rose and diplomacy failed in South East Asia in the spring of 1975, Ford determined American action to be necessary. This meant consultation with Congress and formal reporting as per the War Powers Resolution.

Chapter two addresses the first three instances in which the War Powers Resolution was invoked. All were humanitarian aid and refugee assistance missions but since American troops were involved and the locations had the potential for hostilities, Ford consulted with and reported to Congress on his actions. However the language of the War Powers Resolution was vague and Ford's administration took great pains in deliberating over what would satisfy the letter and spirit of the Resolution. Ford believed

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<sup>37</sup> For an example of the expansive foreign policy attitudes under Reagan see Harold Koh, "Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair." *Yale Law Journal* 97 (June 1988), 1255-1342. For Ford's quote see Congress, Senate, Committee on Foreign Relations, *A Review of the Operation and Effectiveness of the War Powers Resolution*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, Hearing, page 326.

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Mr. Gerald R. Ford, President  
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the War Powers Resolution represented over-legislation and over-compensation of an imperial congress. Ford himself later reflected on the period noting,

Some people used to complain about what they called an “imperial presidency,” but now the pendulum has swung too far in the opposite direction. We have not an imperial presidency but an imperiled presidency. Under today's rules, which include some misguided “reforms,” the presidency does not operate effectively. That is a very serious development, and it is harmful to our overall national interests.<sup>38</sup>

Influenced by the Watergate scandal and revelations about the Gulf of Tonkin incident, these members sought to legislate away the possibility that any President could ever amass that much power again. In fact Ford felt that legislation like the War Powers Resolution would not restore the balance of power in Washington but tip the scales too far in the other direction. When trying to restore the balance of power, aggrandizement by either side is counterproductive. However, regardless of his personal beliefs, reconciliation meant respect for Congress and their constitutionally passed laws. In compliance with the act, Ford made formal reports to the Speaker of the House and President Pro Tempore of the Senate as well as appropriate consultations with relevant members of Congress. The execution of the War Powers Resolution requirements

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<sup>38</sup> Gerald R. Ford, “Imperiled, Not Imperial,” *Time* (November 10, 1980). Ford’s article is part of a two part series, “Two Ex-Presidents Assess the Job”. See Gerald R. Ford and Richard M. Nixon, “Two Ex-Presidents Assess the Job”, *Time* (November 10, 1980), 30-35. Arthur Schlesinger quoted Ford. See Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973, 1989), 425. Schlesinger is quoting from Gerald R. Ford, “Imperiled, Not Imperial,” *Time* (November 10, 1980). Kim McQuaid presented a similar argument. “The Democrats ... knew that the privileges of presidential office no longer covered Richard Nixon in any way. They knew that a pardon was aimed at keeping Nixon out of court, period. But many Democrats also wanted to keep Watergate temporarily alive by public opposing a pardon for the moment. Younger liberals who hadn’t been in Washington very long and who’d cut no private deals with Nixon tended to oppose a pardon because they wanted to change the balance of congressional-presidential power. Keeping Nixon and Watergate in the public eye for as long as possible might help accomplish that end. These same young liberals tended to see Watergate more as a systemic than a personal problem. A jungle of misdeeds had not occurred because of one man’s moral failing, but because Nixon and others had occupied an office which had become too imperial. Too much power had accumulated in presidential hands, the checks and balances of the Constitution no longer checked or balanced, and power was therefore bound to be abused by whoever occupied the Oval Office.” See McQuaid, 290.

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Chapter three continues the discussion of the War Powers Resolution. The fourth situation in the fateful six-week span in April and May 1975 involved the seizure by Cambodian communists of the American merchant vessel *Mayaguez* and her crew. While the diplomacy and operational history of this incident is well documented in the literature, the conflict in Washington over Ford's actions is not.<sup>39</sup> Though Ford and his administration maintained that they followed the same protocols as they had for the other three incidents (discussed in chapter two), some members of Congress contented that Ford did not adequately consult with them before taking action. They argued that defiance or inadequate compliance with the War Powers Resolution not only destroyed Ford's air of cooperation but the secretive and unilateral action implied by the lack of consultation was indicative of precisely the kind of imperial presidency that led to the Vietnam War and Watergate.

Chapters four and five address non-traditional measures to roll back the imperial presidency. Historians frequently focus on the efforts to undo the political and legislative manifestations of aggrandized federal power. This dissertation goes farther, addressing some efforts by Ford and Carter that fall beyond the traditional boundaries of such criteria. I argue that in this context, issues of draft amnesty and imperial trappings are just as important as the legislative juggernaut of the War Powers Resolution.

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<sup>39</sup> See for example, John F. Guilmartin, Jr., *A Very Short War: The Mayaguez and the Battle of Koh Tang*, (College Station: Texas A & M University Press, 1995); Roy Rowan, *The Four Days of Mayaguez*, (New York: W. W. Norton & Company, Inc., 1975); Ralph Wetterhahn, *The Last Battle: The Mayaguez incident and the End of the Vietnam War*, (New York: Carroll & Graf Publishers, Inc., 2001).

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Chapter four addresses draft dodger and military resister reconciliation, the presidential policies of clemency and pardon.<sup>40</sup> Richard Nixon ended American ground troop participation in the Vietnam War but the chain of deception and deceit dates back far before he took office in 1969. Even still, pulling out American troops did not totally fully put to rest the problems of Vietnam. That job fell to Ford and Carter as they sought to bind one of the nations' last wounds of the Vietnam War – specifically what ought to be done for those who chose not to serve in the Vietnam War. While neither president played a role in neither the fighting nor the execution of the war and despite the fact that by the time these men took the oath of office American ground troops had long since left Vietnam, the question remained of how to resolve the situations of these affected persons. To these young Americans, the impact and ramifications of the war continued long after the troops left the battlefield. Some served jail time while others fled into exile, forced to live abroad or lurk in America's shadows. As the nation remained divided over what ought to be these Americans' fate, two presidents tried to find common ground. They tried to heal a nation, to ease tensions between hawks and doves in the general population and in the halls of Congress, and to make amends for the aggrandized federal power that drove the Vietnam War. For this chapter the papers of and regarding the Presidential Clemency Board play a prominent role, as will the Congressional floor and committee debates. Undaunted by the constitution's pardon clause, many members of Congress sought to enact their own reconciliation solutions.

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<sup>40</sup> A draft dodger is anyone accused or convicted of Selective Service System violations. A military resister is anyone accused or convicted of non-violent crimes under the Universal Code of Military Justice. The later category includes but is not limited to deserters. Clemency is the legal opportunity to earn one's way back into society. Pardon removes the legal barriers and expunges the criminal records but does not lend moral credibility to those who committed the absolved offenses. These terms will be discussed in more detail in chapter four.



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Chapter five deals with Jimmy Carter's arsenal of austerity, including his restriction of limousine and helicopter use and the selling of the presidential yacht *Sequoia*. Owing to Jimmy Carter's populist style and outsider mentality, as president he tried at every turn to minimize the trappings of office. He believed the position itself had inherent prestige and anything beyond that was unnecessary. I argue that this rejection of excess coincided with his efforts to undo the imperial presidency. However, while Carter had clear success in reducing the fleet of White House helicopters and the use of limousines by executive staff, his move to sell the presidential yacht proved much more difficult and yielded much murkier results. The boat itself served political ends but fundamentally represented a frivolous means. Carter did not see the political grease and capital the boat represented. Rather, Carter only saw a selfish perquisite for an official that should not be afforded such liberties. However, Carter's quest for austerity proved to be one of his first lessons in Washington politics as bureaucracy and red tape stymied some of his noble message. His efforts to de-imperialize the presidency were overshadowed by the means to his ends. How he sold the boat became more important than why he sold it. Thus while Carter's austerity campaign had a mixed bag of results, the majority of the press coverage was on his follies more than his successes.

Chapter six continues my discussion of Carter's efforts to restore the balance of power in Washington. Throughout Carter's term in office he fought against the legislative veto, one of the measures implemented by overzealous members of Congress worried about returning to the imperial presidency. Devised to be an added check on runaway executive power, fundamentally it gave Congress the ability to nullify executive decisions. In practice the legislative veto represented aggrandized congressional power

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and more of an unbalancing than a rebalancing of federal power. Ford and Carter threw the weight of their presidencies behind measures designed to expose the unconstitutionality of the power. In a time when politicians were trying to restore the trust and balance in government, the legislative veto represented a step in the wrong direction. In this chapter, as the ones before it, the internal presidential memoranda and external communications will prove highly useful in gauging the White House's reaction to these pressing issues. The debates and hearings of Congress will also prove prudent in understanding the impact of the imperial presidency on the Legislature.

Chapter seven is my conclusion. In addition to tying together the three prongs of my reconciliation thesis, I bring the story of aggrandized presidential power into the present decade. Americans and politicians have just lived through the first decade of the twenty-first century, where once again the debate on the extent and scope of presidential power has taken center stage. The current debate bares many of the hallmarks of its 1970s counterpart, and in fact some of those comparisons surfaced in the 2008 election.

Carter's mishandling and inability to resolve the Iran hostage crisis before the 1980 presidential election undid much of his leadership image and political capital. Overshadowing his reconciliation efforts, his incumbency advantage, and even his role in the Camp David Accords, with a tarnished image Carter could not carry the election.<sup>41</sup>

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<sup>41</sup> For an example of an analysis of why Carter's follies overshadows his accolades see Clark R. Mollenhoff, *The President Who Failed*, (New York: MacMillan, 1980). One of the metaphors often employed by those who wanted to characterize Carter's presidency as enfeebled was that of the killer rabbit. While on a fishing trip Carter was confronted with a pestering rabbit. Press Secretary Jody Powell accidentally let the story slip to *Washington Post* reporter Brooks Jackson who ran the story on the front page two days later. With a cartoon entitled "PAWS" (parodying the popular Hollywood movie *Jaws* about a killer shark), the article spoke about the dangerous hare. The imagery of Carter being licked by a rabbit became a metaphor for his shortcomings. See Brooks Jackson, "Bunny Goes Bugs: Rabbit Attacks President", *Washington Post* (August 30, 1979), 1; Jody Powell, *The Other Side of the Story*, (New York: W. Morrow, 1984), 4; David Farber, "The Torch Had Fallen", *America in the Seventies*, Beth Bailey and David Farber, eds., (Lawrence: University Press of Kansas, 2004), 19-20.

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Ronald Reagan's tenure in office carried a strong mandate from the American people, but the election of 1980 that brought the California Governor and former actor to office could never have played out on the national and international issues the way it did had Ford and Carter not already sufficiently assuaged the Americans fears about political collapse. Ford and Carter acted to restore balance in government but also to restore American's faith in government. Today President Reagan is the Republican President every Republican Presidential candidate tries to compare themselves to. Each president seeks to convince America they can restore American credibility abroad and prosperity at home in a Reagan-esque manner. However, Reagan could never have happened had the ghosts of Watergate and the Vietnam War not been successfully exorcised by Ford and Carter.

The history of presidential power frequently transitions from Richard Nixon to Ronald Reagan with barely a pause. However in that pause two men took the oath of office and served in the White House. Historians refer to the "Ford footnote" or "Jimmy Who?", relegating America's thirty-eighth and thirty-ninth Presidents to obscurity and oversight.<sup>42</sup> I argue in this dissertation that the pause was actually a crucial moment in the larger story. These two leaders attempted the daunting task of taming the imperial presidency. Ultimately, as Americans watched a generation of their own sent off to fight a war in a far off country, they sought solace in the belief that those doing the sending had a good reason for doing so and were responsible for the decisions they made.<sup>1</sup> In

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<sup>42</sup> See, for example, David R. Goldfarb, et al, *The American Journey: A History of the United States*, 2<sup>nd</sup> Edition, Volume 2, (Upper Saddle River, New Jersey: Prentice Hall, 2000), 935; Adriana Bosch, producer, "Jimmy Who?," *Jimmy Carter*, American Experience, (Alexandria, Virginia: PBS Video, 2002); Lloyd Bitzer and Theodore Rueter, *Carter vs Ford: The Counterfeit Debates of 1976*, (Madison: University of Wisconsin Press, 1980), 17. Even Arthur Schlesinger argued Ford and Carter were "hapless". "Vietnam drove Johnson from the White House. Nixon drove himself. Nixon's successors – the hapless Gerald Ford and the hapless Jimmy Carter – proved incapable of mastering the discordant frustrations of the day." See Schlesinger, 424.

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## **CHAPTER 2:**

### **Gerald Ford and the War Powers Resolution: Emergency Evacuations**

#### Introduction:

After having been deceived by the vague language of the Gulf of Tonkin Resolution and what they considered a quixotic prosecution of the Vietnam War by Presidents Lyndon Johnson and Richard Nixon, by the 1970s dovish members of Congress were desperate for a way to check presidential power. As one legal journal phrased it, the War Powers Resolution represented “the zenith of congressional effort to increase legislative control over decisions to commit United States armed forces abroad.” While the War Powers Resolution had inherent momentum and broad based support, Nixon’s veto of the bill four days after the “Saturday Night Massacre” where he fired Special Prosecutor Archibald Cox and others for their relentless pursuit of the Watergate investigation, sealed Congress’ decision. Two weeks later Congress overrode Nixon’s veto by a vote of 284 to 135 in the House and 75 to 18 in the Senate. Though the margin in the House was just barely over the two-thirds minimum, this fact that the veto-override carried reflects the overwhelming support for the bill from members of Congress. Historian Robert Scigliano remarked, “It would be correct, though insufficient, to say that the War Powers Resolution, enacted on November 7, 1973, over President Nixon’s veto, was a belated reaction by Congress to the Vietnam War and an effort to prevent future Vietnams.” In fact, there is consensus amongst scholars across disciplines that, as another historian – Robert Turner – said, it is “conventional wisdom” that the War Powers Resolution sought to prevent future “illegal” conflicts such as the Vietnam War.<sup>1</sup>

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<sup>1</sup> “War Powers Resolution”, Public Law 93-148, November 7, 1973. For the quotes see “Realism,



Considered by scholars the most defining piece of legislation of the 1970s, the War Powers Resolution represented the doves' (mostly newly elected Democrats) response to the Vietnam War and the events of the past decade. It represented the dawn of a new chapter in American foreign policy.

This chapter is not about the circumstances that brought about the War Powers Resolution nor is it about the debate over the passage of the 1973 Act. These two topics have already been covered extensively in the literature.<sup>2</sup> Though these subjects are important to the modern debate over presidential power, there is a more specific issue to address. The next two chapters deal with Gerald Ford and how, as the first President to face the invocation of the War Powers Resolution, he complied with its mandates. In a six week span in 1975, Gerald Ford faced four situations that triggered the War Powers Resolution. This chapter addresses the first three instances. In each of these cases, President Ford mobilized United States Armed Forces to facilitate the safe evacuation of

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Liberalism, and the War Powers Resolution," *Harvard Law Review* 102:3 (January 1989), 637; Robert Scigliano, "The War Powers Resolution and the War Powers," In Joseph Bessette and Jeffery Tullis, eds., *The Presidency in the Constitutional Order*, (Baton Rouge: Louisiana State University Press, 1981), 115; Robert F. Turner, *The War Powers Resolution: Its Implementation in Theory and Practice*, (Philadelphia: Foreign Policy Research Institute, 1983). For Tower's comments see page ix. For Turner's comparison see page xiii. For a discussion of the conspicuous juxtaposition of Nixon's veto and the "Saturday Night Massacre" see Duane Tananbaum, "Gerald Ford and the War Powers Resolution" in Bernard J. Firestone and Alexej Ugrinsky, eds., *Gerald R. Ford and the Politics of Post-Watergate America*, 2 vols., (Westport, Connecticut: Greenwood Press, 1993), 528. The terms War Powers Act and War Powers Resolution are used interchangeably in the literature. The House titled the Joint Resolution the "War Powers Resolution" while the Senate Titled it the "War Powers Act" and while the final name of the Joint Resolution as passed was "War Powers Resolution", all bills passed into law carry the power and title of an "Act." For the purposes of consistency and simplicity, I am deferring to the term War Powers Resolution.

<sup>2</sup> The literature on these debates is thick to say the least. For some reflections by Members of Congress see especially Thomas F. Eagleton, et al, "Whose Power is War Power?" *Foreign Policy* 8 (Fall 1972), 23-37; Thomas F. Eagleton, *War and Presidential Power: A Chronicle of Congressional Surrender*, (New York: Liveright, 1974); Jacob K. Javits, "War Powers Reconsidered," *Foreign Affairs* 64 (Fall 1985), 130-40. For analysis by historians and other scholars see especially Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973, 1989), chapter 9; David Mervin, "The President and Congress," in Malcolm Shaw, ed., *Roosevelt to Reagan: The Development of the Modern Presidency*, (London: C. Hurst & Company, 1987), 83-4; John Ely, "Suppose Congress Wanted a War Powers Act That Worked", *Columbia Law Review* 88:7 (November 1988), 1379-80; Turner, chapter 1; Scigliano, op cit.

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American citizens and other persons from hostile situations. The fourth instance – discussed in the next chapter – regards Ford’s use of Armed Forces to rescue the seized American merchant vessel *Mayaguez* and her crew.

However, while this chapter will not delve into the circumstances that brought about the War Powers Resolution, it is prudent to describe the bill and its mandates. In an effort to prevent future Gulf of Tonkin Resolutions (blank check bills passed on weak intelligence) and from future Vietnams (quagmire military engagements with spurious warrants and limited exit strategy), Congress mandated that it be consulted when American Armed Forces engage in hostilities or when hostilities are imminent. Also, the President must formally report to Speaker of the House and President Pro Tempore of the Senate within the first forty-eight hours of the situation. Further more, the resolution limits the President to ninety days (sixty days with the possibility of a thirty-day extension) to complete the action, withdraw the troops or seek extended authorization (such as a declaration of war) from Congress. In short, the War Powers Resolution gave Congress the ability to veto military engagements and trump presidential power. If the president tried to mire the nation in another war without due cause or clear end, Congress could intervene. It placed the onus on the President to comply with the law and build broad support for their actions. Doves in Congress could not deny their vote in 1964 for the Gulf of Tonkin Resolution, but many maintained that had they been given better information sooner, they would have voted differently. They saw the War Powers Resolution as a pledge to never be ignored or hoodwinked again.<sup>3</sup>

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<sup>3</sup> Richard G. Head, Frisco W. Short, and Robert C. McFarlane, *Crisis Resolution: Presidential Decision Making in the Mayaguez and Korean Confrontations*, (Boulder, Colorado: Westview Press, 1978), 82, 255.

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When the War Powers Resolution initially came to a vote in 1973, Representative Gerald Ford (R-MI) voted against it, supported Richard Nixon's veto, and voted against the veto-override. While a member of Congress, Ford supported a strong American foreign policy and presence abroad, as president he "considered it his personal responsibility to fulfill the expectations of U.S. citizens for presidential leadership and vigorous action." However, President Ford could not let his personal views damage his rapport with Congress. Reconciling the sins of past presidents meant taking a more conciliatory approach to foreign policy and proceeding through policy decisions with caution. Ford's leadership in these crises sought to restore Americans' confidence in their leader and renew respect for the man in the White House. He could not afford to be painted as another imperial president inclined to act on his own whim and fiat.<sup>4</sup>

As president, Ford prided himself on respecting Congress. This included cooperation and consultation on foreign policy whenever possible. However, Ford did not think the architects of the War Powers Resolution meant it to apply to the situations discussed in these chapters. Ford never considered the law as a general principle. He agreed with the idea of keeping Congress apprised. In each of these four instances, Ford consulted and reported as best he could. Ford later reflected on this position and his interpretation of the War Powers Resolution:

Nevertheless, in each instance, I took note of its consultation and reporting provisions, and provided certain information on operations and strategies to key members of Congress. It is my view that when the President as commander-in-chief undertakes such military operations, he would inevitably take the Congress into his confidence in order to receive its advice and, if possible, its support. This type of consultation makes

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<sup>4</sup> Head, et al, 221-2. Ford was on record numerous times and in numerous places – beyond his voting record – as opposing the "limitations that were placed on the Chief Executive" (referring to the War Powers Act). See Clark Clifford, "In Praise of Congress", *New York Times* (May 21, 1975), 43.





common sense and certainly strengthens trust between the executive and legislative branches. But it is to be distinguished from the detailed information and time limits imposed by the War Powers Resolution... The balance must lie, instead, in a frank recognition of the basic strengths and weaknesses of both the executive and legislative branches of government, in the institutional capabilities and limitations imposed by the Constitution and common sense... Tragically, in recent years, the bases of trust, cooperation and civility between the legislative and executive branches of our government have been eroded.<sup>5</sup>

Ford argued that keeping Congress apprised should not be mandated or defined but should just be done as good policy. In fact, Ford argued it was bad policy to force members of Congress in to the decision making process. Ford believed in the separation of powers and that vision did not include strict interpretation of the War Powers Resolution. Ford saw consultation as the answer but he considered the War Powers Resolution more of the problem. Ford saw the Act as trying to write into law what the constitution left out, namely congressional authority to make war. However, Ford respected the law as passed, deciding this would not be the right time to fight Congress on the issue.<sup>6</sup>

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<sup>5</sup> Congress, Senate, Committee on Foreign Relations, *A Review of the Operation and Effectiveness of the War Powers Resolution*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, Hearing, pages 325-331. For the quotes see pages 327 and 330. For further discussion of Ford's position see Gerald R. Ford, *A Time to Heal: The Autobiography of Gerald R. Ford*, (New York: Harper and Row, 1979), 252; Scigliano, 120-4; John Ely, 1379-80; Tananbaum, 529-30. In later testimony, Department of Defense Assistant General Counsel Benjamin Forman, expressed Ford's position in similar terms. Regarding the recent debate over presidential power, rather than seeing the ebb and flow of congressional authority as struggle, he saw it as an ongoing cooperative effort. "I for one, however, view the period as exemplifying a continuing effort at compromise solutions which failed to reach any conclusive results." He argued the boundaries of power create positive boundaries and prevent boundaries disputes. See Statement of Benjamin Forman, Assistant General Counsel, Department of Defense, Before the Senate Judiciary Committee – on Separation of Powers, September 9, 1975, "War Powers Resolution: General" Folder, Box 65, Philip W. Buchen Files (WH Counsel's Office), Gerald Ford Library.

<sup>6</sup> Ford was not the first to question whether Congress could make war. In fact this debate is as old as the constitution itself. See Charles A. Lofgren, "War-Making under the Constitution: The Original Understanding," *The Yale Law Journal* 81:4 (March 1972), 672-702. Historian Arthur Schlesinger noted that Congressional consultation was not always an anathema to Presidential politics. Even Franklin Roosevelt, the president who saw the greatest expansion of presidential power, consulted Congress when possible. "Few Presidents had so much rejoiced in the exercise of power as Franklin D. Roosevelt; but even FDR had preferred, when possible, to act in concert and partnership with Congress. The presidential



The War Powers Resolution sought to provide insurance that in future scenarios, the decision to introduce Armed Forces will be the “collective judgment” of both the President and Congress. In the long term, this would not prove to be the case but unintended consequences do not change the legislative intent. The Resolution narrowly interpreted the constitution’s “Commander-in-Chief” clause<sup>7</sup> and expansively interpreted the “Necessary and Proper” clause<sup>8</sup>, stating that Congress has a role to play in the foreign policy decisions that affect Armed Forces deployment. Gerald Ford saw the War Powers Resolution as consolidating constitutional powers that were meant to be split. Congress had been delegated the power to declare war and raise the military while the President is

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breakaway really came after the Second World War. The postwar Presidents, though Eisenhower and Kennedy markedly less than Truman, Johnson and Nixon, almost came to see the sharing of power with Congress in foreign policy as a derogation of the Presidency. Congress, in increasing self-abasement, almost came to love its impotence.” Schlesinger concluded that it was predominately after World War II that Presidents began to shut Congress out. He added that it was at that time that Congress began to abdicate its role and right to be involved. See Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973, 1989), 206. Historically it had been understood that the President has broad leeway on foreign policy issues and particularly has authority to act on foreign policy in some situations without having congressional approval. For example, in *United States v. Curtiss-Wright Export Corporation* 299 U.S. 304 (1936) the Supreme Court ruled that the president has broad leeway in conducting foreign policy and has plenty of authority in said matters irrespective of congressional consent. Such was also the case of Lend Lease. Schlesinger, 103, 105; Michael D. Ramsey, *The Constitution’s Text in Foreign Affairs*, (Cambridge, Massachusetts: Harvard University Press, 2007), 251. Harry Truman sent troops to Palestine and North Korea with limited Congressional consultation and approval but when the dust settled his decision was respected and supported. However, whenever possible, Truman consulted with members of Congress. However even Truman would be reeled in from excessive power when the Supreme Court ruled that his seize of the Steel industry exceeded the boundaries of executive power. For the Steel case see page 145; *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). John Kennedy took similar liberties regarding his foreign policy towards Cuba. He acted without Congressional consultation during the Bay of Pigs invasion and the Cuban Missile Crisis, each with differing results. Lyndon Johnson consulted with Congress when possible but this at times stemmed more from personal relations with members of Congress than his view of Presidential-Congressional relations. For a general history of presidential use of force and the war-making power see Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973); Ann Van Wynen Thomas and A.J. Thomas, Jr., *The War-Making Powers of the President*, (Dallas: Southern Methodist University Press, 1982). For discussions of post-World War II presidents see especially Schlesinger pages 131-40, 173-4, 181 and Thomas and Thomas, page 50.

<sup>7</sup> “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.” United States Constitution, Article II, Section 2.

<sup>8</sup> “The Congress shall have power to... make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” United States Constitution, Article I, Section 8.

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the Commander-in-Chief of executing American foreign policy. “It was not intended that these powers be consolidated in the interest of efficiency, but rather that they be separated in the interest of democracy.”<sup>9</sup> By and large, these doves (Democrats) on the other hand, sought to avoid the possibility of another Gulf of Tonkin Resolution where members of Congress – based on bad intelligence – would acquiesce to a President’s foreign policy strategy precipitating a significant, long-term commitment of American troops into hostile situations. Thus the issue came down to members of Congress who believed in the balance of power versus those like Ford who endorsed a separation of powers.

Of particular importance for these two chapters is the way in which the first President forced to comply with this Resolution – Gerald Ford – obliged. To this end, the important clauses of the War Powers Resolution to consider in these two chapters are sections three and four. Section three addressed the obligation of the President to “consult” with Congress “in every possible instance” before hostilities and after hostilities have begun. However, the language of the Resolution does not define consultation. Defense strategists Richard G. Head, Frisco W. Short, and Robert C. McFarlane noted, “Consultation was in acknowledgement of Section 3 of the War Powers Resolution, and consisted of both formal and informal briefings by President Ford, members of his staff, and representatives from the departments of Defense and

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<sup>9</sup> See Congress, Senate, Committee on Foreign Relations, *A Review of the Operation and Effectiveness of the War Powers Resolution*, 326. On the issue of constitutional interpretation, Robert Turner added, “Several commentators have observed an apparent irony in the ‘war powers’ debate: many liberals who eschew ‘strict constructionalism’ on other issues seem wedded to an ‘original intent’ interpretation of the declaration of war clause, while many ‘strict constructionalists’ seem happy to rely on constitutional practice and contemporary relevance... Congress does not wish to give the president a ‘blank check’ to use force; but Congress does insist that the constitutional formalities concerning a declaration of war be observed. By its nature, a ‘declaration of war’ is a blank check,’ and efforts by Congress to legislate controls over the *conduct* of military operations quickly create serious separation of powers problems.” See “Excerpts: The Great Debate on War Powers.” *The National Law Journal* 13:20 (January 21, 1991), 26.

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State.” Whether consultation constitutes soliciting the advice and suggestions of members of Congress or just informing them of the President’s decisions is a technicality that would precipitate much debate in the years following the bill’s passage. Ultimately, Ford sought to comply with the intent of the War Powers Resolution. Ford said “Nevertheless, as President I tried to live up to both the letter and the spirit of the law.” Ford agreed with the law’s premise but not its methodology, i.e. he believed Congress should not be shut out but the law should not dictate how and when to consult. Ford’s statement says nothing of his personal views. Ford complied with the law as best he could though his opponents said he may have complied *de jure* but not *de facto*.<sup>10</sup>

Section four regards reporting. In situations in which American Armed Forces are going into or are in hostile or imminently hostile situations or if there is a significant change in force strength or status in a foreign nation, the President must communicate within forty-eight hours to the Speaker of the House and President Pro Tempore of the Senate the circumstances and scope of the engagement.<sup>11</sup> If the circumstances persist, subsequent progress reports must be presented no less than every six months. The first four reports made – the ones discussed in these two chapters – regarded incidents brief enough that the initial report proved to be all the formal reporting necessary.

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<sup>10</sup> Head, et al, 115, 222; Ford, *A Time to Heal*, 252. Ford’s attitude towards Congressional consultation spanned wider than just his belief in the spirit of the War Powers Resolution. In early 1975, *Time* magazine Washington Correspondent Dean Fischer interviewed Gerald Ford’s White House Chief of Staff, Donald Rumsfeld to talk about the style of the New President. Rumsfeld said of his boss, “He’s a do-it-now kind of person. The other day, on the spur of the moment, he picked up the telephone and called a Senator who opposed a veto of a particular bill. And conversely, when somebody is violently opposed to a bill he signs, the President may call him up to explain his reasoning. You don’t get to be minority leader of the U.S. House of Representatives without being one hell of an able guy. The President is not smooth in the modern sense of the word, but the House is a pretty tough league.” Before Rumsfeld worked for President Ford, Congressman Rumsfeld (R-IL) had worked with Minority Leader, Congressman Ford (R-MI) in the 1960s. See “Now the Constituency is the Nation”, *Time* (January 20, 1975), 16. For another example of Ford’s cordiality and open style see “The Quiet Counterforce”, *Time* (March 17, 1975), 8; “Here, There and Everywhere”, *Time* (May 5, 1975), 31-32.

<sup>11</sup> “War Powers Resolution”, Public Law 93-148, November 7, 1973.



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Putting Law into Practice:

White House Debates over War Powers Resolution Compliance

By March 1975 it became increasingly clear to the White House that American personnel in South East Asia might soon need to leave quickly. While the United States no longer had active ground troops participating in the Vietnam War many American military civilian contractors still lived and worked in South East Asia, especially in South Vietnam and Cambodia. These two nations both had fragile governments with Communist forces on the verge of takeovers. If the situation in either country became openly or imminently hostile for Americans, the President would need to facilitate their evacuation. Given the War Powers Resolution mandate that in such situations the President must consult with and report to Congress, White House staff began to discuss with President Ford how he should interpret the War Powers Resolution and its consultation clause.

The conversation began with memos sent to President Ford by Deputy Secretary of State Robert S. Ingersoll and Secretary of State Henry Kissinger, noting that if American forces became necessary in an evacuation of Phnom Penh, Cambodia, it would trigger the War Powers Resolution. Kissinger supplemented his realization with suggestions from Ingersoll explaining various ways Ford could “comply” with the War Powers Resolution.<sup>12</sup> Ingersoll, Kissinger, and Ford were well aware of the divided

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<sup>12</sup> Memorandum, Henry A. Kissinger to Gerald Ford, no date, “War Powers Resolution: Vietnamese War” Folder, Box 65, Philip W. Buchen Files (WH Counsel’s Office), Gerald Ford Library; Memorandum, Robert S. Ingersoll to the President, March 18, 1975, “Cambodia (12)” Folder, Box 2, National Security Advisor, Presidential Country Files for East Asia and the Pacific, Gerald Ford Library.

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Ingersoll noted,

Since our evacuation contingency plans provide for the possible use of U.S. military forces to effect an evacuation of Americans from Phnom Penh, and since Congressman Zablocki is certain to raise this question... it must be decided urgently whether and, if so, in what manner we wish to consult with the Congress regarding our evacuation contingency plans.

Representative Clement Zablocki (D-WI) was one of the primary architects of the War Powers Resolution. Thus he would be more adept than most in Congress to know when it ought to be invoked. More fundamentally, Ingersoll's comment reflects an understanding that while Ford might not personally agree with the War Powers Resolution, he ought to pro-actively consider how he would comply with the law and its mandates. Ingersoll continued,

Even though consultations may not yet be a legal requirement, it is undoubtedly true that the sooner key congressmen are briefed on this matter the easier it will be to deal with them at such time as our plans might actually be implemented.... Thus... we must tell the Congress something about our evacuation plans or we will be put in the posture of having refused, in the face of Section 3 of the War Powers Resolution, to discuss this most important matter with the Congress.

The perception of non-cooperation or the imagery of taking a bad posture could potentially do significant damage to Ford's reputation and political capital. The teeth of the War Powers Resolution lie within the bill itself (trumping presidential power) but also in the public image it creates when a President is non-compliant (or even simply perceived as non-compliant). Continuing on the thread about perception of cooperation, Ingersoll explained that the vague definition of consultation in the War Powers Resolution was a double edged sword.

Presumably, however, it means something more than merely informing Congress of a decision taken by the President. The term consultation

carries the connotation that there will be some exchange of views as a minimum even though it does not require that the parties exchanging views come into agreement as to what is to be done... It is within his power to describe these options to representatives of Congress without at this time committing himself as to exactly which option he will adopt. This approach is all the better in that it avoids the accusation which might otherwise be made that he was merely confronting the Congress with a fait accompli.<sup>13</sup>

Ingersoll warned Ford that while he did not have to heed Congressional advice, he needed to solicit it. These consultations should be far enough in advance that the suggestions could be implemented (even if he never intended to). Ford could bring options to members of Congress without saying this is the only option. Thus Ford could comply fully yet retain his presidential power and right to his prerogative. (In retrospect, this logic assumes that time is not a factor. Ford would later learn that time for consultation is a luxury not always available.) Ingersoll then proceeded through the various options Ford had for compliance.

Ingersoll laid out five overlapping but distinct options by which Ford could proactively plan to comply with the War Powers Resolution. Involving many combinations of members of Congress and an array of communication techniques, Ingersoll presented Ford with various ways to comply and the positives and negatives of each option. Cost-benefit analyses were presented for telephone communication versus personal meetings – and which of each would be done by Ford himself. Consulting too many members of Congress or consulting them too informally risked leaks to the press or the enemy while consulting too few might be perceived as inadequate or non-compliant. Regarding non-compliance, Ingersoll warned that “Congress would react negatively to such a posture on

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<sup>13</sup> Memorandum, Robert S. Ingersoll to the President, March 18, 1975, “Cambodia (12)” Folder, Box 2, National Security Advisor, Presidential Country Files for East Asia and the Pacific, Gerald Ford Library.

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the ground that failure to consult under present circumstances indicates that the President does not desire meaningful consultation.” Such a posture could possibly trigger Congressional backlash and precipitate further “restrictive legislation”.<sup>14</sup>

Building off of Ingersoll’s suggestions, Kissinger reiterated the vagueness of the language demanding consultation in War Powers Resolution, providing great latitude for presidential discretion in compliance. Kissinger argued that Ford had “three basic decisions” to make... “(1) the timing of such consultations; (2) what members of Congress should be consulted; and (3) who should conduct the consultations.” Kissinger stressed that while notification would not be a problem, prior consultation and communication carries risks to national security. Also, involving Congress too early might make changing his mind more difficult later on with regard to other options. Kissinger then proceeded to elaborate on similar cost-benefit analyses for each of the three decisions.<sup>15</sup>

On March 20, 1975, National Security Counsel (NSC) staff member Les Janka sent a classified memo – along with Kissinger and Ingersoll’s memos – to Deputy Assistant for Legal Affairs Max Friedersdorf and White House Counselor Phil Buchen noting that the situation in Phnom Penh might escalate to hostilities and trigger the War Powers Resolution. Since the administration’s actions in this situation would set an important precedent, he called for input and feedback so that the response could be the best possible. Later that day, having already solicited the input from Buchen and

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<sup>14</sup> Ibid.

<sup>15</sup> Memorandum, Les Janka to Max Friedersdorf and Phillip Buchen [*sic*], March 20, 1975, “War Powers Resolution: Vietnamese War” Folder, Box 65, Philip W. Buchen Files (WH Counsel’s Office), Gerald Ford Library; Memorandum, Henry A. Kissinger to Gerald Ford, no date, “War Powers Resolution: Vietnamese War” Folder, Box 65, Philip W. Buchen Files (WH Counsel’s Office), Gerald Ford Library.

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Friedersdorf, Janka sent a similar memo to the Deputy Assistant to the President for National Security Affairs (better known as the Deputy National Security Advisor and Henry Kissinger's protégé), former Air Force Lieutenant General Brent Scowcroft.<sup>16</sup>

By the end of that day – March 20, 1975 – Friedersdorf replied to Janka's memo concurring with the conclusions that Janka, Kissinger, and Ingersoll made. Additionally he expressed his preference for the consultation option where the President personally contacted the Speaker of the House, the President Pro Tempore of the Senate, and the Majority and Minority leaders of both houses. He then suggested it would be the purview of the Secretary of State and the Secretary of Defense to call the chairmen and ranking members of their jurisdictional committees. Two days later, Buchen replied to Janka, concurring that a constitutional challenge would not be prudent.<sup>17</sup> At a moment when the President sought to win the battle over public perception as much as the battle over separation of powers, Ford and his staff realized that though his constitutional challenge might be valid, it would not be prudent.

Though many at the White House accepted the tumultuous hostilities in Southeast Asia as possible – if not probable – nobody knew when it would come or how frequently it would come in the ensuing two months. Four times in a six week span from April 4, 1975 to May 15, 1975 Ford reported to Congress – on four different situations – in

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<sup>16</sup> Memorandum, Les Janka to Max Friedersdorf and Phillip Buchen [*sic*], March 20, 1975, "War Powers Resolution: Vietnamese War" Folder, Box 65, Philip W. Buchen Files (WH Counsel's Office), Gerald Ford Library; Memorandum, Les Janka to General Scowcroft, March 20, 1975, "Cambodia (12)" Folder, Box 2, National Security Advisor, Presidential Country Files for East Asia and the Pacific, Gerald Ford Library.

<sup>17</sup> Memorandum, Max Friedersdorf to Les Janka, March 20, 1975, "Cambodia (12)" Folder, Box 2, National Security Advisor, Presidential Country Files for East Asia and the Pacific, Gerald Ford Library; Memorandum, Phil Buchen to Les Janka, March 22, 1975, "Cambodia (12)" Folder, Box 2, National Security Advisor, Presidential Country Files for East Asia and the Pacific, Gerald Ford Library. For Scowcroft's qualifications and relationship with Kissinger see "Scowcroft: Able General", *Time* (November 17, 1975), 26.

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compliance with the War Powers Resolution. Two weeks after these memos circulated Ford was first pressed into a situation invoking the War Powers Resolution. Despite the predictions of various memos that the War Powers Resolution incident would be in Cambodia, in fact exigent circumstances developed in Vietnam first.

#### Incident # 1 – Vietnamese Refugee Evacuation (April 4, 1975)

As the situation in South East Asia began to deteriorate exponentially, Ford and his staff began to prepare an address to Congress calling for – amongst other things – the clarification of the War Powers Resolution and whether the President has the authority to employ American Armed Forces to facilitate and ensure the safety of foreign nationals in addition to American citizens. However, one week before Ford would address a joint session of Congress and make his plea, the North Vietnamese army's progressive march southward through South Vietnam overtook the costal city of Da Nang, threatening the safety of the American citizens and South Vietnamese nationals therein. Emphasizing America's continued moral obligations, Ford decided to use the Armed Forces to help effect an evacuation of the affected persons.<sup>18</sup> While the possibility of hostilities was unlikely, since it could not be ruled out entirely, he felt obliged to contact members of Congress. As such, on March 31, 1975 Ford and his staff began to contact and apprise members of Congress of the situation, Ford's course of action, and the potential for

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<sup>18</sup> See for example, Memorandum, Phil Buchen to Les Janka, March 22, 1975, "3/29/75 – Evacuation of Vietnamese Refugees", "War Powers Act" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Memorandum, Jack Marsh to [Dick] Cheney, April 3, 1975, "4/5/75 – Evacuation of Vietnamese Refugees (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; News Conference Transcript, "Secretary of Defense James R. Schlesinger at the Pentagon", April 2, 1975, "4/5/75 – Evacuation of Vietnamese Refugees (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 5:6600-1; Thomas W. Lippman, "All Americans Evacuate Phnom Penh", *Washington Post* (April 12, 1975), A1, A12. For a discussion of Ford's use of moral arguments see for example Graeme Mount, *895 Days That Changed the World: The Presidency of Gerald R. Ford*, (Montreal: Black Rose Books, 2006), 64.

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hostilities. White House staffers had call sheets for the House and Senate, contacting key members in each chamber. The reactions of members of Congress were documented on the call sheets for relaying to White House officials and for record keeping.

Though commentary came to the White House from both sides of the aisle in Congress, the strongest support came from the most ideologically conservative members of each party. Conservatives typically favored strong presidential leadership and did not press Ford on how he complied with the War Powers Resolution. They generally remained content knowing the president acted decisively. For example, Senator Strom Thurmond's (R-SC) response was listed as "Agrees with action". Thurmond's political leanings were clear since his run for the Presidency on the Dixiecrat ticket in 1948. In 1964 following the passage of the Civil Rights Act (despite his marathon filibuster) and Senator Barry Goldwater's (R-AZ) resounding defeat in the November general election, Thurmond switched parties to be the first Republican from the Deep South in the twentieth century. Thurmond represents the early shift amongst Republicans (often former Southern Democrats) to the party of Goldwater. Similarly Senator John Sparkman (D-AL) was quoted as saying "Thinks this is a good move." Though still a Democrat, Sparkman's ideology closely resembled Thurmond's. A veteran of the Southern Democratic juggernaut, Sparkman later that year would reassert his conservative ilk by becoming one of only four Democrats to oppose the extension of the Voting Rights Act. Indeed by the 1970s, Sparkman frequently voted much more conservatively than median of his party.<sup>19</sup>

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<sup>19</sup> For the quotes and general discussion of the members of Congress contacted see Memorandum, [Robert] Wolthuis to Phil [Buchen], March 29, 1975, "3/29/75 – Evacuation of Vietnamese Refugees", "War Powers Act" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Draft Message, John O. Marsh to Congressional Leaders including Chairmen and Ranking Minority Members, no date, "3/29/75 –

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By April 3, 1975 the imminent need to evacuate Da Nang became clear to the White House. The next day White House Counselor Jack Marsh sent a classified communication to President Ford. "It has been determined that the reporting requirements of Section 4A (2) of the War Powers Resolution requiring reporting to the Speaker and the President Pro Tempore should be observed." Marsh noted that the report must come within forty-eight hours of the triggering incident, and since the *New York Times* already had the story, ignorance was not an option. *New York Times* reporter John Finney had already made a Department of Defense inquiry and the department was waiting for Ford's guidance on how to respond. (Finney published his article the next day.) Marsh concluded his memo with the observation that the Counsels offices at White House, Department of Defense, and Department of State all concurred that the War Powers Resolution applied. All agreed that Ford had until 4:00am on April 5 to report to Congress (forty-eight hours after the situation in Da Nang became terminal).<sup>20</sup>

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Evacuation of Vietnamese Refugees", "War Powers Act" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Memorandum, William Kendall to [no recipient], March 29, 1975, "3/29/75 – Evacuation of Vietnamese Refugees", "War Powers Act" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Memorandum, Robert K. Wolhuis to [no recipient], March 29, 1975, "3/29/75 – Evacuation of Vietnamese Refugees", "War Powers Act" Folder, Box 122, John O. Marsh Files, Gerald Ford Library. For a discussion of the political ideology and background of Thurmond and Sparkman see Merle Black and Earl Black, *The Rise of Southern Republicans*, (Cambridge, Massachusetts: Harvard University Press, 2002), 1-2, 32-4, 62, 82, 115-7, 126, 128. For the term juggernaut see for example page 40.

<sup>20</sup> Memorandum, Jack Marsh to Don Rumsfeld, April 3, 1975, "4/5/75 – Evacuation of Vietnamese Refugees (2)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Memorandum, Jack Marsh to The President, April 4, 1975, "War Powers Resolution: Vietnamese War" Folder, Box 65, Philip W. Buchen Files (WH Counsel's Office), Gerald Ford Library. Other copies of this letter are in the "War Powers" Folder, Box 125, Ron Nessen Papers (WH Press Secretary's Office), Gerald Ford Library and the "4/5/75 – Evacuation of Vietnamese Refugees (2)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library. The War Powers Resolution demands consultation with Congress. This proved especially difficult given that at the time of the incident, Congress had adjourned for Easter. Congressional leadership sojourned in distant places, from Mexico to China and in twelve different states of the union. For copies of the telegrams sent see the "4/5/75 – Evacuation of Vietnamese Refugees (2)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library. For a discussion of the difficulty see Congress, Senate, Committee on Foreign Relations, *A Review of the Operation and Effectiveness of the War Powers Resolution*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, Hearing, pages 328; James MacGregor Burns, *The Power to Lead: The Crisis of the American Presidency*, (New York: Simon and Schuster, 1984), 186-187. For Finney's article see John W. Finney, "Backed on Evacuation", *New York Times* (April 4, 1975), 11.

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The next day (April 4, 1975), in a message to Congress as per his War Powers duty, Ford told the leaders of each chamber of Congress of operation “Baby Lift”, his action directing Navy vessels to aid in the evacuation of refugees from Da Nang and other seaports in Vietnam. Since Ford authorized a small cadre of Marines to transport some refugees via helicopter, there were some troops that would be in hostile areas. In language that would later be the subject of debate Ford declared, “The operation was ordered and conducted pursuant to the President’s Constitutional authority as Commander-in-Chief of U.S. Armed Forces to provide for the protection and safety of U.S. citizens.” Using seemingly innocuous language, Ford asserted in his War Powers Resolution mandated letters that his actions stemmed not from a Congressional grant of authority but from his innate power as President vested in him by the constitution. While the War Powers Resolution asserts a Congressional role in foreign policy decisions, Ford reiterated that cooperation is a courtesy but the power to act squarely remained the purview of the President.<sup>21</sup> Over the next twenty-four hours, various memos followed documenting how the members of Congress were apprised and their reactions. Comments like those of Senator Majority Whip Robert Byrd’s (D-WV) dominated. “This is proper role for President. Thinks President is handling a terribly difficult situation very well.” The conservative Byrd had a reputation for courtesy and respect. The senior statesman –

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<sup>21</sup> For Ford’s interpretation of his powers and his phraseology see Donald L. Westerfield, *War Powers: The President, the Congress, and the Question of War*, (Westport, Connecticut: Praeger, 1996), 107-8; Turner, viii.

<sup>21</sup> For an example of this discussion see James H. Willbanks, *Abandoning Vietnam: How America Left and South Vietnam Lost Its War*, (Lawrence: University Press of Kansas, 2004), chapters 9 and 10.

<sup>21</sup> “United States Foreign Policy”, *Weekly Compilation of Presidential Documents* Volume 11, Number 15 (April 14, 1977): 359-70.

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and others like him – approved of what Ford had done but they especially appreciated that he had made an effort to tell them he had done it.<sup>22</sup>

After the evacuation ended and the imminent hostilities subsided, there was a long protracted debate over the status of the Vietnamese refugees. The discussion of this situation is beyond the scope of this chapter.<sup>23</sup> However, amidst the discussion, Ford raised another issue in an April 10, 1975 address to a Joint Session of Congress. While apprising Congress of the status of American foreign policy and calling for further refugee and humanitarian assistance, Ford asked for clarification of the War Powers Resolution.

And now I ask the Congress to clarify immediately its restrictions on the use of U.S. military forces in Southeast Asia for the limited purposes of protecting American lives by ensuring their evacuation, if this should be necessary. And I also ask prompt revision of the law to cover those Vietnamese to whom we have a very special obligation and whose lives may be endangered should the worst come to pass. I hope that this authority will never have to be used, but if it is needed, there will be no time for Congressional debate. Because of the gravity of the situation, I

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<sup>22</sup> Message, Gerald Ford to Speaker of the House and President Pro Tempe of the Senate, April 4, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (2)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library. See for example, Memorandums, Jack Marsh to Don Rumsfeld, April 5, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (2)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library. Special efforts were taken to ensure communications reached members of Congress who were abroad. See for example, Flash, Situation Room to Carl Albert, April 4, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (4)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Certificate, John O. Marsh, Jr. [regarding Carl Albert], April 7, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (2)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Letter, H. Spofford Canfield to John O. Marsh, Jr., April 7, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (2)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Memorandum, Richard Fryklund to Jack Marsh, April 7, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (3)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Memorandum, Robert J. McCloskey to John O. Marsh, April 9, 1975, “4/5/75 – Evacuation of Vietnamese Refugees (3)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library. See also Turner, 52-54; Willbanks, 247-53. For a discussion of Byrd’s statesmanship see David Tarr and Ann O’Conner, eds., *Congress A to Z*, 3<sup>rd</sup> ed., (Washington, D.C.: Congressional Quarterly, Inc., 1999), 45-6. On the issue of Ford’s action being pursuant to the War Powers, Historian Robert F. Turner actually disagrees. He argued that given Ford’s disposition to the device (demonstrated by his votes as a Congressman), as president Ford submitted reports to Congress “consistent with” rather than “pursuant to” the resolution. See Turner, viii.

<sup>23</sup> For an example of this discussion see Willbanks, chapters 9 and 10.

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In an effort to consult and solicit Congressional input and respect their prerogative, Ford demonstrated his desire to restore inter-branch cooperation. Navigating through uncharted waters, Ford sought Congressional advice on how he could continue to do his job and ensure the safety of American citizens while respecting and complying with the law as passed by Congress.

While the House of Representatives waited two weeks to take up the debate, the Senate soon took up Ford's inquiry. Unlike the more conservative members of Congress, the more liberal members spoke out most favorably in support of the War Powers Resolution and for any action that reigns in American foreign presence – especially in Southeast Asia. On April 15, 1975 the famously even tempered Senate Majority Leader Mike Mansfield (D-MT) spoke about the need for more diplomacy and an end to the South Asian conflict. Mansfield spoke with praise for the President and his actions. He also noted that the Armed Services Committee and the Foreign Relations Committee would soon be delving into the clarification request by Ford regarding his authority to use American forces, if necessary, for evacuation missions from South Vietnam. Mansfield argued that it was one thing to use troops to secure the evacuation of Americans from hostile situations but it would be another matter if this situation created combat casualties and became the warrant for a “reinvolvement in the military conflict in Vietnam in any way.” Mansfield reiterated the Majority leader's position that under no circumstances should the United States resume military involvement in the war.

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<sup>24</sup> “United States Foreign Policy”, op cit.

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Legally, the war cannot and must not be resumed without the express consent of the American people speaking through the Congress and the President jointly. The sooner everyone in this government, in every branch and service recognizes that Constitutional reality, the better for all concerned. To find any pretext to the contrary is to raise once again the specter of Watergate – the specter of gross illegal behavior on the part of officials of the United States, sworn to uphold the Constitution and the law. I do not expect any such pretext.

Despite Mansfield's generally cordial relationship with Lyndon Johnson and the White House in general, Mansfield became one of the first Senators to speak out against American foreign policy in Southeast Asia. Subsequently, Mansfield remained suspicious and concerned with all American actions in the area, especially ones that could constitute new commitments or that lacked full transparency. Ford would work hard to assure Mansfield and those like him that this would not be the case. While some members of Congress focused on this apprehension, many others delayed the bills progress by scrutinizing the humanitarian aid budget also in the bill.<sup>25</sup>

Eventually the House took up the issue in Committee. Deceived by the Gulf of Tonkin, liberal House committee members were taking no chances. While the bill passed through the Committee on International Relations (and though the bill would eventually be passed by the Committee), members of Congress debated if granting the President such authority had the potential for abuse. Following the spirit and precedent of the War Powers Resolution, these legislators sought to keep a tighter leash on American foreign policy. For example Representative Lester Wolff (D-NY) argued the terms by which

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<sup>25</sup> Famously even tempered, by the time Mike Mansfield (D-MT), became Senate Majority leader (in 1961), he had already established a reputation for comity and respect for his fellow Senators. He opposed filibusters, encouraged younger Senators to participate, and commanded respect from both sides of the aisle. Mansfield retired in 1977. See "Mansfield Steps Down", *Time* (March 15, 1976), 19. For Mansfield's comments see *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 8:10184-6. For an example of the Senate trying to move quickly despite the budget debate, see for example, *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 9:10899. For a discussion of Mansfield's opposition to the Vietnam War see for example, Tarr and O'Conner, 302-3.

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American troops could be used in the evacuation effort were insufficiently defined. He feared that such vagueness could allow for a prolonged engagement in Vietnam under the guise and auspices of safeguarding an evacuation. He objected that no cap had been set on the number of troops deployable. Representative Michael Harrington (D-MA) expressed a similar complaint, noting that a similar operation had taken place the week before in Cambodia without such a bill and without such concern.<sup>26</sup> He did not want a precedent of ambivalence to be set.

Amidst heated debate and many persuasive soliloquies from members of Congress, Representative Donald Riegle (R-MI) best stated the Committee's fears and apprehensions.

This legislation is another Gulf of Tonkin Resolution that poses the gravest dangers for the United States. If this legislation is passed, it would wipe away four years of carefully drafted legislative restrictions by the Congress which have brought our American military role in Southeast Asia to an end... If we grant the President the authority specified in this bill we give him a complete blank-check to plunge the U.S. into the war by reintroducing as many U.S. combat troops into Vietnam as he wishes, for as long as he wishes.

Riegle went on to call this bill "Gulf of Tonkin Resolution number 2" alleging that it would be a similar catastrophic abrogation of Congressional oversight and would be similarly regretted in retrospect by all who voted for it. The War Powers Resolution gave Congress the ability to reject the President's war plans but if it approved bills that endorse or funded action, it would undercut Congress' ability to rebuke or subdue the action and the president's will.<sup>27</sup>

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<sup>26</sup> Congress, House, Committee on International Relations, *Vietnam Humanitarian Assistance and Evacuation Act of 1975*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Report, 13-15.

<sup>27</sup> Congress, House, Committee on International Relations, *Vietnam Humanitarian Assistance and Evacuation Act of 1975*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Report, 17-8. For other examples of similar

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However, other members of Congress did not see the delay in such admirable terms. While preventing presidential abuse is noble, some members feared the other extreme of legislative paralysis. For example, lamenting the delay and invoking a football metaphor, Senator Thomas Eagleton (D-MO) quipped, “Congress fumbled the ball.” Senate Majority Leader Mike Mansfield promised to try to get the legislation passed and back to Ford by the President’s April 19 deadline. The Senate came close, approving the measure on April 23 with the House following suit the next day but differences in the bills forced the bill to conference. The Conference Committee reported back on April 25 and while the Senate approved the compromise the next day, the House voted down the compromise on May 1. Historian Robert F. Turner characterized the situation saying that Congress “continued to ‘fiddle’ with authorization legislation while Indochina ‘burned.’”<sup>28</sup> While Congress debated their bill at their own pace (accelerated or sluggish depending on who was asked), two more hostile situations arose and in each case, Ford acted as he saw fit regardless of how the Congress was leaning at the time on his call for clarification.

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apprehensions see the statements of Representatives Stephen Solarz (D-NY) and Charles Walen, Jr. (R-OH), pages 19-21 and 25. See also John W. Finney, “President’s Power: Tonkin and Today”, *New York Times* (April 25, 1975), 13. George W. Bush and Dick Cheney would later use similar tacit consent logic to infer Congressional support for the Iraq War. See Charlie Savage, *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy*, (New York: Little, Brown and Company, 2007), 202.

<sup>28</sup> Turner, 57-9; Tananbaum, 531; Thomas and Thomas, 30; Thomas Eagleton, “Congress ‘Inaction’ on War,” *New York Times* (May 6, 1975), 39; Congress, House, Conference Report, *H.R. 6096 Vietnam Humanitarian Assistance and Evacuation Act of 1975*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Report; Congress, Senate, Conference Report, *Vietnam Humanitarian Assistance and Evacuation Act of 1975*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Report; *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 9:11491-561, 11647; *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 10:12023-6, 12482-3, 12812.

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## Incident #2 – Personnel Evacuation from Cambodia (April 11, 1975)

As mentioned earlier, by late March 1975, many in Washington feared that the situation in Cambodia had become dire and another domino in the spread of Communism would likely fall soon. Though the doomsday communist scenario never manifested, in the House, Representative Stephen Solarz (D-NY) introduced HR 4878, a bill providing for the “evacuation by the United States of any Cambodian who feels that his life would be in danger in the event of the triumph of the Khmer Rouge forces in Cambodia.” Solarz noted that the current government’s forces in Cambodia (the Lon Nol regime) will run out of equipment – ammunition especially – within the next month. Solarz noted that America traditionally evacuated refugees from Communist controlled countries during the Cold War and the nature of his bill and its proposed evacuation would be no different. Representatives Helen Meyner (D-NJ) and Bella Abzug (D-NY) took the floor next, rising in support of Solarz and his bill. However, unlike Meyner who offered blanket support for the bill, Abzug’s support manifested more tangentially as the Congresswoman from New York used her floor time to speak more broadly about American failures in Southeast Asia. As an outspoken war critic and liberal activist, Abzug’s politics were as prominent as her distinctive Bronx accent. Though HR 4878 did not parallel the hawkish bills of Congresses past, Abzug never missed an opportunity – nor shirked from any – to speak her mind.<sup>29</sup> However, international events made this bill moot before it went any farther than its initial introduction. Ultimately Ford would again act on his own extant authority rather than a Congressional grant of power.

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<sup>29</sup> *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 7:8438-40. For a discussion of Abzug’s character and ideology see Suzanne Braun Levine and Mary Thom. *Bella Abzug: How One Tough Broad from the Bronx Fought Jim Crow and Joe McCarthy, Pissed Off Jimmy Carter, Battled for the Rights of Women and Workers, Rallied Against War and for the Planet, and Shook up Politics Along the Way*, (New York: Farrar, Straus and Giroux, 2007).

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By April 11, 1975, the situation became more openly hostile, threatening the safety of all Americans there. Ford approved operation “Eagle Pull” and deployed 350 combat ready Marines to ensure the safe evacuation of Americans, Cambodians and third-country nationals from Phnom Penh, Cambodia. Like the last incident, the potential for hostilities existed but was not guaranteed. Since American troops could end up in hostile situations, Ford preemptively informed Congress in an effort to promote transparency and the spirit of consultation.<sup>30</sup> Ford began the process of informing members of Congress of his actions because it seemed that the War Powers Resolution applied. However, one Senator in particular, Clifford Case, believed that was in fact not the case. Case believed that the War Powers Resolution did not apply to evacuation efforts.

The week before, Jack Marsh sent a secret memo to White House Chief of Staff Donald Rumsfeld that Senator Clifford Case (R-NJ), a principal author of the War Powers legislation, said that consultation was not necessary for the type of evacuation operation planned. Case noted that the Senate Foreign Relations staff had tried to get him and Senator John Sparkman (D-AL) to sign a letter requiring consultation but Case refused. Case advised the staff that the War Powers Resolution did not cover rescue operations and thus congressional consultation was not necessary. Case indicated approval of Ford’s plans. Marsh suggested not going public with Case’s comments until

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<sup>30</sup> Turner, 54-6; Kenton Clymer, *Troubled Relations: The United States and Cambodia Since 1870*, (Dekalb: Northern Illinois Press, 2007), 157-8; Mount, 65; Tananbaum, 530. For a discussion of the operational history of “Eagle Pull” see John Francis Guilmartin, *A Very Short War: The Mayaguez and The Battle of Koh Tang*, (College Station, Texas: Texas A & M University Press, 1995), 6-16; “Javits Outlined Evacuation Plan in a March Letter to Sparkman”, *New York Times* (April 12, 1975), 19.

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the White House could do some background research of its own.<sup>31</sup> In the end however, Marsh, Rumsfeld, Ford, and the rest of the White House staff believed that the most prudent action (and the safest posture) would be to act as if the War Powers Resolution applied to the situation. Though the opinion of the key War Powers Resolution architect meant a lot, the administration felt that Case's opinion would not outweigh the public perception or convince enough of the other members in Congress. A precedent would be set and Ford and his administration wanted it to be one of compliance and consultation, and to be done as amicably as possible.

The next day, the official press release came out from the President expressing his "heavy heart" as he ordered the evacuation of American nationals in light of the "deteriorating military situation" around the Cambodian capital of Phnom Penh. Ford's statement announced the evacuation's success while hoping that Cambodia finds its place in the world as an "independent, neutral and united country, living in peace".<sup>32</sup> While Ford's statement was made in public, White House Counselor Phil Buchen sent a memo to Ford containing the letters he needed to sign that would inform the Speaker of the House and President Pro Tempore of the President's actions. The letter kept Congressional leaders apprised of American contingency plans to secure the safe evacuation of American nationals from the Khmer controlled Cambodia. Ford cooperated as per the spirit of the law.

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<sup>31</sup> Memorandum, Jack Marsh to Don Rumsfeld, May 15, 1975, "4/3/75 Phnom Penh Evacuation" Folder, Box 122, John O. Marsh Files, Gerald Ford Library.

<sup>32</sup> Press Release, Statement by the President, April 12, 1975, "4/11/75 Phnom Penh Evacuation" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Press Release, Statement by the Press Secretary, April 12, 1975, "4/11/75 Phnom Penh Evacuation" Folder, Box 122, John O. Marsh Files, Gerald Ford Library. The statement was reprinted in the press. See for example, Gerald Ford, "Text of Ford Statement on Evacuation", *New York Times* (April 12, 1975), 8. For more accounts of the "flawless" success of Operation Eagle Pull see "American Pullout From a City Under Siege", *Time* (April 21, 1975), 26-7.

As with before, Ford's letters claimed the authority to act was inherent in his power as Commander-in-Chief and not delegated or confined by the War Powers Resolution. Ford made it clear that while he had asked Congress for clarification of his power he need not wait for their answer while Americans are in peril. Ford complied with the law but did not agree with it. He followed the law because the time was not right for another inter-branch showdown. After Watergate, Ford wanted to strengthen the White House's rapport with Congress. Washington politics aside, Americans had seen enough presidents disobey the law; he did not want to continue that trend.<sup>33</sup> Regardless, Ford sent his formal report on April 12. Americans had been safely evacuated just in the nick of time. Five days later, April 17, 1975, the government of Cambodia surrendered.

#### Incident #3 – Personnel Evacuation from South Vietnam (April 29, 1975)

Though the results of the evacuation might suggest otherwise, the fall of Saigon caught neither Ford nor his administration by surprise. After the situation in Da Nang, Ford had already introduced the likely possibility that the Armed Forces would be needed to effect a safe evacuation from South Vietnam and that said evacuation would likely happen sometime in April or May. As early as April 2, 1975, as Da Nang began to fall, Secretary of Defense James Schlesinger had already begun to acknowledge that an evacuation of South Vietnam would soon be necessary. Schlesinger told Press Secretary Ron Nessen that the defense of Cam Ranh Bay was holding for the moment but a test of

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<sup>33</sup> Memorandum, Phil Buchen to the President, April 12, 1975, "4/11/75 Phnom Penh Evacuation" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Letter, [Gerald Ford] to Speaker of the House and President Pro Tem of the Senate, April 12, 1975, "4/11/75 Phnom Penh Evacuation" Folder, Box 122, John O. Marsh Files, Gerald Ford Library. For a discussion of the evacuation in the press see for example, Bernard Gwertzman, "Last Americans Leave Cambodia; Embassy Closed", *New York Times* (April 12, 1975), 57.

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its resilience would likely come within the month. (Cam Ranh Bay is located farther south than Da Nang but not as far south as Saigon.)

Schlesinger said he expects the Saigon defenses will be tested within the next four weeks or less. Said there is a possible defensive area around Saigon and the delta which can be held with the present forces, however, should North Vietnam decide to move its uncommitted divisions south, the defense of Saigon will be severely tested.<sup>34</sup>

The North Vietnamese army had been progressively marching south and when it took Cam Ranh Bay, Saigon would likely soon subsequently fall. Saigon was the next (and last) major city in South Vietnam.

By the end of April, Cam Ranh Bay did indeed fall. On April 28, 1975 Gerald Ford held a meeting with his National Security Council at which point they discussed options for operation "Frequent Wind", the evacuation of Americans and foreign nationals from the collapsing Saigon. At the meeting they discussed the order of evacuation and the means. If C130 airplanes could not land, helicopters would be the only remaining options (and rooftops the only viable departure point). At the time of the meeting the situation at Tan Son Nhut airport (in Saigon) could go either way. Ultimately hostile fire and rocket attacks left the airport inoperable and a fixed-wind evacuation impossible, hence helicopters were the only option. It was this decision that brought about Hubert Van Es' iconic image of rooftop helicopter evacuations.<sup>35</sup>

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<sup>34</sup> Memorandum, Lou Thompson to Ron Nessen, April 2, 1975, "4/5/75 – Evacuation of Vietnamese Refugees (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; News Conference Transcript, "Secretary of Defense James R. Schlesinger at the Pentagon", April 2, 1975, "4/5/75 – Evacuation of Vietnamese Refugees (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Yanek Mieczkowski, *Gerald Ford and the Challenges of the 1970s*, (Lexington: University of Kentucky Press, 2005), 290-1. Similarly, earlier in April Senators Henry Jackson (D-WA) and Jacob Javits (R-NY) told the *Washington Post* that they felt Ford needed to get Congressional approval before he could use troops to evacuate South Vietnamese. See Stephen Isaacs, "Rescue Approval Said Needed", *Washington Post* (April 14, 1975), A1, A16.

<sup>35</sup> Transcript, National Security Council meeting, April 28, 1975, Box 1, National Security Adviser.



Marsh sent a memo to Ford saying that in an effort to “be on the safe side” the evacuation and rescue efforts in Vietnam should be treated as covered by the War Powers Resolution and Congress should be necessarily apprised. When the airport became inoperable, on April 28 Ford directed that members of Congress be notified that the evacuation was imminent and would be conducted exclusively by helicopter. Marsh complied. After the final helicopter evacuation, Ford issued his third War Powers Report to Congress. Ford sent the ubiquitous mandatory reports to the Speaker of the House and the President Pro Tempore of the Senate. Amidst the other details of the letters, Ford again listed his Commander-in-Chief powers as the authority for his actions.

In accordance with my desire to keep the Congress fully informed on this matter, and taking note of the provision of section 4 of the War Powers Resolution (Public Law 93-148), I wish to report to you that at about 1:00 A.M. EDT, April 29, 1975, U.S. forces entered South Vietnam airspace... The operation was ordered and conducted pursuant to the President's Constitutional executive power and his authority as Commander-in-Chief of U.S. Armed Forces.

In the days that followed, Ford would be praised for his decisive action (despite the imagery of rooftop departures), but his leadership stood in contrast to Congressional

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National Security Council Meetings File, Gerald R. Ford Library. Available online at <http://www.ford.utexas.edu/LIBRARY/DOCUMENT/NSCMIN/750428a.htm> (accessed January 16, 2008). See also Turner, 56-7; Willbanks, chapter 10; “Last Chopper Out of Saigon”, *Time* (May 12, 1975), 11-12. The most famous picture of the Saigon evacuation was captured by Dutch photographer Hubert Van Es. (As a Dutch citizen he was not rushing to evacuate and was hence able to take the photograph from the balcony of the *United Press International* building.) For the history behind the photograph see Hubert Van Es, “Thirty Years at 300 Millimeters”, *New York Times* (April 29, 2005), 25. The image itself is ubiquitous with the press coverage of the fall of Saigon (amongst other reasons because Van Es worked for *United Press International* and they ran the picture in many periodicals). For example, the *New York Times* of April 30, 1975 printed the picture across five of its eight columns on page one, taking up most of the top fold of the newspaper. For a discussion of the operational history of “Frequent Wind” see Guilmartin, 16-25. For discussion of the evacuation timeline in the press, see for example John W. Finney, “Ford Weighs Evacuation of Remaining Americans”, *New York Times* (April 29, 1975), 69; James M. Naughton, “Call for Pullout, Then a Night’s Vigil at White House”, *New York Times* (April 30, 1975), 16; Hayes Johnson, “Saigon Surrenders to Vietcong; Withdrawal Ends Role of U.S.”, *Washington Post* (April 30, 1975), A1; Lou Cannon and Michael Getler, “Deciding on the Final Withdrawal”, *Washington Post* (April 30, 1975), A1, A29.

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inaction.<sup>36</sup> Regardless of whether Congress had actually passed the evacuation authorization legislation he had requested on April 10 or what their suggestion would have been, Ford once again acted on powers he believed to be inherent in the constitution.

#### Conclusion:

Gerald Ford never voted for the War Powers Resolution. He supported Nixon's veto when he was a member of Congress but as President, he complied with the law. Ford understood that posture and perception were important, as was – first and foremost – cooperation with Congress. This also meant compliance with the law and consultation before action was taken. This meant formal reports and placations at every step of the process. Ford sought to heal the nation and restore the balance of power. While Ford did not believe the War Powers Resolution helped achieve that goal, he knew that defiance and non-compliance would be even worse.

As April became May it seemed at first blush that the law worked (though often Ford's evacuations appeared otherwise). Though the public and the press frequently focused on rooftop evacuations and made other innuendos of bungling, the fact remained that the law was working. Ford reported to Congress on his actions and made an effort to consult with them before hand. Ford's clarification request was never voted up by Congress but Ford acted on extant authority and effected three evacuations. However, as the ballet of compliance with the War Powers Resolution continued to play out, some of

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<sup>36</sup> Memorandum, Jack Marsh to The President, April 29, 1975, "4/5/75 – Final Evacuation of Saigon (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Letter, Gerald R. Ford to James O. Eastland, April 30, 1975, "Wars" Folder, Box 30, Central Files Code ND 18, White House Central Files Subject Files, Gerald Ford Library; Letter, Gerald Ford to Carl Albert, April 30, 1975, "War Powers Act" Folder, Box 15, John O. Marsh Files, Gerald Ford Library. For subsequent praise for Ford see, for example, *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 10:13268-9.



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the underlying tensions and conflicting interpretations came into more scrutiny. For all the debate thus far, the most serious situation had yet to unfold. Serious because it would involve the rescue of seized ship and her crew but also serious because it would be more elaborately revisit the question of War Powers Resolution compliance and what constituted adequate consultation. Such would be the *Mayaguez* incident.

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### CHAPTER 3: Gerald Ford and the War Powers Resolution: The *Mayaguez* Incident

#### Introduction:

In chapter two I discussed Ford's opinion of the War Powers Resolution and how despite his beliefs, he complied and consulted with Congress. In May 1975 Ford faced the biggest test of the Resolution and of his Presidency as Commander-in-Chief. As I discussed in chapter two, Ford – who as a member of Congress voted twice against the War Powers Resolution – had now become the first President subject to its mandates. Though the Paris Peace Accords of 1973 brought cessation to active American ground troop participation in Vietnam, an American presence – and hence the potential for hostilities – remained. After three War Powers incidents of evacuation and humanitarian aid, the *Mayaguez* rescue represented the first military operation undertaken by a President subject to the Resolution. Political Scientists Richard Neustadt and Ernest May noted “The *Mayaguez* incident offered Ford a chance to ease some of the memories of those helicopters departing Saigon. At the same time he could demonstrate decisiveness, resoluteness, and fitness to be President.”<sup>1</sup> While the first three incidents involved the possibility of hostilities for American troops, this time extant hostilities precipitated the situation.

While the facts and operational history of the incident are well covered in the literature, its implications about the federal balance of power remain overlooked by

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<sup>1</sup> On October 26, 1972 at a press conference in Washington, D.C., National Security Advisor to Richard Nixon, Henry Kissinger proclaimed that “peace is at hand.” For coverage of this historic and iconic declaration, see for example, Bernard Gwertzman, New Talk Needed: U.S. Breaks Silence on Efforts and Urges Further Session,” *New York Times* (October 27, 1972), 1, 16. For the Neustadt and May quote see Richard E. Neustadt and Ernest R. May, *Thinking in Time: The Uses of History for Decision-Makers*, (New York: The Free Press, 1986).



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scholars.<sup>2</sup> Of particular importance is the debate and conflict that arose over Ford's compliance with the War Powers Resolution and more fundamentally his consultation with Congress. Legislators designed the War Powers Resolution to better envelop and incorporate Congress into the foreign policy decision making process. Some members of Congress alleged that even if Ford's compliance sufficed the law's letter, he failed to comply with its spirit. With the memory of Vietnam still fresh in the minds of Congressional doves, they were highly suspicious of any foreign policy engagement by Ford. The law requires the president to promptly "consult" with Congress. Accusations flew that Ford never solicited input from members of Congress, only presenting them with his decision once it had been made. Ford's voting record made his posture of compliance all the more tenuous. Though he believed in keeping Congress apprised of military actions, he did not believe the President should be confined in how he did so by the War Powers Resolution.

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<sup>2</sup> See for example Roy Rowan, *The Four Days of Mayaguez*, (New York: W. W. Norton & Company, Inc., 1975); Ralph Wetterhahn, *The Last Battle: The Mayaguez Incident and the End of the Vietnam War*, (New York: Carroll & Graf Publishers, Inc., 2001); Christopher Jon Lamb, *Belief Systems and Decision Making in the Mayaguez Crisis*, (Gainesville: University of Florida Press, 1989); John Francis Guilmartin, *A Very Short War: The Mayaguez and The Battle of Koh Tang*, (College Station, Texas: Texas A & M University Press, 1995); Richard G. Head, Frisco W. Short, and Robert C. McFarlane, *Crisis Resolution: Presidential Decision Making in the Mayaguez and Korean Confrontations*, (Boulder, Colorado: Westview Press, 1978); John Robert Greene, *The Presidency of Gerald R. Ford*, (Lawrence: University of Kansas Press, 1995), 143-7. Michael Getler and Carroll Kilpatrick provided a substantive chronology of events, reporting for the *Washington Post*. See for example, Michael Getler and Carroll Kilpatrick, "Site Near Seized Freighter: Ford Insists Cambodians Release Ship", *Washington Post* (May 14, 1975), A1, A10; Michael Getler and Carroll Kilpatrick, "Marines Rescue Ship and Crew; 4 Copters Lost; Jets Raid Coast", *Washington Post* (May 15, 1975), A1, A16; "Timetable of Events in Mayaguez Recovery", *Washington Post* (May 15, 1975), A14; Michael Getler, "Last Marines Lifted Off Isle; Toll Unknown", *Washington Post* (May 16, 1975), A1, A10; Carroll Kilpatrick, "Ford Reports to Hill on Use of Forces", *Washington Post* (May 16, 1975), A1, A16. Philip Shabecoff and John Finney provided a similar through timeline for the *New York Times*. See Philip Shabecoff, "White House Says Cambodia Seized A U.S. Cargo Ship", *New York Times* (May 13, 1975), 1, 19; Philip Shabecoff, "U.S. Pacific Force Placed on Alert in Seizure of Ship", *New York Times* (May 14, 1975), 1, 18; Philip Shabecoff, "Silence in Washington", *New York Times* (May 14, 1975), 1, 18; John W. Finney, "U.S. Frees Cambodian-Held Ship and Crew; Marines Storm Island, Suffer Casualties; Planes Hit Airfield, Sink 3 Patrol Boats", *New York Times* (May 15, 1975), 1, 18; "A Strong by Risky Show of Force", *Time* (May 26, 1975), 9-18.

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International relations expert Christopher Lamb argued that Ford's operational and strategic decisions flowed from a belief of what needed to be done and not what would be popular. However, while Ford's military decisions may not have been an attempt to jockey for "political fortunes", I argue his decision to comply with the War Powers Resolution despite his reservations reflected his *a priori* desire to reconcile the nation. Defense strategy analysts Richard G. Head, Frisco W. Short, and Robert C. McFarlane noted,

During the *Mayaguez* crisis, the president directed that the spirit and letter of the War Powers Resolution be observed de facto without recognition of de jure responsibility to do so. The president informed congressional members on three different occasions of actions taken, and provided them with an after-action report at the conclusion of combat operations.

As will be explained later on in this chapter, while two days elapsed from when the Cambodians first approached the boat to when Ford informed Congress, Ford only heard his rescue options hours before he met with Congress. Even with such time sensitive issues, Ford tried to apprise Congress as best he could. Despite this, as questions about Ford's consultation delay circulated in Washington, once again members of Congress asked, "What did the President know and when did he know it?" Though Ford's actions were significantly more transparent and cooperative than his immediate predecessors, members of Congress had developed high expectations for presidential consultation.<sup>3</sup>

#### Chronology and Presidential Response:

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<sup>3</sup> Senator Howard Baker (R-TN), the ranking Committee Member in the Watergate Congressional investigation first asked the question but as mantra the question was often repeated and asked in reference to Richard Nixon as the Watergate scandal unfolded. For discussion of this infamous question see for example, "The Central Question," *New York Times* (July 1, 1973), E12. For Lamb's analysis see Lamb, 157-166. For the quote see Richard G. Head, et al, 82-83.



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Within two weeks after American helicopters infamously evacuated Americans from Saigon, Ford faced his fourth crisis in six weeks, and arguably the most dramatic test of the War Powers Resolution yet. On May 12, 1975, Cambodian naval patrol boats from the Communist Khmer Rouge regime seized an American merchant vessel, the SS *Mayaguez*, en route from Hong Kong to Sattahip, Thailand. Captured at gunpoint, thirty-four miles off the Cambodian coast (and seven miles from the Cambodian island of Poulo Wai), both the boat and her crew were redirected to and sequestered on Koh Tang island. With memories looming large in everyone's minds of President Lyndon Johnson's folly after the 1968 North Korean seizure of the *USS Pueblo*, Ford and his staff scrambled into action.<sup>4</sup>

On May 12, 1975 Press Secretary Ron Nessen released a statement that a Cambodian naval vessel seized an American merchant ship, forcing it to the port of Kompong Som. Ford considered this incident an opportunity to confirm that despite recent events – most notably the fall of Saigon and American withdrawal from Vietnam – that America would stand firm and would not be pushed around.<sup>5</sup> Concerned for the ship and her crew, Ford took immediate action. While pursuing diplomatic solutions,

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<sup>4</sup> On January 23, 1968 North Korean gunboats seized the Navy vessel *USS Pueblo*. By the time Lyndon Johnson reacted, North Korea had already sequestered the ship and her crew. North Korea held the crew captive for eleven months but the boat was never released. It remains today floating in North Korean waters as a museum. See Guilmartin 36; Lamb 159; Gerald Ford, *A Time to Heal: The Autobiography of Gerald R. Ford*, (New York: Harper and Row Publishers, Inc., 1979), 277; Neustadt and May, 58-66; George C. Wilson, "Response Differs From That of Previous Presidents", *Washington Post* (May 15, 1975), A17. For a discussion of the current status of the *USS Pueblo* see <http://www.usspueblo.org/> (Accessed February 9, 2009).

<sup>5</sup> Press Release, Statement by the Press Secretary, May 12, 1975, "5/14/75 Mayaguez Seizure (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library. See also, Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 61. For more background on the timing of Cambodia's aggression in light of the fall of South Vietnam see for example, Yanek Mieczkowski, *Gerald Ford and the Challenges of the 1970s*, (Lexington: University of Kentucky Press, 2005), 294-5; Gerald Ford, *A Time to Heal: The Autobiography of Gerald R. Ford*, (New York: Harper and Row, 1979), chapter 5.

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Ford convened an emergency session of the NSC (National Security Council) and ordered American troops into alert and ready positions. After consulting with the NSC, Ford considered the seizure an act of piracy. Ford's first concern involved locating the hijacked ship. Meanwhile Ford instructed the State Department to demand the immediate release of the ship or face stiff consequences.

Later that evening, despite sustaining small-arms fire, American ships located the *Mayaguez*. Subsequently, American jet fighter aircrafts fired warning shots across the bow of the *Mayaguez* to deter the captors from moving the seized vessel to a mainland port and after a second NSC meeting, President Ford ordered American forces to interdict any boats coming or going between the *Mayaguez* or Koh Tang Island and the Cambodian mainland. The goal was to keep the boat docile and prevent it from being moved. This strategy also pinned the captives, preventing the Khmer Rouge from moving their hostages to mainland.

As diplomacy with the Khmer Rouge failed, Ford met a third time that evening with the NSC. At this meeting Ford ordered an attack on Cambodian gunboats near the *Mayaguez* and Koh Tang Island. Subsequently, also at this meeting, Ford directed members of Congress to be apprised that the use of force would be necessary.<sup>6</sup> The next day (May 13), White House staff began a telephone tree of notifications similar to the ones discussed in chapter two that had become ubiquitous with Ford's interpretation of the War Powers Resolution requirement of consultation. The talking points informed key Senators and Representatives of the classified situation unfolding involving the

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<sup>6</sup> Memorandum, Jack Marsh to Phil Buchen, May 13, 1975, "5/14/75 Mayaguez Seizure (1)" Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Robert F. Turner, *The War Powers Resolution: Its Implementation in Theory and Practice*, (Philadelphia: Foreign Policy Research Institute, 1983), 59-61; Kenton Clymer, *Troubled Relations: The United States and Cambodia Since 1870*, (Dekalb: Northern Illinois Press, 2007), 159-60.

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*Mayaguez*. The ubiquitous bevy of phone calls followed with the similarly ubiquitous array of affirming responses and placations.

Though some in Congress alleged – in hindsight – that Ford failed to adequately consult in a timely manner (as per the War Powers Resolution), no member of Congress even hinted at dissent when initially telephoned. For all the debate amongst members of Congress about the definition of consultation, no phone call record or response ever reflected outright defiance or even disappointment with the Presidents decisions. No matter what any member of Congress might later say about Ford's interpretation of the War Powers Resolution, when told, each responded with support and acceptance. Ford chastised the "liberal media" (his phrase) for lambasting him as another hawkish president making hawkish moves. However in effect, no support for this criticism or any other manifested amongst members of Congress. The only statement that even remotely resembled rebuke came from Speaker Carl Albert (D-OK) who asked "What diplomatic channels are you going through?" The Speaker wanted to make sure that the use of force was truly a last resort. Ford assured Albert, "We waited as long as we could". Not really a critique or a rebuff, Albert simply asked for clarification and more information.

Many members expressed sentiments similar to the outspoken President Pro Tempore of the Senate, James Eastland (D-MS) comment, "Blow the hell out of them", but none were as crass. A pillar of the Southern Democratic stronghold, Eastland was an "unreconstructed champion of the old South." Eastland solidified his conservative disposition defending segregation and hawkish attitudes towards the Vietnam War. More polite responses came from comparably more progressive Representatives like Al Cederberg (R-MI), who said "Can't allow it to happen, we must do what it takes to get

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the ship back – otherwise we may as well put the Navy in mothballs. Thank you.” Representative George Mahon (D-TX) similarly replied, “Good. I think he should do that. I appreciate this report very much.” Conjuring images of Ford’s days playing for the University of Michigan, Representative Olin Teague (D-TX) concluded that Ford was “playing with his helmet [*sic*] on”.<sup>7</sup> In other words, Ford was playing smart and acting smart in this situation. More than just affirming Ford’s course of action, these reports prove that cooperation between the White House and Congress was returning. As the situation developed, members of Congress were informed and respected the effort of the White House to inform them. Both sides of the aisle received calls and all spoke as one praising Ford and his efforts.

Early on May 14 three Cambodian patrol boats were destroyed and four others were immobilized. While Americans read about the seizure and the reaction of Congress, the Cambodian authorities read a message, sent by Ford and the American government:

We have heard radio broadcast that you are prepared to release the S. S. *Mayaguez*. We welcome this development, if true. As you know, we

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<sup>7</sup> Memorandums, Max Friedersdorf to Jack Marsh, May 13 and 14, 1975, “5/14/75 Mayaguez Seizure (1)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Document, “Talking Points for Congressional Notification”, May 13, 1975, “5/14/75 Mayaguez Seizure (2)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library. For other quotes of supportive and hawkish members of Congress see for example, Michael Getler and Carroll Kilpatrick, “Cambodia Seizes U.S. Merchant Ship”, *Washington Post* (May 14, 1975), A1, A13. Senator James L. Buckley (Conservative-NY) called for immediate and punitive air strikes while others were more level headed such as Senators Jacob Javits (R-NY) and Hubert Humphrey (D-MN). Senator John Sparkman (D-AL) was quoted as saying “if a person shoots at you, you’ve got a right to shoot back.” Similarly, Senator James Allen (D-AL) called the seizure “an outrage” and an affront to “national honor” that could not go unchecked. Ford singled out Anthony Lewis’ *New York Times* editorial. Lewis likened twentieth century Cambodia to eighteenth century America and chastised the president’s intervention and hostilities towards an enemy he painted as defenseless. Lewis argued Ford had used a “sledgehammer to crack a nut”. Lewis likened Ford’s actions to Nixon’s, saying both acted like a “teenager proving his manhood.” For Ford’s interaction with Albert what Ford considered a harsh liberal reaction see Ford, 281, 283; Anthony Lewis, “Barbarous Piracy”, *New York Times* (May 15, 1975), 43. This would not be the only time Ford’s actions in Koh Tang would be accused of machismo. See for example, Lucy Komisa, “You Won’t Have Uncle Same to Kick Around Anymore”, *New York Times* (June 30, 1975), 29; Lamb, 2. For the quote and ideological background of Eastland see Merle Black and Earl Black, *The Rise of Southern Republicans*, (Cambridge, Massachusetts: Harvard University Press, 2002), 34, 51, 81.



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have seized the ship. As soon as you issue a statement that you are prepared to release the crew members you hold unconditionally and immediately, we will promptly cease military operations.<sup>8</sup>

Later on that morning the destroyer escort *Holt* reached Koh Tang Island and by 7:00pm in the evening approximately 135 Marines landed on the island while sustaining heavy fire. Later that night (circa 9:00pm) a second detachment of Marines from the *Holt* boarded the deserted *Mayaguez*. Two hours later tactical aircraft from the *Coral Sea* flew missions to the Kompong Som area of Cambodia including attacking the military airfield at Ream. While this operation took place, the Cambodian government conveyed its intentions to abandon the *Mayaguez* and release the crew. At 10:53pm the destroyer *Wilson* spotted a small Thai fishing vessel with white flag and at least 30 Caucasian passengers – the *Mayaguez* crew. That night, Ford briefly told the nation that hostages had been rescued. By 9:20am the next day – May 15 – the last marine helicopter landed on the *Coral Sea*.<sup>9</sup>

While the Cambodian government received their formal statement, back in the United States, White House staffers began drafting two identical yet equally important formal statements that needed to be delivered within the next day to the Speaker of the House and The President Pro Tempore of the Senate. White House Counselor Phil Buchen noted that the report should include “the estimated scope and duration of the hostilities or involvement.” Ford later reflected, “I decided to comply with the War

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<sup>8</sup> Press Release, “Text of a Message to the Cambodian Authorities from the United States Government”, May 14, 1975, “5/14/75 Mayaguez Seizure (1)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library.

<sup>9</sup> Memorandum, Jack Marsh to Phil Buchen, May 13, 1975, “5/14/75 Mayaguez Seizure (1)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library; Turner, 59-61; Clymer, 159-60; R. W. Apple, Jr., “Timing of Attack Raises Questions”, *New York Times* (May 16, 1975), 1, 14. For the text of Ford’s statement see for example, Gerald Ford, “Ford: ‘Entire Crew Has Been Rescued’”, *Washington Post* (May 15, 1975), A14.

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Powers Act by attempting to explain, in identical letters to the Speaker of the House and the president pro temp of the Senate, everything that had happened in the last sixty-five hours.” First thing on the morning of May 15, roughly forty-eight hours after it began (the forty-eight hour reporting clock actually expired in the middle of the night), Ford notified the Speaker of the House and the President Pro Tempore of his actions.<sup>10</sup>

The night before the formal letters were delivered to the heads of each branch of Congress, Ford held a larger and more informative (though highly classified) meeting in the White House with key executive and administrative personnel as well as members of Congress from both sides of the aisle.<sup>11</sup> The meeting sought to apprise everyone on the events of the *Mayaguez* incident and to delve further into the actions Ford had just taken. As mentioned elsewhere, the War Powers Resolution mandates consultation but makes

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<sup>10</sup> The underlining is in the original memo from Buchen. See Memorandum, Phil Buchen to Jack Marsh, May 14, 1975, “5/14/75 Mayaguez Seizure (1)” Folder, Box 122, John O. Marsh Files, Gerald Ford Library. For the formal correspondence with Congress see Discussion Paper, no title, no date, “War Powers” Folder, Box 125, Ron Nessen Papers (WH Press Secretary’s Office), Gerald Ford Library; Press Release, Text of a Letter to the Speaker and the President Pro Tem, May 15, 1975, “War Powers” Folder, Box 125, Ron Nessen Papers (WH Press Secretary’s Office), Gerald Ford Library. For Ford’s statement see Ford, 283.

<sup>11</sup> In attendance at the meeting were President Gerald Ford, Vice-President Nelson Rockefeller, Secretary of State and Assistant to the President for National Security Affairs Henry Kissinger, Secretary of Defense James Schlesinger, Vice-President Nelson Rockefeller, Secretary of State and Assistant to the President for National Security Affairs, Dr. Henry Kissinger, Secretary of Defense James R. Schlesinger, and bipartisan members of the leadership. Beyond the President Pro Tempore of the Senate James Eastland (D-MS) and Speaker of the House Carl Albert (D-OK), the other bipartisan attendees were Senators Robert Byrd (D-WV), Clifford Case (R-NJ), Robert Griffin (D-NY), John McClellan (D-AR), Mike Mansfield (D-MT), Hugh Scott (R-PA), John Sparkman (D-AL), John Stennis (D-MS), and Milt Young (R-ND), as well as Representatives Bill Broomfield (R-MI), Al Cederberg (R-MI), Bob Michel (R-IL), Thomas Morgan (D-PA), Thomas O’Neill (D-MA), Mel Price (D-IL), John Rhodes (R-AZ), and Robert Wilson (R-CA). Senator Strom Thurmond (R-SC) and Representatives John McFall (D-CA) and George Mahon (D-TX) had been invited but could not attend. As for the classification status of the meeting, the memorandum was listed as Classified XDGS (exempt from general declassification schedules). The memorandum was only de-classified in October 2001. The classification status did not indicate dirty tricks by the Ford administration but rather a security measure for the operational logistics discussed and a cover to ensure a frank and candid exchange by the leaders of both branches of government. See Memorandum for the Record, May 16, 1975, “May 14, 1975 – Bipartisan Leaders (memcon)” Folder, Box 7, NSA-NSC Press and Congressional Liaison Staff Files, Gerald Ford Library. For a discussion of the political implications of the meeting see Spencer Rich, “Congress Rallies Behind President: Members Briefed” *Washington Post* (May 15, 1975), A1, A16; “An Old-Fashioned Kind of Crisis”, *Time* (May 26, 1975), 18.

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no mention of how that term is to be interpreted. Adopting his own interpretation – and believing that after Vietnam and Watergate, maximum transparency was essential – Ford scheduled a meeting to do his best to keep Congress informed (and consulted).

When Ford entered the cabinet room, the members of Congress gave the President of the United States a standing ovation. Ford then walked the room full of politicians through all the details of the retaking of the mariners and their boat.<sup>12</sup> After hearing Ford's explanation Speaker of the House Carl Albert (D-OK) asked "Was there any danger that the U.S. crew might be on some of the Cambodian boats that were destroyed[?]" Ford replied, "We have no sure way of knowing where the crew is or whether any of the crew members were on the boats attacked." Behind closed doors at classified meetings, there was no need for cheap political jabs, only frank and candid conversation (Ford and others would say consultation) between the leader of the executive branch of government and the leaders of his legislative counterpart.

Senator Mike Mansfield (D-MT) also worried. He feared another engagement of American forces on foreign soil. "Mr. President, why are we again going into the mainland of Asia, especially at a time when we almost have the boat in our custody once again[?] I am deeply concerned by this aspect of your decision." Ford responded that their presence on the mainland was purely defensive. Amidst all of the inquiries, President Pro Tempore James Eastland (D-MS) was one again the most outspoken. "Mr. President, nobody will agree with me, but I'm for bombing the hell out of them."<sup>13</sup> Eastland's political hyperbole evoked no response and the conversation moved on. The

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<sup>12</sup> For a discussion of the applause see Lamb 162.

<sup>13</sup> Ibid.

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conversation continued on the subject of logistics and operational details until Carl Albert spoke again.

The Speaker of the House transitioned to questioning Ford's compliance with the War Powers Resolution. Albert noted that there had been many such accusations mentioned on the House floor that day. Ford responded,

We are faced with the fact that Cambodians have seized a U.S. ship and American citizens. As Commander-in-Chief I have the right to use appropriate military force to recover them. We did give proper notice and we waited until today to take action against the Cambodians. I believe that regardless of the 1973 law, I have the authority as Commander-in-Chief to take this action. Of course, the War Powers Act requires that I report and we have scrupulously done that. We have twice telephoned some 20 members of the Congress on what we have done and we will file the required written report within the 48-hour rule.<sup>14</sup>

The conversation continued and Ford's Congressional counterparts pressed him as to why they had not been informed sooner. Ford answered that the action order had only been made at 5:50pm that day (their current meeting had only begun seventy minutes later at 6:40pm). Later in the meeting it would come out that Ford had only learned of his options at 3:30pm that afternoon. He considered such a quick turnaround impressive. The promptness of the meeting served as a good faith effort to keep Congress involved and informed. Ford maintained that there was no time to talk to Congress before the meeting and that he acted to effect the rescue based on his extant commander-in-chief powers delegated in the constitution.

Senator Robert Byrd (D-WV) then pressed this very point further, evoking an important bipartisan exchange between the Senate Majority Whip and the President of the United States.

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<sup>14</sup> Ibid.



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Senator Byrd: One last question. Why were the leaders of Congress, the Majority Leader, the Speaker, etc., not consulted about this at least at the time the decision was still being made? We are being told only after the fact. You are not required to do this in advance, but it certainly would be better if we did wait until we were attacked before hitting the mainland. You will be charged with overreacting and it would have been better if the leaders of Congress would have been consulted in advance on this decision.

The President: This is a proper question, Bob. As Commander-in-Chief, I have to act to protect our citizens. I acted in a proper exercise of my authority within the War Powers Act. I did have within the NSC the advice of the Joint Chief of Staff and my other advisors. It is my judgment and my understanding of my responsibility that I had to weigh the risk of doing too little to avoid any danger to the limited number of Marines going in on the first wave. I did not want to be criticized for doing too little to protect our initial marine forces.

Senator Byrd: Let me respectfully press this. I know you are doing what you think best and certainly don't question your authority to do it, but I want to know why the leaders were not brought in in *[sic]* advance of your decision?

The President: We have a government of separation of powers. The President has the authority to act. I have an obligation to act. We have lived within the law of the War Powers Act. We may have differences over judgments and decisions, but I would never forgive myself if I had let our Marines be attacked by the 2400 Cambodian soldiers.

This exchange reinforces Ford's efforts to heal the nation and restore the balance of power. Some in Washington, such as Byrd, had come to expect Congressional power. This meant that Congress has a right to participate in powers traditionally and technically delegated to the president. Ford fought hard to restore a separation of powers. This meant a restoration of the constitutional boundaries of power and encouraging each branch to do the best job at managing their own powers while not encroaching on another branch's powers. In this case, Ford reiterated the expressed power of the president to act to ensure the safety of Americans and to conduct foreign policy.

On the issue of time sensitivity, Senator Eastland backed the President. He asked how long the President had to decide. Ford answered that he became aware that the

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decision needed to be made at 3:30pm, just over two hours before he decided on the specific rescue mission. Ford reiterated that the exigent circumstances and small window of opportunity meant that quick and decisive action on the part of the President was a must and that this meeting – held just over three hours after Ford received all his intelligence – represented the earliest possible opportunity to brief this Legislative branch on the situation. (Ford later remarked that the turn-around would have been shorter but for Washington, D.C. rush-hour traffic.)<sup>15</sup>

#### Congressional Inquiry:

As the Speaker of the House had alluded to in his White House meeting with Executive and bipartisan Congressional leadership, allegations had begun to fly around Washington – especially in Congress – that Ford failed to comply with the War Powers Resolution, specifically he did not adequately consult Congress beforehand. *New York Times* reporter Tom Wicker alleged that Ford’s non-compliance was “obvious”. “The problem lies in defining “consultations”; obviously, Mr. Ford – reserving as much latitude to himself as possible – only informed Congress of what he had already decided to do.” Wicker did not fault Ford, arguing that such an interpretation would likely be how all Presidents interpret the clause. On an issue where posture meant as much as practice, these claims pushed Ford onto the defense.

Further accusations were presented by the press. A newswire report alleged that Ford waited eleven hours to tell the American people that warplanes had fired on Cambodian boats. Some members of Congress felt they had not been adequately

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<sup>15</sup> For the quote see *ibid.* Ford later remarked about the role of Beltway traffic. See Ford, 281.

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consulted about Ford's rescue plans but merely informed as to the President's intent. Senate Foreign Relations Committee chair John Sparkman (D-AL) told reporters that he had been called on the phone twice and briefed. He said, "I call that a pretty good degree of consultation." On the other hand House Majority Leader Mike Mansfield (D-MT) said "I was not briefed either yesterday morning or this afternoon, nor was I consulted before the fact. I was notified after the fact about what the administration had already decided to do. I did not give my approval or disapproval." He later maintained that Ford "informed" rather than "consulted" Congress. Senator Robert Byrd (D-WV), who had pressed Ford at the classified meeting, spoke out against Ford's actions, accusing him of inadequately incorporating Congress into the decision making process. Though nearly all supported Ford's action, many wanted to be better included before the fact.<sup>16</sup>

Again controversy surrounded conflicting expectations of consultation. White House Press Secretary Ron Nessen defended Ford's actions as compliant with the letter of the War Powers Resolution. He followed up by noting that the President's power to protect the lives of Americans is inherent to the constitution and hence need not be submitted to Congress for approval or discussion. Nessen took great caution to say Congress had been "consulted" while refraining from the word "notification". However, perhaps more so than legal and linguistic disputes, the primary implication of Nessen's comments was that if Ford acted improperly, not only was said action therefore illegal,

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<sup>16</sup> Rich, *op cit.*; Philip Shabecoff, "Ford is Backed: Senate Unit Endorses His Right to Order Military Action," *New York Times* (May 15, 1975), 1, 18; "Ford Waited 11 Hours to Give News of Attack on Patrol Boats," *New York Times* (May 15, 1975), 18; Tom Wicker, "Raising Some Mayaguez Questions," *New York Times* (May 16, 1975), 37; "Ford Sends a Signal", *New York Times* (May 18, 1975), E1; Jules Witcover, "The Mayaguez Decision: Three Days of Crisis for President Ford", *Washington Post* (May 17, 1975) A1, A10; Turner, 61-4; Ford, 283.

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but in acting illegally in defiance of Congressional oversight and sunshine laws, Ford was no different and no better than the imperial presidents he replaced.<sup>17</sup>

Even before Ford ordered retaliatory and rescue actions and before members of Congress received their formal letters or briefings, various Representatives and Senators heard elsewhere (mostly on the newswire) of the Khmer Rouges' aggression. This information fueled accusations of non-compliance. As early as May 12, 1975 (two days before Ford issued his orders), Senator James Allen (D-AL) apprised the Senate of a news item that just had come across the wire. The story explained that an American merchant ship *Mayaguez* was fired upon and seized by a Cambodian naval vessel in the Gulf of Thailand. Similarly, the next day, right after the session began, Representative Robert Sikes (D-FL) took the floor to discuss the latest "Communist ploy." Sikes called for immediate action to clarify that America has the courage and commitment to stand by its people. After that day's session, Representative Glenn Anderson (D-CA) extended his remarks, concurring with Sikes and condemning the Khmer Rouge seizure of the *Mayaguez*. He called for America to clarify its unwavering policy to defend its ships on the high seas. These statements called for action but did not speak specifically to the implications of the War Powers Resolution.<sup>18</sup>

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<sup>17</sup> Historians are divided on this issue of whether Ford's consultation was adequate. For example, Ann Van Wynen Thomas and A.J. Thomas, Jr. argue that "Ford did not consult the Congress as the War Powers Resolution demanded". However, in their footnote they concede that Ford did submit notification to Congress. However Thomas and Thomas cite Arthur Schlesinger's argument that Ford proceeded without Congressional authorization as evidence to the contrary. See Ann Van Wynen Thomas and A.J. Thomas, Jr., *The War-Making Powers of the President*, (Dallas: Southern Methodist University Press, 1982), 30, 153 n58; Arthur Schlesinger, "Is the Presidency Too Powerful", *Readers Digest* (December 1975), 88; Lamb 160.

<sup>18</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:13916-7, 14178, 14139-41.



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Later that day the conservative Representative Jack Edwards (R-AL) took the floor to support President Ford's condemnation of the vessel seizure (referring to Ford's public statement). He concurred with the President in calling the action one of piracy. Edwards called for action. "I do not believe the United States can stand around like a helpless giant and allow this to happen." Similarly, Representative Herbert Burke (R-FL) argued against "strengthening the weak by weakening the strong". He called for America to stand up against this act of piracy. He claimed that his stomach turned at the bravado and foul treatment these "pipsqueak" governments gave the United States. He too called for immediate action. Ultimately, these are just a sampling of the sentiments expressed by members of Congress on the floor. They knew something had happened and something needed to be done but they had not yet heard from President Ford.<sup>19</sup>

By May 15, 1975, Ford's actions had been publicized, the action taken, and the crisis ended. Eight out of every nine phone calls to the White House about the *Mayaguez* had positive messages. The Gallop Poll rating of Ford's favorability jumped from 39% to 51% following the incident. Representative Don Fuqua (D-FL) took the floor to praise Ford's actions in connection with the *Mayaguez*. "This is what American policy should be – firm, forceful, and fair." Fuqua accepted peace is a goal but if threatened, America should retaliate appropriately. Representative Dan Daniel (D-VA) spoke next, adding that Ford's "performance was in the true American tradition, and reflects credit upon the American people and upon himself." Senator Jacob Javits (R-NY) and Representative Bernice Sisk (D-CA) – two of the War Powers Resolution authors – similarly

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<sup>19</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:14111, 14113, 14323. For more examples of early responses by Members of Congress see for example *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:14139-41, 14261-2, 14395-6, 14435. For a discussion of Willaims and Burke's ideology (especially as Southern Republicans), see Black and Black, 146-8.

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commended Ford on his compliance and touted that successful implementation of the spirit and letter of the War Powers Resolution. Representative Samuel Stratton (D-NY) continued the trend, congratulating Ford on the “firm, aggressive, and successful leadership which he has taken in the *Mayaguez* incident.” He later added

The thing that has impressed me most in this incident is that the President did consult with the leaders of Congress at every step of the way. In addition, there were substantial briefings of other members of Congress. Mr. Speaker, I believe we have here in this case a clear demonstration of the kind of cooperation that should exist between the Congress and the White House on foreign policy.<sup>20</sup>

Other members spoke after Stratton but none framed it as succinctly. A crisis developed and Ford acted accordingly. More importantly, he complied with the War Powers Resolution and made sure Congress was in the fight, not just sitting ringside.

At the same time in the Senate, support for Ford’s actions manifested even clearer. Amidst a similar barrage of kudos and congratulations, some Senators fired back against accusations of inadequate consultation. Senator Clifford Hansen (R-WY) rebuked the media for insinuating that Ford insufficiently consulted with Congress. He accused those of saying so as politically motivated despite the President’s clear and concerted efforts to make sure both sides of the aisle were kept in the loop in the situation. Similarly, Senator Howard Baker (R-TN) commended Ford’s action. “The President chose wisely and well and, in my judgment, acted within the scope of his

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<sup>20</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:14451-3. For examples of placations in the House see *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:14497, 14501, 14503, 14507, 14510, 14746-7; *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 12:14901-2, 14908-9, 15474, 15542, 16222-3. For examples of placations in the Senate see *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:14517-8, 14651, 14652; *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 12:14769-70, 15321-2; Duane Tananbaum, “Gerald Ford and the War Powers Resolution” in Bernard J. Firestone and Alexej Ugrinsky, eds., *Gerald R. Ford and the Politics of Post-Watergate America*, 2 vols., (Westport, Connecticut: Greenwood Press, 1993), 532. For discussions of Ford’s popularity and improved standing see Neustadt and May, 64; “Public Reaction Favors Bombings to Free Ship”, *Washington Post* (May 15, 1975), A17; Lou Cannon, “Ford Action Applauded by Friends, Foes”, *Washington Post* (May 16, 1975), A1, A16.

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constitutional and statutory authority within the framework of the War Powers Resolution.” The Senator who infamously asked about Watergate, “What did the President know and when did he know it?”, now praised Ford for his respect for the law. Elsewhere the outspoken standard barer of the Republican Party (not to mention noted war hawk), Senator Barry Goldwater (R-AZ) applauded, “It was wonderful, it shows we’ve still got balls in this country.” In general, the Senate proved more supportive of Ford’s consultation procedures. Both chambers first reactions suggested another successful application of the War Powers Resolution, indicative of the new balance of power in Washington. Though Ford did not calculate his actions specifically for political gain, he did accept the coattails and political capital brought by the mission’s success. *New York Times* writer James M. Naughton noted that Ford took “maximum advantage” of his recent military victory.<sup>21</sup>

Ford’s handling of the *Mayaguez* crisis earned him respect in Congress from the hawks (who applauded his firm stance on foreign policy when American lives were at stake) but also from doves. The later group were assuaged to see the President of the United States complying with the War Powers Act. Praise also came from the opposition pParty. In 1975, two of Democrats most notably on the public radar were the two men vying for their party’s Presidential nomination in 1976. Both North Carolina Governor Terry Sanford and Georgia Governor Jimmy Carter endorsed Ford’s actions. Sanford

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<sup>21</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 11:14556-7, 14651. For Baker’s Watergate quote see “The Central Question”, op cit. For Goldwater’s quote see William Shawcross, *Side-Show: Kissinger, Nixon, and the Destruction of Cambodia*, (New York: Simon and Shuster, 1979), 433n 34n; Douglas Brinkley, *Gerald R. Ford*, (New York: Times Books, 2007), 103-4. For a discussion of Goldwater’s politics see Black and Black, 33, 127, 225. For Naughton’s remarks see James M. Naughton, “President Starts to Mesh ’76 Drive”, *New York Times* (May 22, 1975), 16. Naughton argued that Ford did not act for political gain but the success his actions brought boded well for the upcoming 1976 Presidential election.

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called Ford's actions were "precisely the right thing" while Carter argued that Ford's swift actions prevented more serious problems from developing.<sup>22</sup>

However, once the euphoria of congratulations and elations for the rescue of the ship and her crew subsided, some members of Congress (specifically some members of the House of Representatives) reflected on the semantics and legality of the way in which Ford came to his decision. On May 19, 1975, Representative John Seiberling (D-OH) called for "sober" reflection on the implications of the *Mayaguez* incident on the War Powers Resolution. While he touted the success as exhilarating he cautioned that

...as the exhilaration dies down, and the casualty lists come in, it is time for sober second thoughts, particularly by Members of Congress. For among the casualties of the *Mayaguez* incident may be the idea that the war powers resolution would usher in a new era of Presidential cooperation with the Congress in matters involving the commitment of U.S. Armed Forces to hostilities.

Seiberling noted that Ford had multiple meetings with the Security Council before he informed Congress. Seiberling called for his colleague, International Relations Committee Chairman Thomas Morgan (D-PA) to investigate whether further clarifying language was needed in the War Powers Resolution. His formal letter to Morgan was then printed in the record as was an editorial from the *Akron Beacon Journal* that reflected his position. The editor accused Ford of only "consulting" (loosely defined) with one member of Congress – House Republican Leader John Rhodes (R-AZ) – while the rest "were merely informed of what the President planned to do, which is hardly the same thing as being consulted." The editorial conceded that most members approved in hindsight and would have endorsed the plan if asked but that "the question is one of

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<sup>22</sup> Anthony Lewis, "A Chorus of Yahoos", *New York Times* (May 26, 1975), 15; Thomas P. Ronan, "Carter and Sanford Support President on Mayaguez Step", *New York Times* (May 18, 1975), 6.



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constitutional law and precedent.” The editorial concluded that any hostile action should go through Congress as the power to declare war is their sovereign jurisdiction.<sup>23</sup>

Two days later, the dovish Representative Robert Drinan (D-MA) further pressed the issue of lingering questions after the *Mayaguez* incident. He likened the White House’s initial reaction to that of a “John Wayne movie. We were told that the Marines shot up the bad guys and rescued the American ship.” However as time went on, the American people – and here Drinan – asked if the lethal force was warranted and whether all other options had been truly exhausted. Drinan also questioned whether Ford complied with the spirit of the War Powers Resolution. He argued that since Ford held back on many of the details of the incident (referring to the four Security Council meetings prior to formal public reporting) that his actions “could not be described to be totally consistent with at least the spirit ... of the war powers resolution.” Drinan argued that while the President did report on time, he did not adequately comply with the War Powers Resolution because he committed troops before sufficiently proving the necessity to do so. He argued that the War Powers Resolution gives the appropriate Congressional committees – House International Relations and Senate Foreign Relations – the right to know everything, including the “mistakes and miscalculations”, which were made in the process of the administrations handling of the *Mayaguez* situation. However, these sentiments were not unanimous. After he said this, Representative John Duncan (R-TN)

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<sup>23</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 12:15070-1; “Cambodian Crisis Ends, But Questions Remain”, *Akron Beacon Journal* (May 15, 1975), A6. The same day Morgan read the *Akron Beacon Journal* article, millions of *New York Times* subscribers read Anthony Lewis’ latest take on the consultation debate. Lewis – the same reporter Ford would be labeled as “liberal media” – argued that Ford took the “sophisticated” position of opting not to challenge the constitutionality of the law but construe his compliance so narrowly such as to try and skirt the constitutionality question entirely. Lewis predicted that Ford’s interpretation would garner further scrutiny. See Anthony Lewis, “The Laws Under Which Mr. Ford Took Action”, *New York Times* (May 18, 1975), E2. See also John Herbers, “Ford Now Is a President in the Recent Tradition”, *New York Times* (May 18, 1975), E4.

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commended the renewed sense of “mutual trust and confidence” that emerged out of the *Mayaguez* incident.<sup>24</sup>

On May 22, 1975, Representative Michael Harrington (D-MA) extended his remarks commending Chairman Morgan for pursuing his request for hearings on the *Mayaguez* incident in his International Relations committee.<sup>25</sup> In fact, the House Subcommittee on International Political and Military Affairs of the Committee on International Relations had already begun to hold hearings on the *Mayaguez* incident, both to better understand what happened in terms of logistics and operational history but also to determine if an unlawful delay occurred in apprising Congress of the situation.

Knowing that the President would be concerned that his posture and consultation procedures had come into question, White House Counselor Phil Buchen briefed his boss on the viability of the Congressional inquiry. Taking the form of talking points, specifically Ford’s potential answer to the core question of the inquiry, Buchen reiterated to Ford his position and why it would stand up even in the face of Congressional scrutiny.

QUESTION: “Some members of Congress have raised the issue that you may have notified but did not “consult” Congress before attacks started to prevent movement of Cambodian boats between the MAYAGUEZ and Koh Tang Island or between the island and the Cambodian mainland. Others have raised the issue that you did not “consult” with the Congress before you had already decided to seize the ship and the island forcefully and to protect the operation by air attacks on military targets. What are your comments on these issues?”

ANSWER “From the very beginning of this operation, as our diplomatic and military actions developed, I kept the leaders of the Congress fully informed. On the decision made under a critical time deadline to use force in order to recover the vessel and the crew, I discussed the contemplated actions fully with the leaders of the Congress and of the appropriate committees as soon as possible. As a former Congressman, I fully believe that it is important for the Congress and Executive to act together on major

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<sup>24</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 12:15751-2, 15761.

<sup>25</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 12:16229.

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issues. That is the philosophy that I have followed since the beginning of my administration, and that I shall continue to follow. Neither one of us can assume the responsibilities of the other, nor should we try, but it is important that we should work together and understand each other's views."<sup>26</sup>

Ford acted pursuant to his Commander-in-Chief powers and in a spirit of cooperation with Congress. After all the dust settled, Buchen remained confident that these truths would hold up.

Representative Dante Fascell (D-FL), Chairman of the House Subcommittee on International Political and Military Affairs of the Committee on International Relations began their hearings regarding the seizure of the *Mayaguez* on May 14, 1975 with Robert H. Miller, Deputy Assistant Secretary of State for East Asian and Pacific Affairs and Morton I. Abramowitz, Deputy Assistant Secretary for International Security Affairs (East Asia and Pacific Affairs). The two reiterated the operational history of the boat's seizure and the steps and actions taken to reacquire the boat and her crew. The two executive officials commented on the dates and times as well as the equipment and personnel employed in the actions.<sup>27</sup>

As the hearings got under way liberal Representative Donald Riegle (R-MI) pressed the question of when the White House informed Congress of its intentions (to say nothing of consultation prior to action). Riegle calculated that the chairman of the International Relations Committee did not hear about Ford's actions until fifteen hours afterwards. Riegle was not afraid to balk at his own party if he thought something was wrong. Though he personally liked Ford, those sentiments were trumped by his fears of

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<sup>26</sup> Question and Answer, [Phil Buchen for Gerald Ford], no date, June 23, 1975, "War Powers Resolution: *Mayaguez*" Folder, Box 65, Philip W. Buchen Files (WH Counsel's Office), Gerald Ford Library.

<sup>27</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 1-29.

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what the presidency had become under Nixon. Despite Abramowitz pointing out that a formal “war powers report is going forth”, Riegle opined that “it is a damn poor procedure when you cannot let people [in Congress] in positions of responsibility know sooner than that.” Riegle’s concern was not addressed at that time; the discussion shifted to other issues. Much of the concern about consultation regarded Ford’s diplomatic efforts and the specific conditions of the seizure of the vessel and capture of her crew. Overall though, the discussion at this initial hearing made no specific allegation of non-compliance by the President.<sup>28</sup>

The next day (May 15) the Subcommittee reconvened, at which point Miller, **along** with Assistant Secretary of Defense for Legislative Affairs John M. Maury and **Legal** Adviser and Legislative Assistant to the Chairman of the Joint Chiefs of Staff **Colonel** Zane E. Finkelstein, testified. With the operation having only ended **approximately** two hours before the hearing convened, much of the early interrogation of **these** men called for further explanation and articulation of the operation and its outcome. Of particular importance, Representatives William Broomfield (R-MI) (Committee Chairman) and Clement Zablocki (D-WI) (ranking member) questioned the necessity of air strikes. Did the Air Force need to lay down fire to continue the safe evacuation? Colonel Finkelstein fired back, explaining the possibility for casualties and fatalities given the enemies armaments and capabilities and as such the “essential [need for force] to save the marines on that island.” Finkelstein added,

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<sup>28</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing. For Riegle’s quote see pages 12-3. For discussion of the rescue operation, rules of engagement, and diplomatic efforts, see especially pages 14-25. For discussion of the deliberation in the NSC see especially pages 25-8. For a discussion of Riegle’s attitudes towards party unity, the presidency and Gerald Ford, see Donald Riegle, with Trevor Ambrister, *O Congress*, (Garden City, New York: Doubleday, 1972).



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Now, you are forced, sir, to make a judgment between using adequate force and failing to use sufficient force to protect the men on the ground. That judgment is a very close one, sir, in almost every instance, whether it is a platoon operation under a sergeant, a division operation under a general, or an operation of this nature under the direct command of the Commander in Chief. That is a tactical decision that is easy sometimes to Monday-morning quarterback. The question has to be what would you do if you were responsible for the men on the ground at the time the decision was made, sir. We recognized that of all the manifestations of power, restraint is one that that is greatly recognized. That fact was constantly a consideration in the minds of the military planners involved in this operation. Restraint was a goal, but protecting American lives, sir, was the first goal.

Frustrated at (civilian) members of Congress questioning operational decisions made by **military** experts on what appeared to be political grounds, Finkelstein reiterated that the **use** of force was warranted in order to secure the safe evacuation of the *Mayaguez* crew **and** the military personnel that rescued them. Later on in the hearing, Representative **Edward** Biester, Jr. (R-PA) asked for clarification about the air strikes. He asked and **Finkelstein** confirmed that there had been no punitive air strikes. In other words, **American** air power had not inflicted collateral damage or retaliatory action.<sup>29</sup>

Members resented not knowing about the deliberation as well as not being part of said deliberation. Some members of Congress felt that diplomatic channels were abandoned too quickly while others were not sure if the circumstances were dire enough to warrant Ford's responses. Still other members concurred that Ford's actions were justified, but disapproved of the nature of Ford's interpretation of the War Powers Resolution's consultation clause. These members were generally not the ones applauding the President's actions on the floors of the main chambers. They felt the President

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<sup>29</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 31-7, 42-3. For the discussion of the air strikes and Finkelstein's quote see pages 33-5.

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delayed in consulting the relevant and responsible Congressional counterparts. Similarly, they took this delay as proof that the President determined his decision and course of action on his own and then – at best – asked for Congress to comment on his choice. They concluded the President did not present options to Congress or call for Congressional suggestions, but rather notified them of his intent.

By June it became clear that the debate over Ford's actions would not be going away just yet. Liberal Representatives Robert Drinan (D-MA) and Gladys Spellman (D-MD) spoke about the lingering linguistic and constitutional questions surrounding Ford's actions during the *Mayaguez* incident. They cited the legal scholar Raoul Berger, Charles Warren senior fellow in American Legal History at Harvard Law School, who argued in a *New York Times* article that Ford was not acting constitutionally when he ordered military action against Cambodia.<sup>30</sup>

The Subcommittee reconvened on June 19, 1975 to continue to address the “retrospective investigation into the seizure of the U.S. vessel *Mayaguez* and diplomatic efforts and military actions taken to secure the release of the ship and its crew.” Subcommittee Chairman Fascell opened by stating that while he and his colleagues were grateful that the crew and the boat were rescued unharmed,

... [t]here remain, however, a number of serious questions which must be answered more fully if we are to be certain that our mechanisms for preventing and managing future crises will maximize opportunities for peaceful resolution and minimize risks to the lives of U.S. civilian and military personnel.

*More important*, Fascell spoke to the larger concern of his Subcommittee and its inquiry.

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<sup>30</sup> *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 13:6564-5; *Congressional Record*, 94th Congress, 1st session, 1975, Volume 121, part 14:17949-51; Raoul Berger, “The *Mayaguez* Incident and the Constitution,” *New York Times* (May 23, 1975), 37.

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In the post-Watergate and post-Vietnam era there is a pervasive air of skepticism about virtually every action of our Government. It is incumbent on the institutions of government to attempt to reestablish the mutual trust and confidence necessary to maintain both an effective government generally and an effective foreign policy particularly.

Fascell stated that the Hearings started with the assumption that the administration did nothing wrong and that nothing improper transpired. However, the Subcommittee wanted to make certain that "our imperfect system works as well as it can when the lives of American citizens are at stake." In other words, Fascell respected that the Ford administration may not have done anything wrong but he wanted to make sure all sides are taking all possible actions to minimize the need for future hostilities. Amongst the issues that he hoped to address at the hearing was the communication channels between the President and Congress in times of crisis and how the requirements of the War Powers Resolution ought to be carried out.<sup>31</sup>

On this third day of hearings, Miller testified again. Fascell interrupted the Deputy Assistant midway through his statement and questioned the sincerity in the tone of his voice. Fascell argued that though Miller's recollection and restatement of the dates and times for the record was accurate, the Department of State was at the time neither forthcoming nor readily available. In fact, Fascell then challenged the chronology provided by Miller arguing that there were conflicting accounts of the events, especially the times of the incident and when consultation formally occurred. Fascell specifically pointed to vagueness in answers given by Miller on May 14 and 15 regarding the operational specifics of the rescue. Fascell pressed Miller specifically on the circumstances surrounding the diplomatic options and when the White House received

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<sup>31</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 133-4.

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responses – if any – from the Cambodian government and when this correspondence was made available to Congress. Fascell argued that Ford had made his decision regarding the *Mayaguez* incident based on his first consultation with the NSC, a full day before directing that the Congressional leaders be notified. Miller categorically denied Fascell's conclusion, stating he could not comment on Fascell's deductive logic.

Representative Winn then followed up by asking Miller what he would consider – in his expert opinion – as “consultation” as he described in his chronology of events. Miller's response was elusive.

I did not participate directly in the consultations or the contacts with the Congress, other than the briefings that I mentioned in the beginning. But it is my understanding that the congressional leadership was informed in advance of actions and had an opportunity to convey their views.

Winn then pressed Miller further asking him to distinguish between briefings and consultations. Winn argued that a briefing is formally (and often publicly) apprising members of Congress of a decision already made while consultation is more direct, more personal, and implies the opportunity for feedback and influence. To this end, Winn asked Miller what he meant by consultation and if he knew of any member that voiced opposition to the action (and if such criticisms were considered). Miller again responded that he had no knowledge of the substance of the consultations, only that they happened. He clarified that some consultations occurred by telephone and that there was a meeting convened by the President with Congressional leadership. Miller ultimately concluded “that the record shows – and as the Department's legal adviser has testified – that the administration made every effort to keep in touch, to inform, to solicit comments on the part of the Congress and to convey those comments to the President.” In short, Miller concluded that the President not only complied with the letter of the War Powers



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Resolution, but made every effort to comply with the spirit of the Resolution that places the onus upon the President to better involve members of Congress with foreign policy decisions.<sup>32</sup>

Representative John Buchanan, Jr. (R-AL) spoke next, providing an affirmative response to Miller's testimony. Buchanan and Miller agreed that that constitution designates the President the power to protect American citizens and Congress cannot – other than by constitutional amendment – do anything to impede or prevent the President from execution of said duty. Trying to reframe the events in a more “positive light”, Buchanan and Miller also agreed that the actions taken represented a “successful rather than an unsuccessful attempt to meet a crisis.” However, after concurrence on that point, Buchanan then followed on the point raised by Fascell and Winn, asking for clarification of the times consultation was rendered.<sup>33</sup>

Fascell respected that Miller did not have more specific answers since he did not sit in on the NSC meetings but he chastised his superiors – “Mr. Sisco” in particular – for not showing up. Undersecretary of State for Political Affairs Joseph Sisco had been invited to testify and to the best of the Committee's understanding, had no good reason not to show up. Fascell did not fault Miller for not having better answers, he faulted Sisco (and others) who declined to show up but thought Miller would suffice in their absence.<sup>34</sup>

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<sup>32</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, For Fascell's challenge of timely consultation see especially page 140. For Winn's interrogation see pages 140-1.

<sup>33</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 144-6.

<sup>34</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 147-52.

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The Committee invited members of Congress to speak at the June 25, 1975 date of the hearings. Dovish Representatives Patricia Schroeder (D-CO), Elizabeth Holtzman (D-NY), and John Burton (D-CA) described their own personal chronologies (when they were contacted) as well as their calls for the gaps to be filled and questions to be answered by Department of State and Department of Defense. At one point Riegle compared the lack of information and clarification flowing from the Ford administration to the Nixon administration's handling of the Watergate fallout.

That reminds me of President Nixon, who several times on the Watergate issue, issued a final statement that nothing more would be said and the issue would be closed. Well it didn't turn out that way. I think it would be a grave mistake if the Congress were to settle for what we know now and let that pass as the final answer.<sup>35</sup>

Riegle's comment pressed the heart of the issue. If Congress ceased the inquiry because of a White House stonewall or if Congress determined that Ford had held back information or failed to comply in good faith with the War Powers Resolution, it would represent a throw back to the imperial presidency and the days of Watergate.

Hearings resumed on July 25, 1975. Fascell began by announcing that Deputy Secretary of State Robert S. Ingersoll had committed to testify at their next convocation on July 31 and Deputy Secretary of Defense William Clements would testify sometime that September. That day's hearings focused on maritime law but the next day of hearings, July 31, returned to questions of chronology and consultation.<sup>36</sup> As promised, Ingersoll showed up for testimony. Fascell recapped the hearings to date for Ingersoll

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<sup>35</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 161-82. For Riegle's quote see pages 169-70.

<sup>36</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 183-225.

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and then asked him to explain the gaps and answer the chronology questions. Ingersoll explained that the President was most concerned with saving lives and this meant quick and decisive action. He argued that the President tried at every opportunity to involve Congress as much as possible.

Riegle and Fascell pressed Ingersoll to clarify who was contacted, when they were contacted, and how that related to when Ford had made his decisions and committed troops to action. Ingersoll answered but his comments added credence to the claim of some members that their opinion was not being counted. Later in the hearing Representative Winn asked Ingersoll "Do you believe that Congress can play any role during a crisis such as the *Mayaguez* seizure?" Winn argued that given all the information Ingersoll had provided, he was left with the impression that the Ford administration might not think so. Ingersoll answered,

I think it is difficult to generalize in this sort of an issue. I believe that Congress should be involved in discussion of this type and the opinions of Congress certainly should be taken into account in an ongoing event and decisions that are made with respect to that. I think eventually the President has to make the decision after he has consulted with both his own staff and the Congress. I think that the Chief Executive officer has to take that responsibility.

Winn followed up, bringing the issue back to the *Mayaguez* incident, asking whether the President, given all the consultation he received from the NSC and Department of State, deliberately delayed Congressional consultation.<sup>37</sup>

Then Riegle further pressed Ingersoll on the nature of the NSC meetings. He pressed Ingersoll to concede that there were ideas and options discussed and debated at

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<sup>37</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 255-66. For Winn's exchange with Ingersoll see especially pages 265-6.

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the NSC meetings (but still no mention of the ideas to Congress until later). However, Ingersoll continued to stonewall Riegle and the committee. The Committee asked for people who were at the NSC meetings to testify about the decision making process employed. However, those who showed up – Ingersoll and Miller – could not comment. Riegle called it a “catch-22.” Those who showed up could not speak for those who were not there but those who should have come (and were asked to come) did not show up.<sup>38</sup>

The last day of hearings was September 12, 1975. As promised, Deputy Secretary of Defense Secretary of defense William P. Clements testified, as did Morton Abramowitz (again), and Assistant Director of Operations for Command and Control of the Joint Chiefs of Staff, Air Force Brigadier General Atkinson. Clements spoke first, and explained how the NSC operates and helps the President formulate a plan of action.<sup>39</sup> Congress had their answers. Ford did meet with the NSC four times before he sent his formal reports to the Speaker of the House and President Pro Tempore of the Senate. He had met with the NSC before the initial phone calls were made to members of Congress. However, every witness confirmed the time pressures faced by Ford and that the President made every effort possible to include Congress.

#### Conclusion:

In 1973, members of Congress – led by dovish members fearful of another Vietnam and determined not to allow another president to abuse his foreign policy power – passed the War Powers Resolution. Historian Michael Genovese wrote “Reacting

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<sup>38</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 255-270.

<sup>39</sup> Congress, House, Committee on International Relations, Subcommittee on International Political and Military Affairs, *Seizure of the Mayaguez*, 94<sup>th</sup> Congress 1<sup>st</sup> session, Hearing, 289-319.



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against the excess of power in the Johnson and Nixon presidencies, the Congress attempted to reassert its power by taking a series of presidency-curbing steps, the most notable being the passage of the *War Powers Act*.<sup>40</sup> President Richard Nixon did not like the bill and in fact he vetoed it. He had some support for his position in Congress, most notably the Representative from Grand Rapids, Michigan – Gerald Ford (R-MI). However, despite the best efforts of Nixon, Ford, and others, the majority in Congress overrode the Presidential veto. Two years later, President Gerald Ford would face the first applications of the Resolution.

Ford agreed with Congress that Presidents Lyndon Johnson and Richard Nixon had acted out of line in pursuing the Vietnam War but as President – as he did as a member of Congress – Ford thought the Resolution was a bad law. Ford concurred with Congress that the Gulf of Tonkin Resolution, as worded, mortgaged Congressional authority and provided Presidents with a blank check to conduct the Vietnam War. However, Ford was neither Johnson nor Nixon. As historian Phil Williams phrased it,

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<sup>40</sup> More specifically, Michael Genovese wrote, “The aftermath of Watergate led to a decline of the presidency and a rebirth of congressional power. A transformation began to take place. As a result first of Vietnam, then of Watergate, our superman became an Imperial President. The presidency had become a danger to the republic, using its powers not for the public good but for self-aggrandizement. A new image of the presidency developed. Watergate turned out to be the final nail in the coffin of the unambiguous acceptance of the strong-presidency model. The twin effects of Vietnam and Watergate led to an era of deep cynicism regarding politics and the presidency. Scholars and the public began to condemn the “excesses” of presidential power characterized as the Imperial Presidency, and called for a corralling of a presidency perceived as acting above the law. It was a presidency-curbing, if not presidency-bashing, period. Reacting against the excess of power in the Johnson and Nixon presidencies, the Congress attempted to reassert its power by taking a series of presidency-curbing steps, the most notable being the passage of the *War Powers Act*, which attempted (with little subsequent success) to curb the president’s war powers. The presidency-curbing era also ushered in a period in which the public did an about-face regarding their trust in and support of presidents and the presidency. Any and all presidential acts were suspect; virtually no support was given for presidential initiatives; and a weak-presidency model (though not a strong-Congress model) prevailed. In the midterm election of 1974, a new breed of activist Democrats was elected to the Congress. Weaned not on FDR’s greatness but on Johnson’s and Nixon’s excesses, this new generation of legislators was less deferential to presidents, less willing to bow to claims of presidential prerogative, and more willing to challenge presidents directly. As a result, the legislative initiatives of Presidents Ford and Carter would fall victim to the Congress’s revised, more suspicious attitude towards presidential power.” See Michael A. Genovese, *The Power of The American Presidency, 1789-2000*, (New York: Oxford University Press, 2001), 168.

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“Although President Ford resisted the imposition of restraint by Congress, [he was] much more circumspect in the use of American power than [his] immediate predecessors.”<sup>41</sup> Ford disagreed with the law but understood it needed to be followed. Policy preferences and personal politics took a back seat to public imagery. Ford knew at this time he needed promote reconciliation, not widen the divide further on principle. Even after Congressional inquiry, his reputation and consultation procedures endured.

Through four incidents in rapid succession Ford acted with authority and dignity commensurate with the office of the President of the United States. Though some debate arose as to whether Ford’s actions complied sufficiently with the War Powers Resolution and though some of the operations went smoother than others, there was no doubt that his actions demonstrated a clear break from the unilateral imperative displayed by his predecessors. Ford presented himself as an honest and cooperative politician who respected the federal separation of powers. He consulted with Congress to the best of his ability whenever possible as per the law. In the short term, Ford’s actions proved that America was stepping away from political apocalypse. While members of Congress debated over Ford’s compliance, none considered his actions anything but an improvement over those that came before him.<sup>42</sup>

However, in the long term, Ford’s compliance with the War Powers Resolution – though begrudged – proved anomalous, as presidents by the 1980s and forward expanded

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<sup>41</sup> Phil Williams, “The President and Foreign Relations,” in Malcolm Shaw, ed., *Roosevelt to Reagan: The Development of the Modern Presidency*, (London: C. Hurst & Company, 1987), 218. Phil Williams later added, “The imperial presidency, however, was not solely a product of congressional abdication. It was also a result of Presidents extending their own authority and power.” The expansion of presidential power could be seen over a long period of time but especially after World War II. With the possible exception of Dwight Eisenhower, he argued Presidents since Truman have took progressively larger interpretations of power until Watergate and the Vietnam war exposed the imbalance. See pages 240-241.

<sup>42</sup> Mieczkowski, 44, 294-6; Sandy Grady, “Rightist Put Ford in Dilemma Over Ship Seizure” *The Evening Bulliten* (May 13, 1975), 2.

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Presidential power at the expense of Congressional right to know and the War Powers Resolution. Ford's successor, Jimmy Carter, also prided himself on accountability and transparency. Yet Carter too understood that absolute consultation and cooperation is not always prudent. Carter consulted when possible on foreign policy, but even he understood the need for secrecy at times. For example, Carter was extremely secretive about his Camp David summit and his decision to normalize relations with the Peoples Republic of China.<sup>43</sup>

By the 1980s the key flaw of the War Powers Resolution came into the light. As historian Arthur Schlesinger wrote, "Certainly the War Powers Resolution, the most publicized shackle of all, turned out to be a toy handcuff... The resolution began by yielding the president what he had heretofore lacked: statutory authority to begin wars without congressional consent." The law sought to prevent Presidents from engaging troops without authorization alleging there was no statutory warrant to do so. However in effect, Presidents construed the War Powers Resolution as a license to take action, tell Congress later, and then if rebuked, withdraw troops later or lobby Congress until they conceded.<sup>44</sup>

Foreign policy scholar Marc E. Smryl argued that Ronald Reagan pursued a foreign policy agenda that was more aggressive than Ford or even Carter. His argument was that Reagan acted in ways similar to Johnson and Nixon. In essence, Smryl concedes that Reagan represented not a return to an imperial presidency but to an aggressive unitary executive interpretation of foreign policy. "[T]he Reagan

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<sup>43</sup> Hugh Sidey, "The Virtues of Secrecy", *Time* (January 1, 1979), 61.

<sup>44</sup> Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973, 1989), 433-4. Schlesinger is actually quoting observations from the Conference Report, *Congressional Record*, October 4, 1973, H8657 (daily edition) and "Statement of War Powers Conferees," October 4, 1973.

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Administration's foreign policy initiatives, although aggressive by the standards of the Ford and Carter Administrations, were well within the boundaries set by Presidents Johnson and Nixon." Smryl argued that there was less Congressional abdication of responsibility than before but on the other hand Reagan began to re-expand the powers of the Presidency.<sup>45</sup>

As time passed after Ford's time in office, his reluctant but compliant deference for the law came to be replaced with a return to a disregard for federal comity worse than before the War Powers Resolution. For example, in 1983 Dick Cheney (former Chief of Staff under Ford and current Representative from Wyoming) reflected on the implications, legality and legacy of the War Powers Resolution. Cheney defended Ford's interpretation of the law, but he argued that Congress should not be dictating or trying to steer foreign policy and should not be second guessing Presidents after they act. Like Ford he claimed the War Powers Resolution needed to be complied with as a matter of law but he believed the law had limitations. In language that would portend his time in the George. W. Bush administration as Vice President, Cheney noted,

If [the president] makes a mistake, obviously we may pay a price for it; but we have to trust him to make certain decisions. To keep coming back to the notion that every set of circumstances in which military force might be used lends itself to consultation and legal arguments is nice, but the world doesn't work that way.

Cheney further reiterated that he did not believe the War Powers Resolution was either constitutional or necessary. By the time Reagan's successor, George H. W. Bush, faced international crisis in Operation Desert Shield and Operation Desert Storm, the ebb and

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<sup>45</sup> Marc E. Smryl, *Conflict of Codetermination? Congress, the President, and the Power to Make War*, (Cambridge, Massachusetts: Ballinger Publishing Company, 1988), chapter 4. For the quote see page 64. See also Eric Alterman, *When Presidents Lie: A History of Official Deception and its Consequences*, (New York: Viking, 2004), chapter 5.



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flow of Congressional consultation for foreign policy decisions had effectively come full circle. With support from his Secretary of Defense, Dick Cheney, Bush complied with the War Powers Resolution. However he did not feel confined or restrained by its claims. Political analyst Charlie Savage noted the way in which Ford's second Chief of Staff, Cheney, particularly resented the manner in which Congress treated Ford and truncated presidential power. Savage argued that Cheney sought to never allow another President to be treated that way should he ever return to a position of such extreme influence. Savage argued that Cheney and George W. Bush acted to ensure presidential power would not be stymied and their strong presidency or "unitary-executive" theory would reign supreme.<sup>46</sup>

Ultimately, the War Powers resolution reflected the determination of congressional doves to use every resource in their power – and some that were not – to prevent another Vietnam. Promoting a balance of power mentality, their crown jewel – the War Powers Resolution – sought to promote members of Congress to the foreign

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<sup>46</sup> Dick Cheney, Lee H. Hamilton, Charles McC. Mathias, Jr., Brent Scowcroft, *War Powers and the Constitution*, (Washington, D.C.: American Enterprise Institute, 1983), 18; Charlie Savage, *Takeover: The Return of the Imperial Presidency*, (New York: Little, Brown, and Company, 2007). For discussions of George H.W. Bush's interpretation of the War Powers Resolution in regards to the crisis in the Persian Gulf see for example, Donald L. Westerfield, *War Powers: The President, the Congress, and the Question of War*, (Westport, Connecticut: Praeger, 1996), chapters 8 and 9; Edward Keynes, "The War Powers Resolution and the Persian Gulf War", *The Constitution and the Conduct of American Foreign Policy*, David Gray Adler and Larry N. George, eds., Lawrence: University Press of Kansas, 1996), chapter 9. For other examples of discussions of the legacy of the War Powers Act see Harold Koh, "Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair." *Yale Law Journal* 97 (June 1988), 1255-1342; Morton H. Halperin, "Lawful Wars," *Foreign Policy* (Autumn 1988) 173; Arthur S. Schlesinger, "American and the World: Isolationism Resurgent?," *Ethics & International Affairs* 10:1 (March 1996), 150-1. Ironically, before he became a collaborator in George W. Bush and Dick Cheney's unitary executive theory in the George W. Bush administration, while Ford's Chief of Staff, Donald Rumsfeld spoke passionately about the limits of Presidential Power while he served as Gerald Ford's Chief of Staff. On the other hand, in the same interview where Rumsfeld "passionately" spoke about the limits of presidential power, Wall Street Journal reporter (and interviewer) understood that, "Whatever Donald Rumsfeld lacks, it isn't chutzpah – or a health measure of self-esteem." See Dennis Farney, "Ford's Falcon: Don Rumsfeld Takes Self-Assured Strides to White House Hub", *Wall Street Journal* (January 23, 1975), 1, 16.



policy decision making table. In practice however, not only was their conception of power flawed but their jewel proved to be a fake. A direct link can be drawn from the authority given to presidents this allegedly limiting device to some of the most divisive engagements of the late twentieth and early twenty-first centuries. Nicaragua, Iraq, and many other engagements were justified by the very legislation that sought to prevent them. Ford could not have known how future Presidents would interpret (or disregard) the precedent he set but he did recognize that the separation of powers reflected an equilibrium of government that had developed over time. By respecting the separation and promoting the restoration of that equilibrium, Ford worked to improve the balance of power in Washington and Presidential respect for Congress.

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## CHAPTER 4:

### Reconciling the Vietnam War: Draft Dodgers, Resisters and the debate over Amnesty

#### Introduction:

The issue of amnesty for Vietnam Era resisters circulated around Washington, D.C. long before Gerald Ford or Jimmy Carter came to presidential office. In the early 1970s, some members of Congress floated proposals as American ground troops continued to serve in Vietnam and elsewhere in South East Asia. However, regardless of the progress of the Vietnam War, as long as Richard Nixon remained President, reconciliation could never become a formal consideration. He maintained that nothing needed to be done for those who did not serve or did not finish their service dutifully. Instead he reiterated the position defined in a January 2, 1972 interview with Dan Rather. When Rather asked the President if there was a scenario in which he could see amnesty being granted, Nixon curtly replied, “no”. Despite the persistence of amnesty advocates, Presidential reconciliation would not come until Gerald Ford and Jimmy Carter.<sup>1</sup>

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<sup>1</sup> For Nixon’s remarks see memorandum. Kenneth F. Bailey to Howard Kerr, March 4, 1974, “Amnesty – President Nixon’s Statements” Folder, Box 2, John O. Marsh Files, Gerald Ford Library; Transcript, CBS Television Program “Conversation with the President”, January 2, 1972, “Amnesty – President Nixon’s Statements” Folder, Box 2, John O. Marsh Files, Gerald Ford Library. Nixon’s opposition to amnesty was certainly not from a lack of awareness of his options or the actions of past presidents. After some of the earliest calls for Amnesty manifested in Congress, Nixon requested background on amnesty and his political options from White House advisor and speechwriter, Pat Buchanan. In December 1971 Buchanan suggested that “Christmas Pardons” might be a compromise gesture to appease the amnesty doves in Congress while not totally alienating Nixon’s hawk base. The pardons would be offer a select few who clearly reflected conscientious objection and had willingly gone to jail for their beliefs. This would reflect Nixon’s compassion but also his “law and order” attitude. However, Buchanan’s assessment of this possibility never became a reality. There were no Christmas pardons and by January, Nixon had solidified his stance against amnesty in any form. Nixon later explained, “...amnesty means forgiveness. We cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price; and the price is not a junket in the Peace Corps... The price is a criminal penalty for disobeying the laws of the United States.” See Memorandum, Patrick Buchanan to the President, November 18, 1971, “Vietnam – Follow up – Amnesty, 1971-73 (1)” Folder, Box A142, Melvin R. Laird Papers, Gerald Ford Library; Memorandum, Patrick Buchanan to the President, December 15, 1971, “Vietnam – Follow up – Amnesty, 1971-73 (1)” Folder, Box A142, Melvin R. Laird Papers, Gerald Ford Library; Note, J. F. Lehman to Bill Baroody, “Draft amnesty resolution”, February 3, 1973, “Vietnam – Follow up – Amnesty, 1971-73 (1)”

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Both Presidents acted immediately in their terms in office on the reconciliation issue. Within a month of taking office, on September 16, 1974, Gerald Ford announced his Presidential Clemency Program (PCP). Setting up the Clemency Review Board (CRB), Ford's program allowed resisters to expunge their spotty service record and earn reentry into American society by performing sufficient alternate service. Successful completion of their service would fulfill their debt to society. Approximately two and half years later, on January 21, 1977 Carter expanded the call for reconciliation with his Proclamation of Pardon. Building off of his own personal and moral beliefs and the statistical reality that, despite Ford's efforts, many young men chose not to participate in the PCP, the day after he took office Carter offered a full and unconditional pardon to all draft dodgers. Directed towards violators of the Selective Service Act, it applied broadly to those who chose jail over service or those who fled into exile in Canada or elsewhere. For other resisters – such as deserters – Carter enacted a Special Discharge Review Program (SDRP), guaranteeing a case-by-case review of their situation to ensure that all veterans had the discharge status they deserved.<sup>2</sup>

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Folder, Box A142, Melvin R. Laird Papers, Gerald Ford Library; Position Paper, "AMNESTY", [February 5, 1973], "Vietnam – Follow up – Amnesty, 1971-73 (1)" Folder, Box A142, Melvin R. Laird Papers, Gerald Ford Library.

<sup>2</sup> Gerald Ford, "Program for the Return of Vietnam Era Draft Evaders and Resisters: Proclamation 4353. September 14, 1974." *Weekly Compilation of Presidential Documents*, Volume 10, number 38 (September 23 1974): 1050; Jimmy Carter, Proclamation, "Presidential Proclamation of Pardon. Proclamation 4483. January 21, 1977," *Weekly Compilation of Presidential Documents* Volume 13, number 4 (January 24, 1977): 90. In both cases, as in most proposals, the affected time period was defined as August 4, 1964 to March 28, 1973, from the Gulf of Tonkin Incident through the removal of Ground Troops nine years later. These dates were also clarified in a report given to Carter after he was elected but before he took office – precisely the time at which he finalize the specifics of his pardon. See "Recommendations For The Treatment of Civilian and Military Offenders of the Vietnam Era", no date, "Pardon, etc. Vietnam War, 01/1977-10/1978" Folder, Box 41, White House Counsel's Office Files, Jimmy Carter Library. For a typical example of the frustration American exiles faced see "Border Incident", *Time* (September 9, 1974), 14-17.



In many ways the reconciliation solutions of America's thirty-eighth and thirty-ninth presidents were quite similar: both offered compromise solutions that simultaneously tried to resolve one of the lingering legacies of the Vietnam War while walking a middle road between hawks and doves. Both Presidents were decorated Navy Veterans -- Ford earned two Bronze Stars and Carter served as a nuclear technician in the early days of the America's nuclear submarine program -- but despite their own military past they understood reconciliation represented issues broader than respect for military service. No solution could have appeased the entire country; however, these men tried to placate as many Americans as they could. Beyond reuniting estranged families, repatriating exiled youth, and fostering cooperation in Congress, reconciliation measures constituted restitution for the Vietnam War, restitution for the deceptive and reckless leadership that drove American participation. Ford and Carter sought to move the nation beyond divisive issues like draft resistance, asking Americans to forgive those who chose not to serve. However they were also asking Americans to forgive the office -- if not the past Presidents -- whose cavalier attitude drove the war. Their reconciliation efforts were real solutions for draft resisters but also recompense for the sins of the imperial presidency.<sup>3</sup>

Having outlined Ford and Carter's solutions, it is important to clarify some terms that those debating amnesty employed. The Constitution reserves the power to pardon (and grant reprieves) to the president and the president alone. Since the founders wrote those words two centuries ago, the definition of pardons and reprieves has expanded to include variants of the power, including amnesty and clemency. Many members of

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<sup>3</sup> For a discussion of the imperial presidency, especially in the realm of foreign policy, see Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973).

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Congress used pardon and amnesty interchangeably – and indeed some argued they connote the same action – but some, especially Jimmy Carter, argued there was an important distinction. To Carter, “Amnesty” meant absolution for a transgression or transgressions often (though not exclusively) with the implication that transgressors were morally in the right. “Pardon” meant effectively the same as amnesty, however there are no moral implications attached. Usually amnesties are given broadly while pardons refer to narrower measures. Carter adopted this logic when he called his solution a pardon. He used semantics to tame the image of his actions. “Clemency” suggests leniency but not automatic absolution. Like partial debt forgiveness, clemency makes restitution easier but some restitution remains necessary. After Gerald Ford enacted his PCP the question still remained as to how clemency would be defined. Clemency Board officials and White House advisors extensively debated how to interpret clemency. Clearly designed to be less than a pardon, the exact definition of the word and how it was to be interpreted and applied to “law breakers” was not nearly as clear. Historically, Presidents have enacted broad sweeping amnesties and pardons in the wake of wars to reconcile the situations of those who chose not to serve in the military. This was the case in every declared war and in the Civil War.<sup>4</sup>

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<sup>4</sup> The founders wrote, “The President ... shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” See United States Constitution, Article II, Section 2. The history of presidential pardoning was often cited by members of Congress during their amnesty debates in the early 1970s. See for example, *Congressional Record* 93<sup>rd</sup> Congress, 1<sup>st</sup> session, Volume 119, part 12:15558. For examples of the competing views on the clemency issue – including historical precedents – see especially, Report, “The President’s Pardoning Power”, December 29, 1974, “Presidential Pardoning Power” Folder, Box 1, Robert J. Horn Files, Gerald Ford Library; Memorandum, General Lewis Walt to Charles Goodell, October 9, 1974, “Alternatives to Pardon” Folder, Box 1, Charles E. Goodell Papers, Gerald Ford Library; Memorandum, Captain John Euler to Presidential Clemency Board, October 29, 1974, “Alternatives to Pardon” Folder, Box 1, Charles E. Goodell Papers, Gerald Ford Library; Jay French to Russ Rourke, July 28, 1975, “Amnesty – Presidential Clemency Board General” Folder, Box 2, John O. Marsh Files, Gerald Ford Library; Memorandum. Russ Rourke to Phil Buchen., July 24, 1975, “Amnesty – Presidential Clemency Board General” Folder, Box 2, John O. Marsh Files, Gerald

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In addition to clarifying the amnesty options, a distinction must be made between “draft dodger” and “draft resister”. Dodging – employing legal means to avoid service – allowed young men to elude service without risk of prosecution or conviction. These men found legal loopholes and technicalities to avoid the Selective Service classification as “ready to serve” and hence induction into the military. When Gerald Ford announced his PCP he used the term “draft evader” as a broader yet more politically neutral semantic alternative to the term “draft dodger”. He defined draft evader as individuals

...who allegedly unlawfully failed under the Military Selective Service Act or any rule or regulation promulgated thereunder, to register or register on time, to keep the local board informed of his current address, to report for or submit to reinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete service ... during the period from August 4, 1964 to March 28, 1973, inclusive, and who has not been adjudged guilty in a trial for such offense.

However, in fact Ford meant draft resisters, i.e. those who illegally avoided service; those who fled from the Selective Service or were accused or convicted of an offense.<sup>5</sup> If a

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Ford Library; Note, Lew [Walt] to Russ [Rourke], July 23, [1975], “Amnesty – Presidential Clemency Board General” Folder, Box 2, John O. Marsh Files, Gerald Ford Library. For a discussion of Carter’s distinction between the two terms see Sharon Rudy Plaxton, “To Reconcile A Nation: Gerald Ford, Jimmy Carter, and the Question of Amnesty”, Doctoral Thesis, Queen’s University, December 1995, 184-90.

<sup>5</sup> See Gerald Ford, Proclamation, “Program for the Return of Vietnam Era Draft Evaders and Military Deserters,” *Weekly Compilation of Presidential Documents*, Volume 10, number 38 (September 16, 1974):1150. During the Vietnam era, all men age eighteen and older were required to register for the draft. At registration, a draftee would be classified as per the Selective Service Act. If no cause for deferment or exemption was found, the draftee would be classified I-A, ready for military service. A deferment is a (temporary) postponement of “ready to serve” status. Exemption is classification as unable to serve. If an individual was able to obtain a deferment or an exemption, such as conscientious objection (I-O and I-A-O) for physical, mental, or moral grounds (IV-F), then they effectually legally avoided the draft. The press dramatized some of these exceptions and Members of Congress lamented them on the floor of the House and Senate. Such cases included “the trick knee of professional athletes” (an allusion by Senator Edward Kennedy (D-MA) to New York Jets star quarterback Joe Namath) and the inexplicable case of a draftee disqualified for having an ingrown toenail. For Kennedy’s comments on Namath see *Congressional Record*, 90<sup>th</sup> Congress, 1<sup>st</sup> Session, 1967, Volume 113, part 4:4270-3. For the case of the ingrown toenail see *Congressional Record*, 90<sup>th</sup> Congress, 1<sup>st</sup> Session, 1967, Volume 113, part 24:32909-10. A complete chart of possible classifications is listed below. Reprinted from George Q. Flynn, *The Draft: 1940-1973*, (Lawrence: The University of Kansas Press, 1993), 117.

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draftee exhausted his legal solutions (or was unaware they existed), he had two remaining options. He could either accept induction and serve his country, or illegally evade the draft. For “tens of thousands” of young men, the latter option meant fleeing the United States for Canada (or elsewhere).<sup>6</sup>

“Resister” is a broader category that includes those who defied Selective Service law but also those who violated the Universal Code of Military Justice. Desertion is one of the more common offenses but the refusal of orders also falls into this category. Such resistance often resulted in an dishonorable discharge or other “bad paper” discharges. One of the first scholars to study the amnesty movement, Kenneth Emerick, defined “resister” as “both the refugee from the armed forces and the draft refuser”. Thus I use the term “draft resister” because it encompasses those who are accused or convicted of violating Selective Service Law or the Universal Code of Military Justice. Desertion was one offense among many that required redress in this time period, hence to speak only of

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I-C .....	Member of armed forces
I-D .....	Member of reserve or ROTC
I-O .....	Conscientious objector, available for civilian alternate service
I-S .....	High school student
I-Y .....	Physically and mentally qualified only in war
II-A .....	Deferred for civilian occupation
II-C .....	Deferred for agricultural occupation
II-S .....	Deferred as college student
III-A .....	Father or has dependents
IV-A .....	Veteran or sole surviving son
IV-B .....	Deferred official by law
IV-D .....	Minister or divinity student
IV-F .....	Physically, mentally, or morally disqualified
V-A .....	Over age of liability

<sup>6</sup> When discussing amnesty for exiled Americans (especially those who fled to Canada), the ubiquitous question is how many went? At a recent conference panel on draft dodging, Joseph Jones condensed the research from his book to give the most definitive answer to date: “tens of thousands”. See Joseph Jones, “The Numbers Have Stories: Perspectives on the Statistics for Vietnam War Resisters in Canada”, Our Way Home Conference, “Peace Event and Reunion”, Castlegar, British Columbia, Canada, July 7, 2007; Joseph Jones, *Contending Statistics: The Numbers for U.S. Vietnam War Resisters in Canada*, (Vancouver: Quarter Sheaf, 2005). However, Jones’ book only covers Canada. Some exiles fled elsewhere, such as Sweden. See for example, Thomas Lee Hayes’ book *American Deserters in Sweden: The Men and Their Challenge*, addresses exiles that chose Sweden as opposed to Canada. See Thomas Lee Hayes, *American Deserters in Sweden: The Men and Their Challenge*, (New York: Associated Press, 1971).

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deserters would exclude other forms of soldier protest. This interpretation diverges from the one Michael S. Foley promoted in his book, *Confronting the War Machine: Draft Resistance during the Vietnam War* (2003). Foley rejected the stock images of draft evaders (fleeing to Canada) and IV-F cases (people he sees as dodgers mislabeled as resisters) to those who (in his view) more legitimately deserve the title “resister.” This is a big delineation for Foley, dodging versus resisting. His resisters turned in or burned draft cards. Foley seeks to place draft resisters, “the antiwar movement's equivalent to the civil rights movement's Freedom Riders and lunch-counter sit-in participants”, in a better light than cowards and traitors. I do not use the term dodger and resister interchangeably but I do argue that dodging was one form of resistance.<sup>7</sup>

The literature surrounding draft resistance is as rich as the literature of presidential power. However, for all the breadth in the literature, the presidential perspective has yet to generate a monograph or even an article. While the literature on the politics of the Vietnam War is also rich and deep, the scholarship focuses on other aspects of the conflict or the anti-war movement, ignoring the debate over amnesty. Even scholarship that focuses on the draft or draft dodgers approaches the topic from the

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<sup>7</sup> For the discussion of terms see Kenneth Fred Emerick, *War Resisters Canada: The World of the American Military Political Refugees*, (Knox: Pennsylvania Free Press, 1972), 8; Michael S. Foley, *Confronting the War Machine: Draft Resistance during the Vietnam War*, (Chapel Hill: University of North Carolina Press, 2003), 7. There are five types of discharges an individual can receive when they are separated from the armed forces: (1) Honorable (2) General under honorable conditions (3) Undesirable (4) Bad conduct (5) Dishonorable. The first two categories are honorable discharges while the last three categories are considered “bad paper” or “other than honorable” discharges. Clemency discharges, as per Ford's program, fall into the category of Undesirable. The last two categories are punitive discharges and are only awarded after a Court Marshall conviction for a Universal Code of Military Justice Violation. Conversely, the first three discharges are administrative, i.e., no trial required. Other than honorable discharged veterans are denied benefits (such as hospital care) are discriminated against in the workplace because of their record. For detailed breakdowns of discharge categories, see for example Congress, House, Committee on Veterans' Affairs, *Upgrading of discharges under Special Programs, Implemented by Former President Gerald Ford and President Jimmy Carter*, 95<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1977, Hearing, 48-52.

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perspective of those who resisted as opposed to those who offered reconciliation. While scholars have written extensively about who resisted, why they did so and where they are now, there has been little discussion of presidential reconciliation.<sup>8</sup>

### Congressional Reconciliation Debates:

Long before Ford enacted his clemency program, members of Congress debated amnesty and proposed their own reconciliation solutions. Undaunted by the Constitution's pardon clause, various determined Senators and Representatives tried to right the wrongs of the Vietnam War. To this end, members proposed solutions knowing they had no authority – or at least had only spurious authority – to act. Their actions reflected frustration with the presidential imperial tendencies that drove the deception and decision making of the Vietnam War.

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<sup>8</sup> The only substantial work on presidential policy and amnesty to date is an unpublished dissertation by Sheila Rudy Plaxton. Focusing exclusively from 1974 to 1977, from when Ford took office until the debate over Carter's pardon ended, she argued that Ford's ascension to office represented a watershed in America. She argued his secession to the presidency served as a harbinger that the "nightmare" of Vietnam, Watergate, and everything else awry with America might soon end. Describing her project as focusing on "a football player, a peanut farmer, and healing a nation's wounds", Plaxton applied sociological analysis to assess presidential reconciliation and soothing the nation as a whole. However, her work remains a lone oasis in the desert of historiography. See Plaxton, op cit. After Plaxton, the next most substantive account is John Greene, who devotes half a chapter to Ford's PCP. See John Robert Greene, *The Presidency of Gerald R. Ford*, (Lawrence: University of Kansas Press, 1995), 37-42. For the quote see page xii. For examples of the Vietnam War scholarship see especially the works of Melvin Small, such as Melvin Small, *Johnson, Nixon, and the Doves*, (New Brunswick: Rutgers University Press, 1988); Melvin Small, *Antiwarriors: The Vietnam War and the Battle for America's Hearts and Minds*, (Wilmington, Delaware: Scholarly Resources Inc., 2002); Melvin Small, *At The Water's Edge: American Politics and The Vietnam War*, (Chicago: Ivan R. Dee, 2005). With regard to draft scholarship, some authors wrote about the draft or Vietnam and include chapters about the aftermath and legacy. However these books tend to only offer a cursory reference to Carter at best. Other authors choose to end their monographs on Vietnam too early to mention Carter. See, for example, Lawrence Baskir and William A. Strauss, *Chance and Circumstance: The Draft, The War, and The Vietnam Generation*, (New York: Alfred A. Knopf, Inc., 1978); George Q. Flynn, op cit. For cursory accounts of Carter's pardon see, for example, Stephen M. Kohn, *Jailed For Peace: The History of American Draft Law Violators, 1658-1985*, (Westport, Connecticut: Greenwood Press, 1986); John Hagan, *Northern Passage: American Vietnam War Resisters in Canada*, (Cambridge, Massachusetts: Harvard University Press, 2001).

Though fully aware that the Constitution, with its checks and balances system, reserves the power to issue pardons and reprieves to the President, and though members of Congress frequently cited past presidential acts of pardon to buttress their own calls for reconciliation, these same members claimed to have the power to enact amnesty on their own based on a dubious precedent set in the 1896 United States Supreme Court case of *Brown v. Walker*. The court ruled that while the power to grant pardons and reprieves has been vested in the president, “this power has never been held to take from Congress the power to pass acts of general amnesty.” Legislative Attorney John D. Sargeant of the American Law Division of the Congressional Research Service filed a report in 1972 with Congress in which, based on the precedent in the *Brown* decision, he argued, “Congress does have the authority to enact amnesty legislation.” However, even Sargeant admitted congressional action had only been in select cases and even then under limited conditions which generally included a mandate that superseded the Constitution’s pardon clause.<sup>9</sup>

Amongst the members of Congress who promoted amnesty solutions, there were two main camps, conditional and unconditional. Conditional amnesty meant that the draft resisters would have to do something to earn their amnesty. Conditional amnesty proposals frequently contained a requirement of two years of alternate service and called for implementation on a case-by-case basis. If an individual made amends and demonstrated remorse he would be offered some form of amnesty. For example, Representative Burt L. Talcott (R-CA) opposed to blanket amnesty but advocated some

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<sup>9</sup> *Brown v. Walker*, 161 U.S. 591 (1896); Report, “The Power of Congress to Enact Amnesty Legislation”, no date, “Amnesty – Power to Enact Legislation on, 1972” Folder, Box A53, Melvin R. Laird Papers, Gerald Ford Library. For an example of a member of Congress referencing a past pardon of a president see Abzug’s reference to Lincoln’s post-Civil War pardon. *Congressional Record* 93<sup>rd</sup> Congress, 1<sup>st</sup> session, Volume 119, part 12:15558.

form of reconciliation. He pushed for a case-by-case review of all draft resisters. Similarly Representative Don Edwards (D-CA) advocated an amnesty review board and alternative service. He promoted a conditional solution because he believed those who fled were not all “cowards”, but they were not all “heroes” either. Representative Frank Horton (R-NY) concurred with Edwards’ sentiments, deeming alternative service and a case-by-case examination the only way to determine if amnesty was warranted. He considered blanket amnesty inappropriate in light of all the men who served dutifully.<sup>10</sup> Conditional (case-by-case) amnesty supporters would later rally around Ford’s clemency program.

Conversely, unconditional amnesty meant that the draft deserter would be offered reconciliation without any requirement of restitution. Two notably liberal New York Representatives spearheaded the case for unconditional amnesty in the House. Representative Edward Koch (D-NY) began his push for reconciliation even before the war was over. In 1972, Koch proposed HR 12417, which allowed men to return without fear of prosecution. Similarly, Representative Bella Abzug (D-NY) advocated amnesty to “exonerate and reconcile with draft dodgers and deserters” in an effort to reconcile American society as a whole. Like Koch, Abzug proposed amnesty bills. In 1974 Abzug proposed HR 236 which, like her advocacy, called for a “full and complete”, i.e., “blanket” amnesty; one which would result in the full expungement of records for all

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<sup>10</sup> *Congressional Record*, 92<sup>nd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 118, part 13:16122; *Congressional Record*, 93<sup>rd</sup> Congress, 1<sup>st</sup> session, 1973, Volume 119, part 8:9912; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 16:20815.



draft resisters. Amnesty and reconciliation reflected precisely the kind of liberal, dovish agenda that Koch and Abzug hung their hats on.<sup>11</sup>

In the Senate, the “conscience of the Senate” Senator Philip A. Hart (D-MI) best paralleled Koch and Abzug’s efforts. For example, on May 16, 1975 Hart quoted a *Washington Post* article from the previous week:

What better time than now for the president or the Congress, or both to extend to those huddled masses of American exiles living in Canada and elsewhere the right to breathe free in their native land.

Hart cited this paraphrasing of Emma Lazarus’ poem purporting that unconditional amnesty was not an admission that someone was right or wrong but a tool of reconciliation to put the past behind. Hart admitted there might be people who would benefit that should not, but contended that it was better to forgive a few too many than deny forgiveness.<sup>12</sup>

There were many members of Congress who opposed amnesty. Even while Ford and Carter tried to heal America, there were many Americans (and members of Congress) who believed nothing needed – or in fact ought – to be done for draft resisters. They

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<sup>11</sup> See, for example, *Congressional Record*, 92<sup>nd</sup> Congress, 2<sup>nd</sup> session, 1972, Volume 118, part 1:71-2; *Congressional Record*, 92<sup>nd</sup> Congress, 2<sup>nd</sup> session, 1972, Volume 118, part 6:7620; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 9:11459. For Abzug’s quote see Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Clemency Program Practices and Procedures*, 93<sup>rd</sup> Congress 2<sup>nd</sup> session, Hearing, 595-8. For examples of Koch and Abzug’s politics see, for example, Edward Koch and William Rauch, *Politics*, (New York: Simon and Schuster, 1985); Suzanne Braun Levine and Mary Thom. *Bella Abzug: How One Tough Broad from the Bronx Fought Jim Crow and Joe McCarthy, Pissed Off Jimmy Carter, Battled for the Rights of Women and Workers, Rallied Against War and for the Planet, and Shook up Politics Along the Way*, (New York: Farrar, Straus and Giroux, 2007). For a discussion of Abzug’s ideology see chapter 2, page 18. For Koch see Edward Koch with Daniel Paisner, *Citizen Koch: An Autobiography*, (New York: St. Martin’s Press, 1992).

<sup>12</sup> Hart elaborated, “Better to blanket in a few liars than to commit to exile forever the thousands of others who believed, erroneously or not, that what they were doing was morally right.” Hart championed the cause of amnesty until his death in 1976. For Hart’s remarks see *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 12:14868. For other proposals see, for example, *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 14:18775-6; *Congressional Record*, 94<sup>th</sup> Congress, 2<sup>nd</sup> session, 1976, Volume 122, part 9:10609-11. For explanation of his nickname see Michael O’Brien, *Philip Hart: The Conscience of the Senate*, (East Lansing: Michigan State University Press, 1995).

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opposed reconciliation because they believed there was no negotiation needed; the *status quo* represented the best solution to the problem. Sometimes these sentiments would amount to an accusation of “cowardice” or even stronger language such as “self-retired veterans” or “slackers anonymous”. These derisions were common amongst anti-amnesty supporters, though were usually followed by more detailed arguments.<sup>13</sup>

The simplest argument against amnesty was that nothing should be done for draft resisters. Representative Edward J. Derwinski (R-IL) believed that Congress should not help those that fled. They should be expected to come home and “face the music”. He believed that those who fled chose to do so of their own volition and with no expectation of reprieve. Derwinski opposed any rhetoric that could be construed as an apology for the Cold War or Vietnam. As such, Derwinski became openly vocal against Jimmy Carter’s foreign policy and positions that the Illinois Representative believed sullied America’s international credibility. Similarly, Representative Lawrence J. Hogan (R-MD) posited that if the draft resisters wanted to return and enjoy the freedoms of the United States, they should return in the same manner in which they left, i.e., facing prosecution. The men should be punished because the decision was theirs and they chose to break the law. The staunchly conservative Representative Philip Crane (R-IL) phrased this argument in terms of civil disobedience. (Crane’s conservatism was solidified by his service as the Republican Study Committee’s first chairman.) Crane likened the actions of draft resisters to the civil disobedience promoted by Dr. Martin Luther King, Jr. Crane argued that Conscientious Objectors (COs) engaging in civil disobedience (such as law breaking draft resisters) should be willing to be punished for

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<sup>13</sup> For an example of the derisive language see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 10:12727-8.

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their beliefs. Thus draft resisters should return to America and face prosecution under the law.<sup>14</sup>

Amnesty opposition generally rested on two contentions. The first argument regarded the negative precedents amnesty would set. Former Republican presidential nominee, outspoken hawk, and conservative Senator Barry Goldwater (R-AZ) argued that to show leniency to any individual or group of individuals would set a devastating precedent for the ability to raise an army in the future. No draft would be able to be called without the assumption that noncompliance is okay. Furthermore, the notion of serving would seem less than dignified.<sup>15</sup>

Other Senators and Representatives feared amnesty would imply that compliance with the law is optional. Former Chair of the National Republican Congressional Committee and House Armed Services Committee member Representative Bob Wilson (R-CA) cited a correspondence from a Navy corpsman. The corpsman expressed frustration with draft resisters who fled to Canada, living off the “fat of the land” while he “sweated it out” in Vietnam. The “Kinetic Congressman” argued that draft resisters should not be let off “scott free” anymore than a tax evader should. He concluded that laws separate society from anarchy and condoning draft resisters would beget anarchy. Conservative Southern Democrat and Veterans Affairs Committee member

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<sup>14</sup> *Congressional Record*, 93<sup>rd</sup> Congress, 1<sup>st</sup> session, Volume 119, part 6:6752-3, 6793; *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 1:926. For Derwinski’s opposition to apologetic rhetoric see Edward J. Derwinski, “Carter’s Foreign Policy: Much Ado About Nothing”, in *Can You Afford this House?*, David C. Treen, ed., (Edison, New Jersey: Caroline House Press, 1978), 146.

<sup>15</sup> The armies raised for every major war since the Revolutionary War empirically disprove this precedent. This is because (as pro-amnesty advocates frequently noted) amnesty was offered after the Revolutionary War, as well as every other declared war in American history and even some of the undeclared ones. See for example, *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 1:412-3; *Congressional Record*, 93<sup>rd</sup> Congress, 1<sup>st</sup> session, 1973, Volume 119, part 6:7341-3. For a discussion of Goldwater’s ideology see chapter 3, page 14.

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Representative Sam Hall (D-TX) reiterated this argument calling for “equal justice under the law.” He opposed amnesty because the *status quo* maintained fair treatment of law violators. The rule of law must be maintained and respected. In sum, he believed, “Amnesty [was] anarchy.” Veteran member of Congress Senator Hugh Scott (R-PA) mockingly spoke of the precedent amnesty would start. “Don’t respect your nation’s laws. Don’t even stand up for your own principles. Do the smart thing and hide till the problem goes away.” Having served in the Congress since before the bombing of Pearl Harbor, Scott argued that lawbreakers should not receive any special treatment. His hawkish viewpoint stemmed in part from his own dutiful service record and his recollection of serving during World War II. He had witnessed the last draft occur with nowhere near the level of discord or protest that occurred during the Vietnam War. Resisters, Scott believed should be expected to stand trail just as any other lawbreaker would in the *status quo*. Americans are not allowed to choose which laws they wish to obey, and disregard the rest.<sup>16</sup>

The second main argument was two fold and regarded the respect for those who served dutifully. Former Dixiecrat presidential candidate and conservative Republican pillar Senator Strom Thurmond (R-SC) stated the argument most forcefully. Amnesty

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<sup>16</sup> See *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 6:8022-3; *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 1:908-9, 916-8, 1142-5. For Scott’s remarks see *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 1:899. For a discussion of Hall’s ideology see Merle Black and Earl Black, *The Rise of Southern Republicans*, (Cambridge, Massachusetts: Harvard University Press, 2002), 196; Jerry L. Summers, *Sam B. Hall: Whatever is Right*, Marshall, Texas: East Texas Baptist University, 2005). For a understanding of Scott’s career and ideology see Congress, Senate, *Tributes to the Honorable Hugh Scott of Pennsylvania in the United States Senate*, 94<sup>th</sup> Congress 2<sup>nd</sup> session, Report. Wilson’s kinetic style refers to his own description of his penchant for constituent service. All politicians are beholden to constituent service for support and reelection. See Bob Wilson, Larry Bischof and William Brian Lowry, *Confessions of a Kinetic Congressman*, (San Diego: Copy Express Printing and Design, 1996); Richard Fenno, *Home Style: House Members in Their Districts*, (Boston: Little, Brown and Company, 1978); David Mayhew, *Congress: the Electoral Connection*, (New Haven: Yale University Press, 1974).

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should not be “doled” out undeservingly; it should be “dosed” out responsibly. Thurmond argued that the solution to amnesty is not peacetime service to solve “spotty” wartime records. Draft resisters should not be allowed to don the same uniform and reap the same benefits as someone who served dutifully. The spirits of the brave men who fought should haunt those who support such a “cynical double standard:” amnesty. Thurmond summed up this argument by noting “[i]f this country’s moral fiber is to regain its consciousness, then we must teach our citizens that they have rights and they have responsibilities, and that the two go together like ham and eggs.” Taking a similar position and referencing Ford’s clemency, fellow right wing stalwart Senator Barry Goldwater (R-AZ) noted:

I deplore very deeply and greatly the fact that our president, my president, whom I want to back as much as I can, has taken this step that is like throwing mud in the face of millions of men who have served their country.

Most of the calls for respect for veterans centered on the plights of prisoners of war (POWs), soldiers missing in action (MIAs) or killed in action (KIAs), disabled veterans as well as veterans in other categories.<sup>17</sup>

Before he became president, Congressman and House Minority Leader Gerald Ford (R-MI) presented a similar argument against amnesty. On March 24, 1973, in his

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<sup>17</sup> For Thurmond’s comments see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 5:6660 and *Congressional Record*, 93<sup>rd</sup> Congress, 1<sup>st</sup> session, 1973, Volume 119, part 15:18802. For Thurmond’s ideology see chapter 2, page 12. Veterans benefits includes, but its not limited to home loan guarantees, GI bill education benefits, use of VA hospitals, pension and preferred hiring for Federal jobs. See for example *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 10:12377. For Goldwater’s remarks see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 23:31279. For talk of POWs, MIAs, KIAs and other Veteran categories, see for example *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 24:32479-80; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 24:32629-30; *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 17:22449-50; *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 1:912-4; *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 27:35250-2.

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weekly radio address, he discussed his position, contrasting the suffering and heroism of Air Force Major (and former Prisoner of War) Joe Shanahan and “those men who call themselves Americans but live in Canada or Sweden or ‘underground U.S.A.’ because they refused to answer the call of their country.” Ford stated clearly to his constituents that unlike some of his fellow legislators who demanded “total forgiveness” and “total amnesty” based on historical precedent, he disagreed with their propositions. He added that the facts actually show that historically, draft evaders pay for their actions. Congressman Ford told his radio listeners that he supported the position of President Nixon and opposed any endorsement of these men’s actions.<sup>18</sup>

Two years later, Ford would reverse his stance. Still against “total” solutions and congressional action, as president he embraced executive clemency as a necessity for progress. In general, Ford and his staff viewed Congressional amnesty bills as encroachment on the separation of powers. The constitution is explicit in who has the power to pardon. Ford saw no reason to spread this power around. For example S 1290 was a 1975 bill that called for the infinite extension of the PCP. White House Counselor Jay T. French described the bill as an “infringement of the President’s pardon power by the Congress”. French and others debated whether Ford should have any constitutional objections and the tacit constitutional implications if he did not object. Bill proponents, liberal Senators Gaylord Nelson (D-WI) and Jacob Javits (R-NY) contended there were still men wishing to seek clemency. In a letter to the president they pledged to help Ford get congressional support for further efforts to move past the divisiveness of Vietnam.

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<sup>18</sup> Radio Address, “Script For Use By Fifth District Radio Stations The Weekend of March 24 – 25, 1973”, March 24-25, 1973, “Fifth District Weekly Radio Reports, 1973” Folder, Box D36, Gerald R. Ford Congressional Papers, Gerald Ford Library.

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Replying on behalf of the President, White House Counselor Phillip Buchen reminded the Senators that the President had already twice extended the program to accommodate such latecomers and that the program needed a “cutoff date” in order to function.<sup>19</sup>

### Ford’s Clemency: A Recipe for Healing or a Half-a-Loaf Solution?

As Ford took office and began to consider how he would reconcile the nation, he thought about he could best restore the public’s respect in the president and “reestablish public confidence in the fairness of government”, specifically with some form of amnesty for resisters. While he wrestled with the implications of pardoning Richard Nixon, family members (such as his son Jack) and advisors (such as Secretary of the Defense James Schlesinger) suggested some form of draft resister amnesty would be a good idea. Ford

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<sup>19</sup> Memorandum, Jay T. French to Philip W. Buchen, April 9, 1975, “Clemency Program – Congressional Legislation” Folder, Box 4, Philip W. Buchen Files, Gerald Ford Library; Memorandum, Jay T. French to Philip W. Buchen, April 10, 1975, “Reorganization of the Presidential Clemency Board, S 1290 (1)” Folder, Box 7, Jay T. French Files, Gerald Ford Library; Memorandum, Charles E. Goodell to The President, April 10, 1975, “Amnesty – Congressional Proposals to Extend the Clemency Program” Folder, Box 1, John O. Marsh Files, Gerald Ford Library; Memorandum, Charles E. Goodell to the President, April 10, 1975, “Clemency Program – Congressional Legislation” Folder, Box 4, Philip W. Buchen Files, Gerald Ford Library; Memorandum, Dick Cheney to Phil Buchen and Jack Marsh, July 1, 1975, “Buchen, Philip 7/75-8/75” Folder, Box 75, John O. Marsh Files, Gerald Ford Library; Letter, Jacob Javits and Gaylord Nelson to Gerald Ford, June 26, 1975, “Buchen, Philip 7/75-8/75” Folder, Box 75, John O. Marsh Files, Gerald Ford Library; Letter, Phil Buchen to Senator Javits and Senator Nelson, July 16, 1975, “Buchen, Philip 7/75-8/75” Folder, Box 75, John O. Marsh Files, Gerald Ford Library; Article, “Amnesty Group Wages Drive To Free Queens War Resister”, May 15, 1975, “Buchen, Philip 7/75-8/75” Folder, Box 75, John O. Marsh Files, Gerald Ford Library; Paul L. Montgomery, “Amnesty Group Wages Drive to Free Queens War Resister”, *New York Times* (May 15, 1975), A12. For the extensions of the clemency program see Gerald Ford, “Program For The Return of Vietnam Era Draft Evaders and Military Deserters,” *Weekly Compilation of Presidential Documents*, Volume 11, number 5 (3 February 1975): 122. ; Gerald Ford, “Presidential Clemency Board,” *Weekly Compilation of Presidential Documents*, Volume 11, number 5 (3 February 1975): 122; Gerald Ford, “Program For The Return of Vietnam Era Draft Evaders and Military Deserters: Statement By The President Announcing His Decision To Extend The Program,” *Weekly Compilation of Presidential Documents*, Volume 11, number 5 (3 February 1975): 117; Gerald Ford, “Program For The Return of Vietnam Era Draft Evaders and Military Deserters: Statement By The President Announcing His Decision To Grant A Final Extension of The Program,” *Weekly Compilation of Presidential Documents*, Volume 11, number 9 (3 March 1975): 228; Gerald Ford, “Program For The Return of Vietnam Era Draft Evaders and Military Deserters: Proclamation 4353. Dated February 28, 1975. Released March 1, 1975,” *Weekly Compilation of Presidential Documents*, Volume 11, number 9 (3 March 1975): 231; Gerald Ford, “Presidential Clemency Board: Executive Order 11842. Dated February 28, 1975. Released March 1, 1975,” *Weekly Compilation of Presidential Documents*, Volume 11, number 9 (3 March 1975): 231.

knew that the question of draft resisters remained one of the lingering wounds from the Vietnam War and represented a window where he would put his promise into action. Ten days after Nixon resigned and Ford took office, on the new president's first official trip outside of Washington, D.C., he gave a speech at a Veterans of Foreign Wars (VFW) conference in Chicago, Illinois. President Ford's message was controversial: his speech was about clemency. Ford deliberately and specifically chose the VFW convention to announce his program since the organization's beliefs paralleled most anti-amnesty constituents. Ford later reflected, "The more conservative VFW would be very disturbed, but announcing it to them would indicate strength on my part." His clemency program represented the culmination of ideas Ford began to solicit as soon as he took office. Gerald Ford and his administration were committed to a policy of leniency but not amnesty. This logic is consistent with the net result, his PCP: i.e. a process whereby one might get a reprieve but not a free pass.<sup>20</sup>

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<sup>20</sup> Despite the hostile VFW audience, Ford declared, "I have made a decision which I think is right and proper: no [unconditional] amnesty, no revenge, and ... individuals who have violated the draft laws or have evaded Selective Service or deserted can earn their way or work their way back." Ford's plan, according to Attorney General William Saxbe would "open the door to them" (draft resisters), adding that the clemency "will make it as easy as it can be for them to return—but they are not going to be welcomed back as heroes." Former head of VVAW (Vietnam Veterans Against the War) John Kerry said "The purpose of amnesty is to forget the war and heal the wounds and it may be that the way to do that is to demand a sacrifice on both sides. My heart and my morality say the resisters shouldn't have to do anything to come back, but a year of some kind of public service work is something that everyone should do anyway, as a continuation of citizenship." See "The Amnesty Issue", *Time* (September 9, 1974), 14. Former CRB members and noted Vietnam War amnesty scholars Lawrence Baskir and William Strauss attribute Ford's change on the amnesty position his son Jack. Ford on the other hand, in his autobiography attributes his change to the advice of his sons and Schlesinger. As President of the United States, as a statesman, and as a President who wanted reconciliation on many fronts, it is likely that Ford received advice from many sources, but some weighed more prominently than others. For discussion of Ford's advisees and the quotes see Baskir and Strauss, 210-1; Gerald Ford, *A Time to Heal: The Autobiography of Gerald R. Ford*, (New York: Harper and Row, 1979), 140-1. For Ford's speech to the VFW see Gerald Ford, Address, "Veterans of Foreign Wars: The President's Address to the 75<sup>th</sup> Convention of the Veterans of Foreign Wars in Chicago, Illinois," *Weekly Compilation of Presidential Documents* Volume 10, number 34 (August 29, 1974): 1047; Press Release, Address by the President to the 75<sup>th</sup> Convention of the Veterans of Foreign Wars", August 19, 1974, "1974/08/19 – Veterans of Foreign Wars, Chicago, Il (2)" Folder, Box 1, Robert T. Hartman Files, Gerald Ford Library.

Before going public with the specifics of his plan, the President called for candid advice from his staff. On August 30, 1974 Attorney General William B. Saxbe and Secretary of Defense James R. Schlesinger urged the President to keep his “earned re-entry” plan within the confines of existing legal channels. They argued that while reconciliation and healing was in order, so was maintaining the respect for those who served and recognizing the citizen obligation to serve their country.<sup>21</sup>

Though reflecting different political ideologies and hailing from different parties, Senator Ted Kennedy (D-MA) and President Ford both had a reputation for crossing party lines for the right causes. In fact, Kennedy sent a letter to Ford, thanking the President for calling him. Ford had previously started this exchange after Kennedy gave a similar speech to the VFW. That same day, Kennedy sent a letter to the President assuring him that while he doubted the VFW appreciated the stance he and the President had taken on amnesty he was confident that the majority of Americans were a more receptive audience. Ford’s ally on the issue, Kennedy emphasized that “reconciliation is the precondition for the nation to move forward again,” arguing that reconciliation was not about helping individuals but about healing the nation. The Senator from Massachusetts reasoned that for most cases the call for healing outweighed the call for justice. “Many Americans would accept the hardship and suffering – even though self-imposed – which many of these young men already have suffered in defense of their deep moral convictions as sufficient.” Kennedy added that even more would be willing to accept reconciliation provided there was some sort of an “earned re-entry” program, i.e. some alternate service to serve as restitution for past transgressions. Regarding deserters,

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<sup>21</sup> Letter, William B. Saxbe and James R. Schlesinger, August 30, 1974, “Amnesty – White House Meetings” Folder, Box 2, John O. Marsh Files, Gerald Ford Library.

Kennedy called for a case-by-case review, since their offense was more egregious and less explicable on conscientious grounds. Kennedy closed by making a case for the upgrading of discharges for those who have already had their records marred by the discharge system. Kennedy closed his letter by pledging “whatever additional assistance” Ford wanted. While Ford’s subsequent pardon (two weeks later) of Richard Nixon would eviscerate his political capital and anger many members of Congress, including Kennedy, Ford used his initial honeymoon period to foster bipartisanism and rally support for reconciliation.<sup>22</sup>

Goldwater style Republican and conservative coalition supporter Senator Robert Taft, Jr. (R-OH) offered similar candid advice to the new president. Taft had mixed

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<sup>22</sup> Letter, Edward Kennedy to The President, August 29, 1974, “Judicial Matters – Clemency Program” Folder, Box 26, Presidential Handwriting File, Gerald Ford Library. Despite scandals such as Chappaquiddick, Ted Kennedy emerged in the 1970s as a respected – though still often partisan – statesman. For a discussion of Kennedy’s development into an ambassador of the Senate see Adam Clymer, *Edward M. Kennedy: A Biography*, (New York: William Morrow and Company, Inc., 1999). Ironically, despite Kennedy’s reputation and respectful relations with Republican President Gerald Ford, he and Jimmy Carter would not always be as cordial, especially after Kennedy challenged the sitting President in the 1980 Democratic primary. See James MacGregor Burns, *The Power to Lead: The Crisis of the American Presidency*, (New York: Simon and Schuster, 1984), chapter 3; James MacGregor Burns, *Running Alone: Presidential Leadership – JFK to Bush II: Why it Has Failed and How We Can Fix It*, (New York: Basic Books, 2006), 128-9; Katharine Q. Seelye and Julie Bosman, “Carrying Primary Scars Into the General Election”, *New York Times* (April 1, 2008), A14. Seelye and Bosman pointed to that conflict as one of the reasons Carter lost the 1980 presidential election (similar to Gerald Ford’s challenge from Ronald Reagan 1976. The *Times* reporters cautioned that the 2008 primary election battle between Senators Hillary Clinton (D-NY) and Barack Obama (D-IL) might similarly play out the 2008 general election. This did not happen as Senator Obama successfully wooed Clinton supporters and defeated his Republican opponent, Senator John McCain (R-AZ). For Kennedy’s ideology see Black and Black, 233, 308. Other members of Congress weighed in too. Representative Howard W. Robison (R-NY) sent Ford a letter asking that he consider his suggestions on amnesty while formulating his policy. Robinson called for a conditional amnesty similar to the bill he introduced to Congress earlier that year. A transcript from the Congressional Record followed. Similarly Representative Don Riegle (D-MI) wrote a handwritten letter to “Jerry” Ford. Riegle commended his friend and former fellow Michigan Congressman on the leadership displayed by his choice to announce his reconciliation (“amnesty”) program before the VFW. See Letter, Max L. Friedersdorf to Howard W. Robison, August 16, 1974, “Amnesty for Draft Evaders and Military Deserters” Folder, Box 1, William E. Timmons Files, Gerald Ford Library; Letter, Howard W. Robison to Mr. President, August 15, 1974, “Amnesty for Draft Evaders and Military Deserters” Folder, Box 1, William E. Timmons Files, Gerald Ford Library; Speech, “Conditional Amnesty – A Step Towards Reconciliation”, February 25, 1974, “Amnesty for Draft Evaders and Military Deserters” Folder, Box 1, William E. Timmons Files, Gerald Ford Library; Letter, Don to Jerry, August 20, 1974, “Amnesty for Draft Evaders and Military Deserters” Folder, Box 1, William E. Timmons Files, Gerald Ford Library ;*Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 3:3964-8.

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opinions about Ford's PCP program but particularly opposed its requirement of loyalty oaths. The program required clemency recipients to verbalize their recommitment to America. Taft feared that such an allegiance agreement or oath might discourage some young men from participating, viewing the stipulation as tacit "admission of error". Here his position mixed legal reasoning with political ideology. Replying to his Congressional counterpart and colleague, Ford thanked "Bob" Taft for his input and promised to continually re-evaluate the success of his program. Ford's openness to the exchanges reflects the new president's congressional background and desire to restore a cordial dialogue between the two branches. However, advice and consultation is never binding and for all Ford's reflections and advice received from Congressional experts, his program never moved beyond earned reentry.<sup>23</sup>

Approximately two weeks later (on September 16, 1974), Ford issued Executive Order 11803 and Proclamation 4313 establishing his Clemency Program. Ford validated his promise to "throw the weight of [his] presidency into the scales of justice on the side of leniency and mercy." Later Ford reflected, "There was no magic wand that I could wave to restore people's trust, but there *were* some specific steps I could take to nudge the process along." In subsequent weeks Ford defended his decision against criticism. During a November "Question-and-Answer" session, the president described the program as "earned amnesty for draft evaders." Ford believed that draft resisters deserved a

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<sup>23</sup> Taft was in fact an expert on the amnesty issue. Letter, Gerald Ford to Robert Taft, Jr. September 28, 1974, "Clemency Program – General (1)" Folder, Box 5, Philip W. Buchen Files, Gerald Ford Library.; Letter, Robert Taft to Mr. President, September 24, 1974, "Clemency Program – General (1)" Folder, Box 5, Philip W. Buchen Files, Gerald Ford Library. In *Ex Parte Garland*, the United States Supreme Court struck down loyalty oaths as afterthoughts to pardons. See *Ex Parte Garland* 71 US 333 (1866). For Taft's ideology and a description of his congruence with Goldwater see Black and Black, 54; Burns, *The Power to Lead*, 52.



second chance to rejoin society. He clarified that the program was not a “free ride” but a chance for people to earn a second opportunity at mainstream society.<sup>24</sup>

Ford’s clemency program was a case-by-case conditional amnesty. The clemency program encompassed individuals who resisted the war between the dates of August 4, 1964 and March 28, 1973. The clemency program had different divisions to assist different types of potential clemency cases. The first category was those draft law offenders who had yet to be convicted or punished. Ford offered these individuals an option to fulfill their civic duty by means of twenty-four months of alternate service. Alternate service referred generally to duties similar to those assigned to COs. The second category of potential clemency cases involved those persons already convicted of draft law offenses. The clemency program offered a review of their case to determine if their status needed to be amended. To review these cases, Ford established the Clemency Review Board (CRB).<sup>25</sup>

As the impact of Ford’s announcement set in, he and his staff received increased volumes of correspondence, both pro and con. For example, the hawkish Senator John Tower (R-TX) urged the President “for God’s sake ... not to by-pass the military courts in dealing with deserters.” The conservatively minded Tower added, “If the President by-passes the military courts there will be a total collapse of military discipline and I

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<sup>24</sup> Gerald Ford, Remarks, “Program For The Return of Vietnam Era Draft Evaders and Military Deserters: The President’s Remarks Announcing The Program. September 16, 1974,” *Weekly Compilation of Presidential Documents* Volume 10, number 38 (20 September 1974): 1149-50. Regarding Ford’s reflections see Gerald R. Ford, *A Time to Heal*, 141. The italics were in the original text. For Ford’s clarification of the program see Gerald Ford, “Society of Professional Journalists, Sigma Delta Chi: The President’s Remarks in a Question-And-Answer Session at The Society’s Convention in Phoenix, Arizona November 14, 1974,” *Weekly Compilation of Presidential Documents* Volume 10, number 46 (18 November 1974): 1449.

<sup>25</sup> Gerald Ford, Executive Order, “Presidential Clemency Board, Executive Order 11803. September 16 1974.” *Weekly Compilation of Presidential Documents* Volume 10, number 38 (20 September 1974): 1051-2.

hope he realizes this as he decides on this whole matter.” Tower represented the conservative wing of the Grand Old Party. As the first Republican to crack the Southern Democratic juggernaut, he predated many of the conservative giants in the Republican Party, earning him added status and respect amongst his peers by the 1970s.

Conversely, some members called for greater leniency. When Ford enacted his clemency program, Representative Bella Abzug (D-NY) declared on the floor of Congress that she was happy to hear he had taken the ‘first step’ and “rejected revenge, favored leniency, and ordered a review of the cases of individual draft resisters.” However, she believed that more than a “second chance to work their way home” ought to be done for those who protested an immoral war. Ford needed to take the next step of universal and unconditional amnesty, especially in light of his pardon of Nixon. She considered it ironic that Ford pardoned Nixon but only offered consideration for draft resisters. As the PCP ran its course Abzug chastised Ford for giving America a “half-a-loaf” solution to silence supporters for amnesty and noted that his “earned reentry” program was failing its goal of reconciliation and reintegration. Abzug attributed this failure to the fact that clemency was not amnesty; it was “strained mercy.” She advocated complete expungement, effectively rendering the records of draft resisters *tabula rasa*. In her view, extension would not be enough; true success required the wiping clean of records, which could only be successfully achieved by a universal and unconditional amnesty. For this reason Abzug approved of Carter’s pardon of draft dodgers two years later, but wished he had also pardoned resisters. Ford and his staff

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were aware of the half-a-loaf argument but made no formal reply to Abzug or anyone else on the issue.<sup>26</sup>

There are thick folders filled with civilian correspondence in the Ford Library archives on this subject, beginning from the moment Ford announced his program. For example, amongst the negative feedback, on August 30, 1974 Anthony Harrigan or the USIC (United States Industrial Council) wrote Jack Marsh to express his disapproval – and the disapproval of his organization – with amnesty in any form (including Ford’s program). Harrigan noted that his organization represented over 3 million people who stood in unison against clemency for resisters. Similarly, “Gee Gee” [Mrs. George Pasquet] sent a letter to “Jack” [John] Marsh expressing her discontent with Ford’s leniency to lawbreakers. The Maxwell Air Force Base resident saw compassion towards those who fled to Canada and Sweden as a sign of weakness and an affront to those who served dutifully.

Some correspondence was of a different nature. For example, on September 10, 1974, Chairman of the College Republican National Committee Karl Rove sent a letter to White House Counselor to the President, Anne Armstrong. Rove called upon President Ford to appoint a Student to the CRB. Though he did not suggest his own name for the

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<sup>26</sup> For Tower’s remarks see Memorandum, Tom C. Korologos to The President, September 10, 1974, “Judicial Matters – Clemency Program” Folder, Box 26, Presidential Handwriting File, Gerald Ford Library. For discussion of Tower’s political views see, for example, John G. Tower, *Consequences: A Personal and Political Memoir*, (Boston: Little, Brown and Company, 1991); Black and Black, 72, 88-91, 271. For Abzug’s continued struggle see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 22:28862-3, 30133; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 23:30893; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 24:31758; *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 1:54; *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 2:2415-6; *Congressional Record*, 94<sup>th</sup> Congress, 2<sup>nd</sup> session, 1976, Volume 122, part 4:4718-9. For other references to the “half-a-loaf” talking point see for example, Article, “By Almost Any Standard, the Amnesty Plan Isn’t Working”, October 27, 1974, “News Clippings (2)” Folder, Box 8, Charles E. Goodell Papers, Gerald Ford Library; Phil Stanford, “By Almost Any Standard, the Amnesty Plan Isn’t Working”, *New York Times* (October 27, 1974), E7.

position, he did suggest the candidate should be “someone without partisan or ideological (e.g. anti-war) credentials” and “someone drawn from a leadership position”. Rove contended that such a gesture would promote the President’s image of representing all Americans.<sup>27</sup>

In light of the diverse congressional feedback and in the spirit of transparency and federal comity, on September 16, 1974 President Gerald Ford held a meeting with Congressional Leaders of both parties (along with key White House Staff) regarding his PCP. “Hard-line conservative” Representative Eddie Hébert (D-LA) claimed he was not aware of the program before it was announced and that Ford could not get any legislation through his committee. However he noted that the program did not need to go through his Armed Services Committee. His main concern, however, was that by being too lenient now, Ford would set a bad precedent for future crises. Later on in the meeting, Senator Strom Thurmond (R-SC) worried,

I want to help you unify the country, but I am concerned. Eddie Hébert expressed my views. There is no worse crime than this. This is setting a dangerous precedent. You can exercise your pardon authority, but we should let the courts go through the legal processes.

Conversely, House Majority Leader and vocal Vietnam War critic, Representative Mike Mansfield (D-MT), congratulated Ford on his action, noting he is “continuing a tradition that was started by President Washington.” A good indicator of Ford’s commitment to cooperation is the memorandum of conversation for the meeting. According to the memorandum of the meeting Ford responded,

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<sup>27</sup> Letter, Anthony Harrigan to John Marsh, August 30, 1974, “Amnesty – Public Opinion Mail” Folder, Box 2, John O. Marsh Files, Gerald Ford Library; Letter, Mrs. George Pasquet to Jack Marsh, August 27, 1974, “Amnesty – Public Opinion Mail” Folder, Box 2, John O. Marsh Files, Gerald Ford Library; Briefing Paper, Philip W. Buchen to The President, September 16, 1975, “Clemency Review Board” Folder, Box 68 FG 6-28, White House Central Files Subject File, Gerald Ford Library.



Thanks Mike; but Eddie, I hope this meeting illustrates that we can have frank discussions in these meetings without affecting personal relationships. I think the restrictions we have imposed will keep them from having clean hands. The [Joint Chiefs of Staff] think it would not undermine military discipline, but others in the Pentagon differ with that.

More than just having such a meeting with Congressional leadership – which in itself represented a gesture lost at times by past presidents – Ford invited and respected (though he did not necessarily follow) the input and suggestions from members of Congress. “Frank discussions” and “personal relationships” were two things that had been lost during the Johnson and Nixon administrations. Reflecting a new attitude and a renewed sense of cooperation in Washington, Ford publicly announced and followed through on ensuring that the CRB reflected a diversity of opinions and political views.<sup>28</sup>

Cordial meetings with the Washington leadership aside, emboldened and empowered, the imperial Ninety-Forth Congress exercised its right to hold hearings on amnesty and Ford’s PCP to evaluate his program but also to promote its own amnesty agenda, which thrived despite the lack of constitutional grounds. To this end, the Ninety-Fourth Congress held two important Congressional hearings. The House Committee on the Judiciary (Subcommittee on Administrative Practice and Procedure) and the Senate Committee on the Judiciary (Subcommittee on Courts, Civil Liberties, and the Administration of Justice) convened, in 1975, to examine and comment on the

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<sup>28</sup> Memorandum of Conversation, September 16, 1974, “September 16, 1974 – Ford, Bipartisan Congressional Leadership, and Others” Folder, Box 5, National Security Adviser – Memoranda of Conversations, Gerald Ford Library. For the quote and description of Hébert see Robert McG. Thomas, Jr., “F. Edward Hébert, Ex-Lawmaker, Dies”, *New York Times* (December 30, 1979), 14; F. Edward Hébert with John McMillan, *“Last of the Titans”: The Life and Times of Congressman F. Edward Hébert of Louisiana*, Lafayette, (Louisiana: Center for Louisiana Studies, 1976).

presidential clemency program. The goal of the hearings was to report on the presidential clemency program and ascertain its successes and failures.<sup>29</sup>

Like most Congressional hearings, the list of those called to testify is voluminous. However, the hubris of this Congress can be seen in the testimony of the Clemency Review Board Chairman, Charles E. Goodell, who testified at both hearings. The moderate former Republican Congressman, Goodell defended the Board's jurisdiction and mission, concluding that it had been useful and productive, pointing to successful clemency cases that restored civil rights and restored the fair opportunity for employment. Thus Goodell described the clemency program not as punishment but as a gateway to full citizenship.<sup>30</sup>

Members of Congress such as Senator Ted Kennedy (D-MA) forced Goodell to concede that clemency did not clear an individual's record. While the president had the power to pardon for offenses, the president did not have the authority to expunge an individual's record. Kennedy continued to cross-examine Goodell, asking about the application rate in relation to the total number of individuals eligible. Essentially, the Senator asked Goodell to explain why so there were so few applications. Goodell blamed it on inadequate explanation of the program, contending that many more individuals would have applied if they had more information. Senator Philip A. Hart (D-MI) built on Kennedy's critique of the program's stringency, asking Goodell why the program was limited to case-by-case basis as opposed to a broad, blanket act. He proceeded to

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<sup>29</sup> Congress, House, Committee on The Judiciary, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, *The Presidential Clemency Program*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Hearing; Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Clemency Program Practices and Procedures*, 93<sup>rd</sup> Congress 2<sup>nd</sup> session, Hearing.

<sup>30</sup> Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Clemency Program Practices and Procedures*, 93<sup>rd</sup> Congress 2<sup>nd</sup> session, Hearing, 4, 15, 23.



promote his own bill, the “National Reconciliation Act of 1975” (S 1145), calling for Congress to grant general immunity (*de facto* amnesty) to all charged with draft resistance or desertion. No alternate service would be required, effectually making the act a “general and unconditional amnesty”. Goodell was also critiqued at the hearing from the right. Senator Strom Thurmond (R-SC) lambasted Goodell with the conservative arguments denouncing amnesty and thus opposing clemency.<sup>31</sup>

Goodell concluded that ultimately individuals chose for themselves if they wanted to return. The CRB chairman did not suggest which choice these young men made, but gave statistics regarding how many individuals applied for the program. Goodell concluded that of the approximately 127,000-137,000 individuals that were eligible for the clemency program, only 18,867 had applied. Most draft resisters protested Ford’s program. Goodell insinuated that draft resisters expected something more lenient.

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<sup>31</sup> Ibid, 47, 54-61, 121-2. Privately Kennedy also expressed his reservations about the PCP to President Ford. In a letter dated January 28, 1975 he made recommendations regarding the timeframe and scope of the clemency program. In his concluding paragraph, Kennedy left the mechanics of improving the program to talk about the larger picture. Kennedy reiterated his support for Ford’s reconciliation and expressed his belief that the majority of Americans agree. Specifically, Kennedy said: “As I indicated to you last summer following your speech to the Veterans of Foreign Wars, I believe that the vast majority of Americans across the country agree with you that reconciliation is a precondition for national unity and progress. Your initiation of the Clemency Program in September reflected both courage and compassion. When you announced the program, you cited the example of President Lincoln’s compassionate attitude of clemency after the Civil War. A continuation, expansion, and improvement of the present Clemency Program will move that program closer to this ideal.” See Letter, William T. Kendall to Edward Kennedy, January 28, 1975, “12/28/74 – 5/6/75” Folder, Box 67 FG 6-28, White House Central Files Subject File, Gerald Ford Library; Letter, Edward Kennedy to The President, January 27, 1975, “12/28/74 – 5/6/75” Folder, Box 67 FG 6-28, White House Central Files Subject File, Gerald Ford Library. Other Members of Congress sent similar correspondence. See Letter, Max L. Friedersdorf to Marvin L. [Marv] Esch, January 30, 1975, “12/28/74 – 5/6/75” Folder, Box 67 FG 6-28, White House Central Files Subject File, Gerald Ford Library; Letter, Marvin L. [Marv] Esch to Max L. Friedersdorf, January 28, 1975, “12/28/74 – 5/6/75” Folder, Box 67 FG 6-28, White House Central Files Subject File, Gerald Ford Library; Letter, Vernon C. Loen to Tom Hagedorn, February [8], 1975, “12/28/74 – 5/6/75” Folder, Box 67 FG 6-28, White House Central Files Subject File, Gerald Ford Library. For Goodell’s critique from the right, see Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Clemency Program Practices and Procedures*, 93<sup>rd</sup> Congress 2<sup>nd</sup> session, Hearing, 22,37, 51-4.

Those that were inclined to partake in the program were hoping for leniency. Those that did not care were generally also the ones who did not participate in the program.<sup>32</sup>

However, beyond the statements supporting members' personal solutions and the standard grilling of bureaucrats' policy and policy choices, I argue that there was a deeper problem beneath the surface at these hearings. Members of Congress critiqued the president's program but they buttressed their reservations with their own alternatives. These choices had spurious constitutional grounding and demonstrated an inclination to usurp, annex, and appropriate, presidential power when the President chose not to act on his own. Frustrated by presidents who would not act on their powers or acted in a way doves did not like, some members of Congress pushed for a division of power allowing Congress to play a role in traditionally executive decisions (such as pardons). Congressional dissatisfaction with presidential performance is not an invention of the 1970s. However, the frequency with which Congress proposed policies regardless of legal precedent or presidential prerogative was more than just partisan bickering, it was a reactionary response to Vietnam, Watergate, and the imperial presidency in general.

For all the impediments to reconciliation successfully healing the nation and taming the imperial presidency, two pardons that occurred contemporaneously with Ford's clemency program stand out above the rest. Given the contentiousness of draft resister reconciliation, the irony that these two types of men were pardoned during the same time period struck at the very core of the message of healing. These two men were

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<sup>32</sup> Initial numbers for Ford's program had been even less promising. Three months into the program only 3,200 of those eligible had come forward. At the time, DOD estimates were that only 12,500 would come forward. There were already fears brewing that the PCB would fail to bind the wounds cause by the failures in Vietnam. See "Frustrated Clemency", *Time* (December 23, 1974), 8.

forgiven before draft resisters. Regarding the first amnesty, bestowed August 5, 1975, Representative Edward W. Pattison (D-NY) noted:

The bill not only grants general and unconditional amnesty, it covers the case of an American citizen, a West Point graduate and officer of the Army sworn to uphold the Constitution, who not only refused to fight for the Nation but actually joined the opposing army to serve as a high ranking officer.

Pattison was referring to Congress' pardon of General Robert E. Lee. Congress posthumously recognized Lee by restoring his citizenship and civil rights. Patterson used this "literary teaser" to prove the irony of the situation. Pattison questioned how the government could forgive Lee but not do the same for draft resisters. Pattison asserted that Ford's program failed to forgive and forget, and a better amnesty was needed.<sup>33</sup>

The other act of forgiveness is the more popularly recognized pardon, and subsequently the more contested hypocrisy. On September 8, 1974 Gerald Ford pardoned his predecessor, Richard Nixon. Pro-amnesty supporters (and notable anti-war doves) such as Senator Philip A. Hart (D-MI) and Senator William Fulbright (D-AR) argued that if Nixon could be pardoned, so should draft resisters. Fulbright added that it would be "equally appropriate" to extend amnesty to draft resisters. "We have an opportunity at this moment to clear the decks of lingering acrimony. As we clear the decks of Watergate, let us take this occasion to clear the decks of the other great moral issue of our time, the war in Vietnam." Similarly, in a letter sent directly to President Ford, Representative Edward I. Koch (D-NY) and nine of his fellow members of Congress urged Ford to do unto draft resisters what he did to Nixon. "The pardoning of

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<sup>33</sup> Similarly, Representative James H. Scheuer (D-NY) opposed the measure, not out of disrespect for Lee, but because of the irony that the same amnesty could not be given to the living draft resisters. See *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> session, 1975, Volume 121, part 19:24151, 24153-4; "General Lee and His Heirs", *Time* (August 4, 1975), 6.

President Nixon has had an enormous impact on the thinking of what should be done in all fairness for these young men.” Even anti-amnesty supporters agreed that Nixon’s pardon was hypocritical. Former football quarterback, future Vice-Presidential nominee, and notable budget hawk Representative Jack F. Kemp (R-NY) stated, “Presidential pardons are not the way to handle either Watergate or draft evader and deserter cases.” Despite party affiliations, Kemp believed that there should not be haste to pardon either group.<sup>34</sup>

Overall however, the clearest demonstration of the irony and hypocrisy came from a statement that intended to argue just the opposite. Senator Jesse Helms (R-NC) submitted into the record two statements by Strom Thurmond (R-SC) intended to

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<sup>34</sup> Ironically, Ford would later reflect, “Secretary Schlesinger had suggested that one way to hasten the healing process and draw a real distinction between the Nixon and Ford administrations would be to do something about the fifty thousand draft evaders and resisters from the Vietnam War”. See Gerald R. Ford, *A Time to Heal*, 141. For his pardon of Nixon see Gerald Ford, Proclamation, “Pardon For Former President Nixon,” *Weekly Compilation of Presidential Documents*, Volume 10, number 37 (8 September 1974):1103. For Koch’s comments see Letter, Edward I. Koch, et al to President Gerald R. Ford, October 21, 1974, Ted Marrs to Jack Marsh, December 24, 1974, “Buchen, Philip 10/74-12/74” Folder, Box 82, John O. Marsh Files, Gerald Ford Library. For Hart’s sentiments see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 21:27340. For Fulbright’s sentiments see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 21:27624-5. Despite Fulbright’s stance, his ideology proved to be too conservative for changing times and in fact by the time of these statements he was already a lame duck. He had been challenged and beaten in the primaries by the even more moderate Governor Dale Bumpers. See Black and Black, 111-2; William C. Berman, *William Fulbright and the Vietnam War: The Dissent of a Political Realist*, (Kent, Ohio: The Kent State University Press, 1988). For Berman’s discussion of Fulbright’s position on pardoning Nixon and the draft dodgers see especially 193-4. For Kemp’s sentiments see *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 23:31114. Kemp would round out the bottom half of the 1996 Republican Presidential ticket when Bob Dole (R-KS) ran for the White House his second time. For a discussion of Kemp’s politics in the 1970s see Jack Kemp, *An American Renaissance: A Strategy for the 1980s*, (New York: Harper and Row, 1978), chapters one and two; Jack Kemp, “Tax Reform, Job Creation, and Income Growth”, in *Can You Afford this House?*, David C. Treen, ed., (Edison, New Jersey: Caroline House Press, 1978). Many scholars argue Ford’s pardon of Nixon was a mistake. One historian, G. H. Bennett, went farther saying it was one of Ford’s two biggest mistakes with his clemency program being the other. Bennett based his argument on the adverse effect the two actions had on Ford’s chances in the 1976 election. I agree with Bennett’s evidence but not his conclusion. I agree his pardon of Nixon hurt him in the 1976 election but given Carter’s pledge to pardon all draft dodgers, Ford’s clemency program was a non-issue by the time the general election season was under way. Also, I disagree that these moves were errors. Ford make moves to heal the nation and restore dignity and respect to the presidency. Even Bennett conceded this argument later on in the same chapter. See G. H. Bennett, *The American Presidency 1945-2000: Illusions of Grandeur*, (Thrupp: Sutton Publishing, 2000), 156-158.

reconcile any accusations of hypocrisy. Regarding the pardon of Nixon, Thurmond wrote:

The actions of President Ford in granting, under his constitutional powers, a full pardon to former President Nixon, was proper and in the interest of the country.

I feel a majority of the people in the United States wanted neither the prosecution nor the imprisonment of Mr. Nixon, as they feel he has already suffered enough, especially in view of the nature of the offense with which he was charged. A trial of our former president would have certainly perpetrated division among the people and the President's pardon should hasten the end of this national controversy. Prudence would suggest a national acceptance of the President's action.

It is my hope that President Ford's act of mercy to Mr. Nixon will be recognized by all Americans as an appropriate conclusion to this tragic situation.

Immediately following that statement was this one regarding Ford's clemency program:

Today President Ford, pursuant to the Constitution, signed an executive order creating a Clemency board of nine prominent citizens to make recommendations for conditional amnesty for those who evaded service in the Vietnam War.

This board will review, on a case by case basis, applications for amnesty, and is authorized to recommend the imposition of alternative service for up to 24 months. The act of President Ford is not subject to review by the Congress.

My position has always been to oppose the granting of a general amnesty to draft dodgers and service deserters. It is not only unjust to those who served their country when called, but it would make it difficult to maintain unity and would encourage similar action in future crises.

I have great respect for President Ford, but I disagree with his action in adopting a general policy of lenience to those who refused to serve their country in time of war.<sup>35</sup>

These statements, which seemingly justified Ford's diverse reactions, actually buttressed the claim that amnesty for draft resisters was needed. If Thurmond's comments on Nixon's pardon were read using "draft resisters" in lieu of "President Nixon" or "Mr. Nixon" the statement would resemble the same rhetoric and arguments commonly made

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<sup>35</sup> Congressional Record, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 24:31823.

in favor of unconditional amnesty. By using those arguments to justify Ford's pardon of Nixon juxtaposed next to the warrants why amnesty for draft resisters are not needed (as they were originally printed in the *Congressional Record*), Thurmond demonstrated the double standard the situation created.<sup>36</sup>

In order for the PCP to be a practical success, draft resisters needed trust Ford. This meant that they had to believe his offer was legitimate and adequate plus they had to be willing to compromise. For example, President Ford received a touching letter from Mark A. Adelson, a New York lawyer who was able to repatriate because of Ford's clemency program. To show his gratitude for Ford's clemency he copied the President on a letter he wrote to the Toronto Anti-Draft Program (TADP), once of the preeminent exile organizations for American exiles in Canada. Adelson recounted his experiences as he returned United States after a period of five years of unauthorized absence from the Army. He described the painlessness and amicability of the process to prove the "*bona fide*" [*sic*] of the program.<sup>37</sup> Adelson wrote the TADP to testify that, unlike the deception and lies exiles were used to hearing from the American government, this program was legitimate and his story was the proof. Testimonials such as this one demonstrate that Ford's efforts to reconcile America had at least been a partial success.

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<sup>36</sup> See *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 24:31823. These sentiments were buttressed by a *Los Angeles Times* article by Rudy Abramson. He argued that Ford's program – designed to heal the nation – met resistance and resentment from both sides of the aisle. The hawks thought it went too far and the doves thought it did not go far enough. The controversy was heightened by the more lenient, "no-strings-attached" pardon Ford offered to Nixon. See Article, "Ford's Program for Amnesty Unveiled, Quickly Attacked", September 17, 1974, "News Clippings (1)" Folder, Box 8, Charles E. Goodell Papers, Gerald Ford Library; Rudy Abramson, "Ford's Program for Amnesty Unveiled, Quickly Attacked", *Los Angeles Times* (September 17, 1974), 1, 12.

<sup>37</sup> Letter, Mark A. Adelson to The President, November 7, 1974, "Judicial Matters – Clemency Program" Folder, Box 26, Presidential Handwriting File, Gerald Ford Library; Letter, Mark A. Adelson to The Toronto Anti-Draft Program, November 1, 1974, "Judicial Matters – Clemency Program" Folder, Box 26, Presidential Handwriting File, Gerald Ford Library.

After all extensions ran their course, the PCP ended on September 16, 1975. Approximately six percent of the 350,000 eligible men actually applied and of those roughly 21,500 applications only about 8,000 received clemency. Most of those who did not take advantage of the program never intended to in the first place. In the words of White House Special Counsel Richard Tropp, "the clemency/amnesty issue is now a dead letter and a part of history. This particular wound of the Vietnam War is, to the extent that it ever humanly can be, healed." In a brief statement, Ford announced that the program had been a success for all who sought it out. He added that he believed "these young Americans should have the opportunity to contribute a share in the rebuilding of peace amongst ourselves." In his speech, Ford thanked the CRB publicly and later met with the members privately at Camp David. On the agenda for the private meeting, Ford thanked the members for their dedication and their service but also for helping him promote his message of reconciliation.<sup>38</sup> Ford could boast that in an seemingly unprecedented fashion, a government organization had been created, charged with a purpose and given a deadline to achieve the same, and actually followed through. The organization accomplished its task on time and was now being dismantled because its job was done. This attitude, he felt, was precisely the kind of small step needed to restore Americans' faith in their leader and trust in their government.

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<sup>38</sup> For the statistics on the PCP see Baskir and Strauss, 215. For Tropp's comments see Memorandum, Richard Tropp to William Nicholson, September 8, 1975, "Amnesty – Presidential Clemency Board General" Folder, Box 2, John O. Marsh Files, Gerald Ford Library; Press Release, "Statement By the President", September 16, 1975, "9/16/75 – Termination of Clemency Board" Folder, Box 23, Paul Theis and Robert Orben Files, Gerald Ford Library; Press Release, Statement By The President, September 16, 1975, "9/15/75-9/20/75" Folder, Box 68 FG 6-28, White House Central Files Subject File, Gerald Ford Library; Briefing Paper, Philip W. Buchen to The President, September 16, 1975, "9/15/75-9/20/75" Folder, Box 68 FG 6-28, White House Central Files Subject File, Gerald Ford Library.

Overall the views of Congress did not shift in the wake of Ford's clemency program, but both sides of the amnesty debate shifted their focus. Anti-amnesty proponents modified their position and merged with the conditional amnesty advocates. Together they supported Ford's actions but wanted no more amnesties to be offered. To them, Ford did the right thing, but more important the only thing that needed to be done. The sentiments of pro-amnesty advocates also shifted their framework in light of Ford's actions. Their new pitch was that Ford's action was an appropriate beginning but more amnesty measures were needed to augment Ford's actions. Pro-amnesty advocates believed that conditional amnesty was insufficient for reconciliation with draft resisters. Thus by enacting his program and changing the *status quo*, Gerald Ford promoted reconciliation within the halls of Congress, reducing the diversity of members' positions. Though democratic politics assume disagreements can and will happen and while Ford's actions did not foster total harmony, his actions did unite some factions.<sup>39</sup>

#### The 1976 Presidential Election:

In 1976, President Ford ran against the Democratic Governor of Georgia, Jimmy Carter. As Carter tried to out-heal the healer and unseat the incumbent president, one of the recurring campaign issues was reconciliation. Ford repeatedly denied having any plans to offer any program beyond the clemency already offered. The president wished more individuals had taken part in the program, but had no intention of expanding

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<sup>39</sup> See for example *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 25:33073-4; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 26:34526; *Congressional Record*, 93<sup>rd</sup> Congress, 2<sup>nd</sup> session, 1974, Volume 120, part 24:32810; *Congressional Record*, 94<sup>th</sup> Congress, 2<sup>nd</sup> session, 1976, Volume 122, part 14:16971-2.



amnesty.<sup>40</sup> This rhetoric transformed into a clear distinction between the candidates after Carter's August 24, 1976 American Legion speech. Speaking before a hostile audience, Carter pledged, "I do not favor a blanket amnesty, but for those who violated Selective Service laws, I intend to grant a blanket pardon." Carter later added,

If I am President, I will issue a pardon for all those who are outside our country or in this country, who did not serve in the Armed Forces. I am going to issue a pardon – not an amnesty. I think those kids who have lived in Sweden and Canada or who have avoided arrest have been punished enough.

Carter's technical distinction reflects his belief that the word amnesty carries a connotation of moral absolution. A pardon cleans the offender's slate but Carter believed amnesty cleaned the slate and implied the offender was justified in doing what they did. While both men offered visions for healing the nation, their solutions had clear differences. Both men agreed what these men did was wrong but to varying degrees Ford and Carter wanted to reunite them with mainstream American society.<sup>41</sup>

Ford's position had been refined over time. In a speech draft in Robert Goldwin's files dated August 26, 1976, Ford was to say he was "against "blanket" anything –

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<sup>40</sup> See for example, Gerald Ford, Remarks, "The Presidents New Conference on February 8, 1976," *Weekly Compilation of Presidential Documents* Volume 12, number 7 (20 September 1974): 151-67. ; Gerald Ford, Remarks, "Vail, Colorado: The President's Remarks With Reports at Chairlift 6," *Weekly Compilation of Presidential Documents* Volume 13, number 1 (3 January 1977): 1-2.

<sup>41</sup> "Recommendations For The Treatment of Civilian and Military Offenders of the Vietnam Era", no date, "Pardon, etc. Vietnam War, 01/1977-10/1978" Folder, Box 41, White House Counsel's Office Files, Jimmy Carter Library. Carter's position was clear as early as his emergence from the primaries and it never changed: a pardon for draft dodgers but only a case by case review for deserters and other resisters. See "The Joyous Risk of Unity", *Time* (June 28, 1976), 18-19; "Pardon: How Broad a Blanket?", *Time* (January 17, 1977), 22-23. Lee Lescaze described Carter's pardon in a *Washington Post* article, "Deserters Seek Carter Pardon with No Strings" found in Charles Goodell's clippings file. He argued that Carter's pardon placated those calling for draft dodger reconciliation but angered those who call for deserter (resister) reconciliation. See Article, "Deserters Seek Carter Pardon With No Strings", December 5, 1976, "News Clippings (4)" Folder, Box 8, Charles E. Goodell Papers, Gerald Ford Library; Lee Lescaze, "Deserters Seek Carter Pardon With No Strings", *Washington Post* (December 5, 1976), A1, A17. Under the auspices of keeping your friends close but your enemies closer, the better collection of Carter's campaign statements on amnesty are actually found in Ford's campaign records. See "Carter Quotes – Amnesty" Folders, Box H21 and H24, President Ford Committee Campaign Records, Gerald Ford Library.

pardon, amnesty, clemency”. The speech defended Ford’s position while refuting Carter’s distinction between pardon and amnesty. Ford suggested that Carter’s solution simply replicated Ford’s program. The speech draft went on to reinforce the argument that Ford’s solution was more balanced and sensible. Amongst prep notes for the final Presidential debate between President Ford and Governor Carter, though there was no amnesty question formulated, the proposed answer has Ford touting his administration’s “very serious attempt to permit those who evaded the draft or deserted from the military the opportunity to return”. Ford’s draft response then followed up by speaking of his other responsibility – the one to those who served dutifully. The response then transitioned into programs to enhance veteran’s benefits and job prospects.<sup>42</sup>

On September 23, 1976 Ford and Carter faced off in a Presidential campaign debate. True to the overall climate of the campaign, the issue of amnesty arose. The moderator asked Ford his stance on amnesty. Ford maintained that he was against an “across-the-board pardon of draft evaders or military deserters.” In response, Carter clarified what he defined as amnesty and pardon, “Amnesty means what you did was right. Pardon means that what you did, whether it’s right or wrong, you are forgiven for it. And I do advocate a pardon for draft evaders.” Carter wanted to “heal [the] country after the Vietnam War.” The pardon proposed by Carter (and indeed the one later implemented) differed from Ford’s clemency program. However, despite semantic

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<sup>42</sup> See Speech Draft, no title, August 26, 1976, “Clemency” Folder, Box 3, Robert A. Goldwin Papers, Gerald Ford Library. See Memorandum, Milt Mitler to Bill Baroody, October 18, 1976, “Debate Input – Baroody, William and Staff” Folder, Box 26, Michael Raoul-Duval Files, Gerald Ford Library.

differences, the two politicians agreed that American needed to move beyond the divisiveness of the Vietnam War.<sup>43</sup>

Ford lost the election to Carter but in the twilight days of his presidency, one final political window emerged, one last chance to change his position in favor of further reconciliation. On December 26, 1976, Senator Philip A. Hart (D-MI) died. One of his last requests was for Ford to reconsider his stance on amnesty. Hart requested that Ford expand his clemency program to encompass more people. Hart's widow, Jane Hart, sent President Ford a letter on January 5, 1977. Amidst thanking the president for his condolences and his help making funeral arrangements, she took the opportunity to politicize Ford's decision not to upgrade his clemency to a pardon program akin to what Carter has promised in the campaign. After the President had called her to make his formal condolence call, Hart lamented that her husband's death made her wonder how many parents have died with their sons unable to visit them because they are stuck in exile. In a private letter to the President she "blurted out [her] request for amnesty." She respectfully told Ford that she planned to continue her late husband's fight.<sup>44</sup>

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<sup>43</sup> Speech, "Carter's Statement on Amnesty", September 23, 1976, "Amnesty" Folder, Box 3, James M. Cannon Files, Gerald Ford Library; Gerald Ford, Remarks, "Presidential Campaign Debate of September 23, 1976 held in Philadelphia, Pennsylvania," *Weekly Compilation of Presidential Documents* Volume 12, number 39 (September 23, 1976): 1371. Regarding Carter's position, in the *United Press International* on August 24, 1976, Carter was further quoted: "I don't think that the person that pardoned Mr. Nixon – I think it was President Ford – specified that Nixon was guilty or not guilty. I'm not going to say whether those young people were guilty or not guilty. I'm just going to say 'what you did, whether right or wrong, you are forgiven for.'" For this quote and others see "Carter Quotes – Amnesty" Folders, Boxes H21 and H24, President Ford Committee Campaign Records, Gerald Ford Library.

<sup>44</sup> Letter, Jane Hart to Mr. President, January 5, 1977, "Judicial Matters – Clemency Program" Folder, Box 26, Presidential Handwriting File, Gerald Ford Library. Jane Hart was not the only one to call upon Ford to revisit reconciliation and amnesty in his last days in office. For example, James J. Kilpatrick's *Washington Star* article, "'Universal Amnesty' Falls on Fact, Law, Precedent" argued how Ford could further heal the wounds of Vietnam if he issued further proclamations or executive orders. See Article, "'Universal Amnesty' Falls on Fact, Law, Precedent", not date, "News Clippings (4)" Folder, Box 8, Charles E. Goodell Papers, Gerald Ford Library.



There were rumors that Ford might reconsider his position in the wake of Hart's letter but having already lost the election, Ford's pronouncement that he would consider other options was just political cant. As White House Counselor John O. Marsh suggested in a letter to various staff in the West Wing, Ford never really had any intention of changing his position this late in the game, even in light of Ford's exchange with Jane Hart. Not only did Ford not personally believe he should do more but he realized that politically the timing was wrong. If he could not do it when he had a mandate and when urged by his friend in Congress, he should not do it as a lame-duck President when urged by that friend's widow. At best he would look bad, at worse he would seem to be further politicizing Hart's death and pandering to or trying to steal the thunder of the incoming administration.<sup>45</sup>

But for Hart's dying wish, Ford would not have reconsidered his amnesty decision. In deference to the late legislator, Ford publicly claimed he would reconsider the issue. This reconsideration amounted to a practical formality culminating on January 19, 1977, Ford's last day in office. The outgoing President sent a letter to Hart's widow defending his program maintaining (for the last time as Chief Executive) that he had done all he was going to do in terms of reconciliation. The president wished more individuals had taken part in the program, but he had no intention of implementing any other initiatives.<sup>46</sup>

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<sup>45</sup> Memorandum, Jack Marsh to Dick Cheney, et al, December 29, 1976, "Amnesty – General (2)" Folder, Box 1, John O. Marsh Files, Gerald Ford Library; Article, "Justice Dept., at Ford Request, Considers Viet Amnesty Issue", December 29, 1976, "Amnesty – General (2)" Folder, Box 1, John O. Marsh Files, Gerald Ford Library; "Justice Dept., at Ford Request, Considers Viet Amnesty Issue", *Washington Post* (December 29, 1976), A8; Memorandum, Bobbie Greene Kilberg to The President, December 30, 1976, "Amnesty – General (2)" Folder, Box 1, John O. Marsh Files, Gerald Ford Library.

<sup>46</sup> Gerald Ford, Remarks, "Vail, Colorado: The President's Remarks With Reports at Chairlift 6," *Weekly Compilation of Presidential Documents* Volume 13, number 1 (3 January 1977): 1-2.; Gerald Ford, Letter,

### Carter's Proclamation of Pardon:

The day after Jimmy Carter took the oath of office, on January 21, 1977, the new President issued his first Executive Order (11967) and Proclamation 4483. Collectively these initiatives comprised Carter's proclamation of pardon. Unlike Ford's clemency program, Carter pardoned all those accused or convicted of violations of the Military Selective Service Act between the dates of August 4, 1964 and March 28, 1973. Carter issued a "full, complete and unconditional pardon" to all draft dodgers but "specifically excluded" deserters. Carter instructed Attorney General Griffin Bell to dismiss all relevant pending indictments, to cease all relevant pending investigations, and to refrain from opening any relevant new ones. All persons previously precluded from re-entry into the United States were now able to do so. Any individual who participated in Ford's clemency program was eligible for Carter's pardon, eligible to have his status upgraded. Senator Ted Kennedy (D-MA), said Carter had taken a "major, impressive and compassionate step toward healing the wounds of Viet Nam." Continuing Ford's effort to heal the nation, Carter acted swiftly on this campaign promise. The pardon was Carter's first executive order on his first day in office. In doing so he reinforced the idea that the public could begin to trust the President again.<sup>47</sup>

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"Vietnam Era Clemency Program: Letter to Mrs. Philip A. Hart Concerning Her Request for Amnesty for Vietnam Era Draft Evaders and Deserters". January 19, 1977," *Weekly Compilation of Presidential Documents* Volume 13, number 3 (20 January 1977): 71.

<sup>47</sup> Executive Order, Jimmy Carter, January 21, 1977, "Presidential Pardon of Draft Evaders, 1/21/77" Folder, Box 69, White House Press Office Files, Jimmy Carter Library; Jimmy Carter, Executive Order, "Executive Order relating to Proclamation of Pardon: Executive Order 11967. January 21, 1977," *Weekly Compilation of Presidential Documents* Volume 13, number 4 (24 January 1977): 90-1. For Kennedy's quote see "Keeping His First Promise", *Time* (January 31, 1977), 15.

In conjunction with Carter's pardon for draft dodgers – those who never entered the military – he implemented his Special Discharge Review Program (SDRP) to make sure all veterans had the discharge status they earned. The board paid special attention to undesirable and clemency discharges. Beyond the micro-level political argument for reconciling those who served along with those who did not, Carter's SDRP had other political values. As a compromise program, it provided the possibility for leniency while respecting those who served dutifully and did not need the review. By framing his program in terms of re-evaluating all discharges, he did not single out draft resisters as a special category. Rather than validate their choices, he promoted a program to ensure all veterans – including those who served dutifully – could be eligible for review and could be afforded the discharged status that they earned. Also, Carter's program implied that there might be larger systemic problems in the executive branch of government, in this case the Department of Defense and the Department of Veterans Affairs. By promoting a program that called for external review of discharge policy (the SDRP set up a discharge review board similar to Ford's CRB), Carter demonstrated a new honesty and open spirit in the White House. Carter recognized a potential problem with executive bureaucracy and moved to fix it. Carter accepted that the federal bureaucracy – in this case the Department of Veterans Affairs – might have exacerbated the resister and discharge problems.<sup>48</sup>

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<sup>48</sup> Carter also reformed the Veterans Administration – especially in terms of the medical care given to Veterans. Carter appointed distinguished Vietnam War veteran (and future Senator Max Cleland) to be the Administrator of Veterans Affairs. (A distinguished Vietnam War Veteran Cleland was infamously wounded by a grenade during the war, causing the traumatic amputation of his right arm and both legs.) Cleland listened to Veterans (including Vietnam Veterans Against the War co-founder – and another future Senator – John Kerry). Cleland carried Carter's message of reform to the Veterans Administration. The War ended on sour notes but Carter wanted to put the war behind America while respecting those who served dutifully. See "Heroes Without Honor Face the Battle at Home", *Time* (April 23, 1979), 31.

Unable to veto or stop Carter from implementing his pardon, anti-amnesty advocates in Congress responded (in the final action on amnesty) based in the powers that were within their purview. Much like the Congressional proposals to usurp the executive power of pardon, some members of Congress used creative methods to circumvent the separation of powers. Congressional hawks recognized that they could still subvert funding for Carter's program. However, since pardoning required no funding, members intent to subvert Carter's actions focused instead on those veterans who sought to have their discharge status reevaluated.

Representative John T. Myers' (R-IN) added an amendment to Section 706 of HR 7556 (the 1978 Fiscal Year Budget). Myers sought to circumvent the pardon clause by treating the exiles as aliens before treating them as pardonable Americans. Beyond interfering with the presidents' pardon power, the amendment paralleled the language of Carter's pardon and specifically denied funding to his program. While the legislature cannot revoke or veto a presidential pardon, it controls the purse strings for all federal initiatives. Therefore, while anti-amnesty members of Congress could not stop Carter from issuing the pardon, they could hinder any finances needed for the SDRP. For example, Senators Ernest Hollings (D-SC) and Bob Dole (R-KS) reiterated their opposition to amnesty and their support for the Myers Amendment based out of respect for those who served dutifully and especially for those who died in combat.

The support for this amendment was not universal. Like most amnesty debates, hawks and doves took opposite sides. For example, the dovish Senator Mark Hatfield (R-OR) critiqued Myers' plan since it "would effectively gut President Carter's pardon program for Vietnam-era draft resisters." While Hatfield's concerns focused on draft



dodgers – a group whose pardon had already been carried out –his sentiments also applied to wrongly discharged Veterans still in need of a discharge review.<sup>49</sup>

On June 24, 1977, Leon Ulman, Acting Assistant Attorney General from the Offices of Legal Counsel, wrote Deputy Counsel to the President Margaret McKenna a memorandum regarding the potential of the “Myers Amendment” to prevent Carter’s pardon from applying to exiles who had renounced their American citizenship. McKenna herself would be quoted the next day as saying the amendment has “some serious constitutional problems”. Beyond the text of the constitution (“The President ... shall have Power to grant Reprieves and Pardons for Offences against the United States”), Ulman cited numerous Supreme Court decisions reiterating that the power to pardon “cannot be modified, abridged, or diminished by the Congress.” Ulman conceded that Congress had plenary power over immigration but quickly added that this power was not the basis for congressional action in this matter. Myers designed the amendment to nullify Carter’s pardon and its effect. Hatfield concurred, “Denying him the funds in

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<sup>49</sup> For Jimmy Carter’s reaction to the fiscal caveat against spending money on the pardon, see Remarks, “Appropriations Bill: Statement on Signing H.R. 7556 Into Law. August 3, 1977,” *Weekly Compilation of Presidential Documents* Volume 13, number 22 (8 August 1977): 1163-4. Ulman quoted HR 7556 and the specific clause in question (section 706 of Fiscal Year 1978 appropriation bill): “None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses in connection with the dismissal of any pending indictments for violations of the Military Selective Service Act alleged to have occurred between August 4, 1964 and March 28, 1973, or the termination of any investigation now pending alleging violations of the Military Selective Service Act between August 4, 1964 and March 28, 1973, or permitting any person to enter the United States who is or may be precluded from entering the United States under 8 U.S.C. 1182(a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act.” Ulman noted that an identical provision was included in the Supplemental Appropriations Act for Fiscal Year 1977, citing *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, 1977, Volume 123, part 15:18575. See Memorandum, Leon Ulman to Margaret McKenna, June 24 1977, “Pardon, etc. Vietnam War, 01/1977-10/1978” Folder, Box 41, White House Counsel’s Office Files, Jimmy Carter Library. For general discussion of the Myers’ Amendment (including the quotes from Hollings, Dole, and Hatfield) see Plaxton, 205-8; “Senate Turns Down Funds to Carry Out Carter Pardon Plan”, *New York Times* (Jun 25, 1977), 1, 7.

effect is denying him the power to exercise his constitutional authority.”<sup>50</sup> While the balance of power between the President and Congress often fluctuates, Myers’ amendment represents one of many obstacles Carter (and previously Ford) faced in an effort to restore cooperation in Washington. More than just partisan tactics, Myers’ amendment had added significance given the context of 1970s politics.

After weighing options which ranged from passive acceptance of the bill to an outright veto, Carter followed the compromise solution advised by White House Counsel to the President Bob Lipshutz and Chief Domestic Policy Advisor Stu Eizenstat whereby the bill would be signed into law but with a stern signing statement. On August 3, 1977 Carter signed the bill into law but with his signature he expressed his

...strong disagreement with Section 706 of this act... Section 706 purports to prohibit the use of funds appropriated under this act to carry out the Executive order... I am advised by the Department of Justice that this aspect of Section 706 is unconstitutional. It amounts to interference with the pardon power which is invested in the President by the Constitution.

Frustrated by congressional attempts to defy his reconciliations efforts, Carter regretted that he had to sign a budget bill that undermined his discharge review program. He knew that if he vetoed the bill on principle the public reaction would be about government shutdown and would blame him rather than see the scheming of Congressional hawks.<sup>51</sup>

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<sup>50</sup> United States Constitution, Article II, Section II. Ulman cited two Supreme Court cases, *Schick v. Reed* 419 US 256 (1974) and *United States v. Klein* 80 US 128 (1871). Ulman also argued the bill would interfere with resident aliens’ Fifth Amendment right to procedural due process (and the amendment can be conceived as a bill of attainder). See Memorandum, Leon Ulman to Margaret McKenna, op cit. For Hatfield’s quote see “Senate Turns Down Funds to Carry Out Carter Pardon Plan”, op cit.

<sup>51</sup> Memorandum, Bob Lipshutz to the President, July 29, 1977, “Pardon, etc. Vietnam War, 01/1977-10/1978” Folder, Box 41, White House Counsel’s Office Files, Jimmy Carter Library; Memorandum, Bob Lipshutz and Stu Eizenstat to the President, August 2, 1977, “Pardon, etc. Vietnam War, 01/1977-10/1978” Folder, Box 41, White House Counsel’s Office Files, Jimmy Carter Library; Jimmy Carter, “Appropriations Bill Statement on Signing H.R. 7556 Into Law”, *The Public Papers of Jimmy Carter*, Book II (Washington, D.C: Government Printing Office, 1977), 1409-1410. Carter deeply respected the advice and opinions of Bob Lipshutz and Stu Eizenstat. Two members of Carter’s “Georgia Mafia” (a term *Time* magazine used to refer to Carter’s cohort of advisors he bought from Georgia to the White House),

### Conclusion:

Beyond the practical value of clemency there was the bigger symbolic value of this shift in Vietnam War policy. Ten years after the Gulf of Tonkin Resolution begat increased draft calls, the attitude of the executive office changed with respect to the draft. Ford's clemency program and Carter's pardon provided reconciliation for draft resisters but they also provided reconciliation for American government. Ford and Carter acted to reinforce the separation of powers and to restore the public trust in the White House. They acted with powers expressly in their purview and in a manner supported by the majority of the public. Ford and Carter acted where Nixon would not and Congress could not. Ford and Carter's amnesty solutions sought reconciliation and to heal a distraught nation that had been duped by presidents who put their political and personal agendas above the sanctity of their office and the good of the nation.

Deceptions and lies from senior government officials – including past presidents – drove the fighting in Southeast Asia that made the draft necessary. By compromising with draft resisters, Gerald Ford and Jimmy Carter conceded that the establishment had ground to give. Those in Washington could budge because they were at least partially to blame. Insofar as poor leadership begat the Vietnam War, reconciliation provided partial restitution for the imperial presidency. Clemency and pardon were tools to calm tensions in Washington after Vietnam just as much as the War Powers Act and other sunshine legislation discussed in other chapters. No policy or action would single-handedly heal the nation but amnesty constituted a step in the right direction.

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the were at the core of Carter's inner circle. For example, White House Assistant Hamilton Jordon noted "If the President had to fire all but one of us, he probably would keep Stu." See "The Quiet Revolutionaries", *Time* (January 24, 1977), 15; "Carter's Right-Hand Man", *Time* (April 3, 1978), 14.

Similarly, insofar as the quagmire of the Vietnam War reflected the contentious and expansive decisions of past presidents, the reconciliation and cooperation embodied in Ford and Carter's amnesty proposals typified their efforts to be more open and respectful leaders. Two men, one the former House Minority Leader and the other a former southern liberal governor and Washington outsider, strove to recast the perception and operation of the presidency in a way that restored public faith and professional dignity to the office. Their amnesty proposals demonstrated their commitment to be the type of leaders they promised to be and the type of leaders America needed after the imperial presidencies of the recent past.

**CHAPTER 5:**  
Trimming the Trappings of Office:  
Presidential Yacht *Sequoia* and Jimmy Carter's Arsenal of Austerity

Introduction:

Jimmy Carter made many promises during his 1976 presidential campaign but arguably none were more important than his promise to keep his promises. Part of his larger campaign platform of austerity and honesty, the Governor of Georgia vowed to improve the image of the President and eliminate some of the trappings of the office.

Reflecting on his vision, Carter later noted:

Although we altered little in the White House itself, I wanted to make some basic changes in how a President lived and governed. In addition to the gesture of walking down Pennsylvania Avenue, I tried in many other ways to convince the people that barriers between them and top officials in Washington were being broken down. A simpler lifestyle, more frugality, less ostentation, more accessibility to the press and public – all these suited the way I had always lived.<sup>1</sup>

This commitment to austerity and determination to stand by promises translated to a series of actions designed to subdue the luxury of office. Restricting limousine usage and selling the presidential yacht were two of the more prominent and publicized measures undertaken by Carter but they are two of many. Overall Carter sought restitution for the imperial presidency by trying to refine the public face of the presidency.<sup>2</sup>

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<sup>1</sup> Jimmy Carter, *Keeping Faith: Memoirs of a President*, (Toronto: Bantam Books, 1982), 26.

<sup>2</sup> Other initiatives included curtailing the playing of "Hail to the Chief", the use of the Herald Trumpets, and the displaying of the National Flag Cordon. See, for example, Jimmy Carter, Remarks, "Swearing-In Ceremony for Members of the Cabinet", *Weekly Compilation of Presidential Documents* Volume 13, Number 5 (January 23, 1977): 96; Memorandum, Zbigniew Brzezinski to Rick Hutcheson, February 8, 1977, "1/20/77-1/20/81" Folder, Box FE-1, White House Central Files, Jimmy Carter Library. Historian David Farber wrote about Carter's infamous *Playboy* interview. He notes that it was candid and showed the President's promise to be accessible but it also showed his naïveté and exposed a verbal foible. See David Farber, "The Torch Had Fallen", *America in the Seventies*, Beth Bailey and David Farber, eds., (Lawrence:

In the wake of Lyndon Johnson and Richard Nixon's mismanagement of the Vietnam War and Nixon's dealings in Watergate, an air of arrogance and despotism had come to be associated with the White House. Gerald Ford tried to restore the credibility of the presidency, but his pardon of Nixon eviscerated much of his clout and political capital. Carter thus represented the first President with a clean slate and a chance to further restore the faith of Americans in their chief executive.

The real political manifestations of the imperial presidency were buttressed by more subtle and symbolic gestures such as Nixon's decision to augment the dress attire donned by the White House guards. In the early 1970s, the dress of these agents – then still called the Executive Protection Service – proved too plain for Richard Nixon's tastes. Secret Service historian Philip H. Melanson noted, "The new outfits looked like they might have been borrowed from the Vatican or from a Sixteenth-Century French palace."<sup>3</sup> Inspired by European Royal Guards, the uniforms included gold-trimmed tunics and peaked hats. Serving no purpose beyond the visual image, Nixon tried to maximize the regality of his office.

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University Press of Kansas, 2004), 15-16. Carter's austerity and honesty that carried over to the public. In a *Time* magazine article, Dartmouth Government Professor Laurence I. Radway noted, "turning down the heat and doing away with imperial frills" made "Joe Sixpack satisfied and pleased with Carter." See "Just Call Him Mister", *Time* (February 21, 1977), 11-12. See also "The Ford-Carter Character Test", *Time* (October 4, 1976), 22; "Carter's Pollster", *Time* (August 6, 1979), 14. For other discussions of Carter's austerity (such as his changing of the thermostats) see "Resisting the 'State and Pomp'", *Time* (December 6, 1976, 19; "If You Can't Stand the Heat", *Time* (June 23, 1979), 21; "Warm Words from Jimmy Cardigan", *Time* (February 14, 1977), 18; "Just Call Him Mister", *Time* (February 21, 1977), 11-12.

<sup>3</sup> "The Palace Guard," *Time* (February 9, 1970), 8; Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973), 218-223. Writing about the current Uniformed Division dress, Secret Service scholar Philip Melanson noted, "In sharp contrast to the tailored business suits worn by regular secret service agents, the Uniformed Division wear uniforms that are a cross between policy and military dress: distinctive black pants with bright gold striping, white shirts with gold trim, gold and blue badges, name tags that include the officers home state, highly polished black shoes, police-style caps, and shoulder chevrons indicating rank." See Philip H. Melanson, *The Secret Service: The Hidden Story of an Enigmatic Agency*, (New York: Carroll & Graf Publishers, 2002), 171-2.

Nixon also invited controversy when debate arose over some capital improvements made to Nixon's property under the auspices of executive necessity. While every President in the modern age will have some modifications made to their home after taking office in the name of national security, allegedly some of the amenities and frivolities added to Nixon's estates went far beyond national security and prompted a Congressional investigation into the "improvements". The House Subcommittee on the Treasury, Postal Service, and General Government Appropriations of the Committee on Appropriations held hearings, investigating the spending on Nixon's properties in San Clemente, California and Key Biscayne, Florida. At the hearings, officials from the Secret Service made it clear that the alterations to Nixon's properties were all within the letter of the law and all alleged frivolities (such as ice-makers and air-conditioners), were actually for the legitimate use by security staff. Though the Secret Service testimony exonerated the President, the impact on the president's image stuck. The caricature of the imperial presidency extends beyond warfare and spying. The imperial presidency also implies a unique yet extravagant presidential lifestyle and sense of luxury.<sup>4</sup>

To this end, Jimmy Carter's austerity reflected his common-man style and acted as a harbinger of his attitude towards presidential power. After a barrage of presidents who believed they could fiat their prerogative and abuse their office, Carter made deliberate moves to be different. Some gestures were symbolic as much as they were political, such as "serving only beer and wine at the White house and dispensing with the playing of 'Hail to the Chief'." However, Carter's intentions proved at times impractical

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<sup>4</sup> Congress, House, Committee on Appropriations, Subcommittee on the Treasury, Postal Service, and General Government Appropriations, *Federal Expenditures at San Clemente and Key Biscayne*, 93<sup>rd</sup> Congress, 1<sup>st</sup> Session, 1973, Hearing.

or problematic. Some of his gestures were lost in political scandal or simply met public opposition. For example, reflecting on his decision regarding the playing of “Hail to the Chief”, Carter added,

Watergate had been a largely unspoken though ever-present campaign issue, and the bitter divisions and personal tragedies of those recent events could not quickly be forgotten. So, in spite of Ford’s healing service, the ghosts of Watergate still haunted the White House. We wanted to exorcize them and welcome friendlier spirits. However, in reducing the imperial Presidency, I overreacted at first. We began to receive many complaints that I had gone too far in cutting back the pomp and ceremony, so after a few months I authorized the band to play “Hail to the Chief” on special occasions. I found it to be impressive and enjoyed it.<sup>5</sup>

Though Carter’s initiatives begat mixed reactions and results, his efforts proved to be just as important as his successes. After many manifestations of the imperial presidency,

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<sup>5</sup> For the beer and wine reference, see article, “Yacht Carter banished is coming back”, August 25, 1983, “1/20/77-1/20/81” Folder, Sequoia Box, White House Vertical File, Jimmy Carter Library; Susan Farrar, “Yacht Carter banished is coming back”, *Atlanta Constitution* (August 25, 1983), 12-A. For Carter’s quote see Carter, *Keeping Faith*, 27; G. H. Bennett, *The American Presidency 1945-2000: Illusions of Grandeur*, (Thrupp: Sutton Publishing, 2000), 169. Professor Gaddis Smith concurred, adding “Jimmy Carter believed that Watergate and Vietnam indicated that there was a lack of spiritual health and that now somehow there would be a rebirth, which he would lead.” Thus Smith noted that Carter believed the American spirit was sick but he was the cure.” See Gaddis Smith, “Carter’s Political Rhetoric” in Kenneth W. Thompson, ed. *The Carter Presidency: Fourteen Intimate Perspectives of Jimmy Carter*, (Lanham, Maryland: University Press of America, 1990), 205. Ford had a similar bout with the pomp of “Hail to the Chief”. He tried to substitute “Hail to the Chief” with the University of Michigan fight song, “The Victors”. Though in both cases “Hail to the Chief” was played overwhelming more often than not, both presidents had limited success with the change. See Yanek Mieczkowski, *Gerald Ford and the Challenges of the 1970s*, (Lexington: University of Kentucky Press, 2005), 43. Mieczkowski cited Rozell, *The Press*, 7; *Time* (July 14, 1975), 7. The substitution of the University of Michigan fight song for the “Hail to the Chief” is also mentioned in John Robert Greene, *The Presidency of Gerald R. Ford*, (Lawrence: University of Kansas Press, 1995), 191; Gerald R. Ford, *A Time to Heal: The Autobiography of Gerald R. Ford*, (New York: Harper and Row, 1979), 126; “Ford in Command”, *Time* (July 28, 1975), 7-10. On one occasion, Ford’s deference to the Michigan fight song nearly caused a diplomatic incident. On a 1975 visit to China the Peking band played the fight song of the Michigan State University – the University of Michigan’s rival. Reports say however that Press Secretary Ron Nessen chose not to press the issue. See “President’s Gridiron Song Is Booted by Peking Band”, *Wall Street Journal* (December 2, 1975), 3; “Fumble by Peking Band Brings on Punt by U.S.”, *Wall Street Journal* (December 3, 1975), 26. James Fallows also pointed out that there were some trappings that seemed inevitable, especially when foreign affairs were concerned. “There were also familiar allurements of foreign affairs: the trips on fabulous Air Force One, the flourishes, twenty-one-gun salutes, and cheering multitudes along the motorcade routes.” See James Fallows, “The Passionless Presidency,” *Atlantic Monthly* 243:5 (May 1979), 40. Ford too tried to undo some of the pomp of the presidency but his efforts fell short as the public inextricably linked Ford to Nixon after his pardon. For some examples of Ford’s efforts see Henry Graff, “Hour and Man May Have Met”, *Time* (August 19, 1974), 64-67; “Better and Jerry Are at Home”, *Time* (December 30, 1974), 9.



Carter clearly fashioned himself as a man trying to do this opposite. This dovetailed with his larger campaign to be the simple, straight forward, anti-Washington common-man from Plains, Georgia who came to Washington to counteract the imperial *status quo* and clean up American government.

When Carter first took office, his austerity campaign ranked highly amongst his priorities. This is evidenced by a memorandum he received the day after his inauguration from his Press Secretary, Jody Powell. Regarding his upcoming first press interview, Powell instructed the new President to name drop one or two “hard items”, such as the limousines issue or draft amnesty. Powell encouraged the President to steer the conversation towards his “determination to live up to campaign promises and not get enmeshed in the trappings of the office”.<sup>6</sup> Carter reiterated this message numerous times in the early days of his Presidency. Speaking on his efforts to make the government more efficient, Carter said,

And I can hope that I can exemplify this attitude in such a way that it might inspire you to do the same thing. I’ve tried to eliminate some of the artificial trappings and respect that’s openly paid to me. I feel that the Office of Presidency is substantial enough and has an adequate amount of respect already.<sup>7</sup>

From the moment Carter entered office, he tried to promote his common-man image.

After taking the oath of office the newly minted President opted to walk down

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<sup>6</sup> The “limousine issue” refers to the fleet reductions discussed later in this chapter and the “draft amnesty” referred to Carter’s pardon of draft dodgers addressed in chapter four. See memorandum, Jody Powell to Jimmy Carter, January 22, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library. Jody Powell had been the mouthpiece of the Carter Campaign and of the Carter administration ever since Carter ran for Georgia Governor in 1969. The two Georgia natives got along well. Powell was initially Carter’s chauffeur and as he came to know the candidate he gradually became better known as his spokesperson and later his press secretary. Likewise, Carter came to know and trust Powell after many long road trips crisscrossing the Peach State. The same relationship carried over into the presidential campaign. See “Carter’s Mouth”, *Time* (August 2, 1976), 51.

<sup>7</sup> Jimmy Carter, Remarks, “Department of the Treasury”, *Weekly Compilation of Presidential Documents* Volume 13, Number 7 (February 10, 1977): 177.

Pennsylvania Avenue to his new home as opposed to riding in a limousine motorcade. “I felt a simple walk would be a tangible indication of some reduction in the imperial status of the President and his family.”<sup>8</sup> Carter also meant for the walk to emphasize his simpler lifestyle and austere attitude, a break from the pomp of his predecessors. Walking down Pennsylvania Avenue suggested that there would be no regal guard at Carter’s White House and that this president would never hide from the American public.

#### Motion to Dispose:

Following his campaign promises to subdue the trappings of the imperial presidency, Jimmy Carter began considering “retirement” options for the presidential yacht *Sequoia* before the Electoral College had a chance to confirm the public’s electoral will. Rumor had it that the initial move to sell the boat stemmed from a television report by Roger Mudd calling for a “crack down on White House perquisites”. Allegedly the next day Hugh Carter, Special Assistant to the President, known to his colleagues as “Cousin Cheap”, had a handwritten letter on his desk from the President, citing the Mudd report and calling for him to investigate the selling of the *Sequoia*.<sup>9</sup> Intent to dispel the arrogant image of the office and unaware of the political value of some White House perquisites, Carter moved quickly to sell what he saw as an unnecessary luxury. Despite

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<sup>8</sup> Carter, *Keeping Faith*, 18.

<sup>9</sup> This information was referenced in a memorandum dated February 23, 1977. See Memorandum, Bill Gulley to Jack Watson, February 23, 1977, “Military Notebook – Military Personnel at White House - Sequoia” Folder, Box 46, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library. For a list of some of Jimmy Carter’s other campaign promises see *President Carter’s Campaign Promises*, (Chicago: Commerce Clear House, Inc., 1977). While this rumor has neither been confirmed nor denied, the article reporting this was found in the vertical file at the Jimmy Carter library. See Article, “Reunion on the Sequoia”, September 25, 1982, “1/20/77-1/20/81” Folder, Sequoia Box, White House Vertical File, Jimmy Carter Library; “Reunion on the Sequoia”, *New York Times* (September 25, 1982), 11.

the President's deliberate action there still were doubts in the press about his genuineness. Swiftly moving to follow through on his campaign promises, by March Jimmy Carter had already decided the *Sequoia*'s fate. Carter requested detailed information regarding his options for the boat's "disposition".

In a memorandum dated March 23, 1977, Special Assistant to the President for Administration (and the President's cousin), Hugh Carter sent the President the facts – including the history of presidential yachts – and his options, preemptively scuttling any option that did not fit with the President's larger political message. For example, he crossed out the suggestion that the boat be given to the Department of Defense for use by senior pentagon officials.<sup>10</sup> Such an option, though a fortuitous deal for senior Pentagon officials, would be antithetical to Jimmy Carter's austerity motives. Carter believed government workers should focus on the cheap and efficient job of government. Carter did not just think the President should not have an official yacht, he believed that yachts – like fancy dressed guards and other superfluous regalia – did not belong in government. Reassigning the boat elsewhere in the government would defeat Carter's attempt to reduce extraneous perquisites and shrink frivolous expenditures. Carter did not oppose

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<sup>10</sup> Memorandum, Bill Gulley to Hugh Carter, February 23, 1977, "Military Notebook -- Military Personnel at White House - Sequoia" Folder, Box 46, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Memorandum, Hugh Carter to Jimmy Carter, March 23, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library. For an account of the press questioning Carter's genuineness, see for example, Joseph Kraft, "The Carter Style: Sincere or Phony?" *Washington Post*. (February 17, 1977), A19. Kraft questioned whether Carter's symbolism is genuine or manipulation. On one hand, Kraft points to the signs visible from the campaign. Carter wore denim, carried his own bag, and attacked the Washington establishment. "Stressing these themes cost Carter absolutely nothing and while they may not be bogus, they certainly do not pass the test of authenticity. Moreover, the same stress on cut-rate, if not costless, symbols of openness had continued in office." Kraft then noted Carter's moves in office, including the Inauguration Day walk down Pennsylvania Avenue, the rollbacks of limousine use and lowering the thermostat in the White House. However, Kraft notes there was still some secrecy in how Carter play's Washington Politics and he critiqued the President for not pushing his austerity campaign into the private sector. Kraft sees this all as one big ruse and come the first big crisis, it will be business as usual.

an imperial presidency only to enable an imperial congress or an imperial bureaucracy. Carter wanted to return government to the business of governing, free from the arrogance of power or the trappings that imply the same.

The practice of presidential yachts dates back to Rutherford B. Hayes, though the use of river-boats for similar ends can be traced back to Abraham Lincoln. (During the Civil War, Lincoln often rented out the *River Queen*, a privately owned steamer.) Hayes acquired the *USS Dispatch* in 1880, making him the first president to have an official yacht. Between Hays and Carter, ten boats served off and on at the pleasure of the sitting Commander in Chief. Administered by the Naval Administrative unit, "The purpose of the unit is to provide yachting and other support services to the President for both official and social functions." The last in that line of boats was the presidential yacht *Sequoia*. Built in 1924, the *Sequoia* served off and on as the naval refuge for various Presidents since 1933. It contained a master stateroom with king-size bed and private back and topped out at an eleven-knot flank (maximum) speed. A modest boat as yachts go – even Presidential yachts – it still commanded respect and provided a distinguished escape.<sup>11</sup>

As a corollary to the pros and cons of selling the boat, Hugh Carter outlined four possibilities for executing the sale if the President so choose. Option one was deactivation and disposal, with the intent to be sold off if the Department of Defense or the GSA (General Services Administration) could not find a suitable non-pleasure use for the boat. The savings for this option would be \$800,000. The second option called for

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<sup>11</sup> Memorandum, Bill Gulley to Hugh Carter, February 23, 1977, "Military Notebook -- Military Personnel at White House - Sequoia" Folder, Box 46, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library.

the transfer of the boat to the Navy Historical Museum. The savings was estimated at \$600,000, though \$100,000 would need to be earmarked for upkeep; as such funds did not exist in museums' budget. The third option bypassed the reassignment search of option one and went straight to the public sale for a total savings of \$800,000. The last option was to deactivate the boat as a presidential yacht but allow it to remain in the Navy inventory and to be used as the Defense Department saw fit. This option would save less than \$50,000. Hugh Carter added as an afterthought that the prospect of transfer to the Smithsonian had been considered but the Institution did not have the requisite space.<sup>12</sup>

Hugh Carter also described the possible political fallout, reminding his cousin that presidential yachts dated back to 1865 and should Carter dispose of the *Sequoia* it might impede future presidents from replacing the yacht. Ultimately though, Hugh Carter concluded, the "*Sequoia* itself does not serve a function that is necessary for the well-being and security of the nation." Thus he reduced the dilemma to the dyad of austerity versus tradition. Focusing on the details and his larger political agenda, both Carters overlooked and underestimated some of the political ramifications and implications of the boat's sale. The President and his assistant ignored the political capital the yacht created. Bringing members of Congress on the Presidential yacht was one of the unwritten ways to grease the skids inside the beltway, a fact unknown to the anti-Washington, former Georgia Governor. To President Carter, the symbolism of the gesture took priority and any adverse political implications were just burdens he would have to bear in order to implement his vision for government and specifically for the White House.

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<sup>12</sup> Memorandum, Hugh Carter to Jimmy Carter, March 23, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library.

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Solidified by Hugh Carter's recommendations, on March 30, 1977 the President sent a memorandum to Secretary of Defense Harold Brown, instructing him to "[p]lease deactivate the *Sequoia* and have it disposed of through public sale. Despite its distinguished career, I feel that [the] Presidential yacht *Sequoia* is no longer needed." This subtle move was reiterated the next day in the *Weekly Compilation of Presidential Documents*. Amongst other announcements it noted, "The White House announced that the President has requested that the Secretary of Defense dispose of the Presidential yacht *Sequoia*, by offering it for public sale." Reduced to a brief statement, Carter's austerity campaign began to take tangible shape. With a frugality of words Carter introduced his simpler lifestyle and common-man Presidential attitude.<sup>13</sup>

*Washington Post* writer Judith Martin covered the *Sequoia*'s sale, explaining that Carter considered the expense of maintaining a Presidential yacht "unjustified and unnecessary" and how he was unique in his resolve as compared to past Presidents. She noted that ironically, despite all the rhetoric by past Presidents against excessive luxury and wasted spending, they all enjoyed their yachts.

So with all that selling and saving, how come each of those luxury-hating Presidents, and every President in between, has passed hours cruising on the Potomac River or beyond in his very own Presidential yacht? In fact, the U.S. Navy has operated Presidential yachts -- often two of them per President -- during every administration since Rutherford B. Hayes.

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<sup>13</sup> Memorandum, Hugh Carter to Jimmy Carter, March 23, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Note, Rick Hutcheson to Hugh Carter, March 28, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Memorandum, Jimmy Carter to The Secretary of Defense (Harold Brown), March 30, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Announcements, *Weekly Compilation of Presidential Documents* Volume 13, Number 14 (April 1, 1977): 482; Jimmy Carter, *Public Papers of the President*, book 1 (April 1, 1977), 557.

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Martin continued by pointing out the financial incentives. She coyly noted that while the numbers “rock back and forth”, overall the sale would save the American taxpayer money, especially considering that operation costs included the salaries of Navy and Coast Guard personnel assigned to the yacht.<sup>14</sup>

As word of Jimmy Carter’s decision spread, new prospective buyers and mediators offered their suggestions for disposal. Inside Washington, the Associated Press reported that a House panel considered purchasing the yacht. Regarding bidders, Judith Martin quipped that for all the prospective bidders, the one person clearly not interested in the boat was Jimmy Carter, “who ordered it sold as an economy measure”. Representative Phillip Burton (D-CA), Chairman of the House Interior Subcommittee on national parks, put the *Sequoia* purchase plan in a larger, wide-ranging, national parks bill. The bill would place the boat under the jurisdiction of the national parks service where it would be open to the public for a small fee to cover its upkeep.<sup>15</sup>

However, amidst an otherwise benign bidding process (not counting the presence of *Hustler* Publisher Larry Flint or Daredevil Evel Kneivel, both of whom bid on the boat), Jimmy Carter nearly lost a valuable ally in Congress over a prospective bidder.<sup>16</sup> On April 26, 1977, a frustrated Representative John W. Jenrette Jr. (D-SC) wrote White House Congressional Liaison, Frank Moore. The letter referred to a personal friend of

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<sup>14</sup> Article, “All the President’s Yachts”, April 2, 1977, “Sequoia” Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Judith Martin, “All the President’s Yachts”, *Washington Post* (April 2, 1977), D1.

<sup>15</sup> Article, “Carter Sold Yacht – Hill May Buy It Back”, May 2, 1977, “Sequoia” Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Letter, Jim Purks to Hugh Carter, April 7, 1977, “Sequoia” Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library.

<sup>16</sup> For an account of some of the famous and infamous bidders, see “Hustler, History, Et Al Bid On Sequoia’s Presidential Past”, May 12, 1977, “Sequoia” Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Judith Martin, “Hustler, History, Et Al Bid On Sequoia’s Presidential Past”, *Washington Post* (May 12, 1977), D1.

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Jenrette's interested in bidding on the *Sequoia* who was discouraged that tours were restricted. The logic given was to prevent non-serious bidders from bilking free tours of the boat. Jenrette assured Moore that he could vouch to the Department of Defense that the client was a serious bidder prepared to offer over \$1 million for the boat.<sup>17</sup>

Page two of the letter reveals Jenrette's underlying concern. He was not interested in the client's business as much as how the incident had made him look weak. When Jenrette told his constituent that a tour would not be possible, the client then contacted Senator Strom Thurmond (R-SC) and a tour was arranged. Besmirched, Jenrette reminded Moore that he had been an early supporter of Jimmy Carter and his administration and he requested an investigation of the double-talk and the snub. For a president who campaigned on and pledged to restore communication in government and trust in its leaders, these accusations are particularly threatening. This is especially true given that Jenrette and Thurmond's party affiliations made partisan favors an unlikely alternate explanation. Jenrette was one of the "pioneers" amongst Southern Democrats who became more moderate as a reaction to changing politics, demographics, and civil rights. He stood in stark contrast to the conservative icon of Thurmond.<sup>18</sup> This issue would not get lost in party politics. This is a prime example of how Carter's ignorance of Washington politics and aversion to learning the insider game impeded his message from

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<sup>17</sup> Letter, John W. Jenrette, Jr. to Frank Moore, April 26, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library. Another copy of the letter was in the "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library. Frank Moore got off to a very rocky start as Congressional Liaison. A Washington outsider himself, he started in a poor position to serve as a go between for an outsider president and Congress inside the beltway. Moore improved over time but his early stumbles are seen in some of his early ventures. See "How Much Less is Moore?", *Time* (December 12, 1977), 15; "A Problem of How to Lead", *Time* (July 31, 1978, 10-14).

<sup>18</sup> Ibid. For a discussion of Jenrette's "pioneering" see Merle Black and Earl Black, *The Rise of Southern Republicans*, (Cambridge, Massachusetts: Harvard University Press, 2002), 183-4. For a discussion of Thurmond's ideology see chapter two, page 12.

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coming through strongly. Unable to accommodate the political favor of a fellow Democrat, Carter's attempt to rise above politics backfired. In an effort to appear as a president who would not get sucked into backdoor politics, Carter damaged the spirit of cooperation he presented as his alternative.

Having seen the letter, Carter's Special Assistant for Administration Herb Upton believed firmly that Jenrette clearly "talked with the wrong people and got the wrong info" however he concluded that the issue needed further investigation and a reply letter sent. After discussion, White House Military Office Director, W. L. [Bill] Gulley sent the official reply to the Congressman. Gulley apologized for the confusion, contending that some paperwork mishaps had caused the response delay and the tour mix-up. The Director assured Jenrette that the White House neither intended to mislead or embarrass him nor prevent his constituent from touring the boat.<sup>19</sup> In a situation where perception mattered more than facts, it was politically better to eat some crow at the White House and apologize for the inconvenience than to give the story legs. Deflecting any blame to Jenrette would risk creating an imbroglio that would distract from Carter's message of selling a presidential luxury in the name of simplicity and economy.

#### *Sequoia Follies – Growing Pains in the Common-Man Campaign:*

Pushing headstrong into symbolic gestures with major political implications, Carter learned the hard way that the inside politics he campaigned against proved

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<sup>19</sup> Letter, Herb [Upton] to Bill [Gulley], no date, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library; Letter, William M. Fogarty to W. L. Gulley, May 18, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library; Letter, Len Shupe to Bill Gulley, May 4, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library. Letter, Ronna Friedberg to Bill Gulley, May 21, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library; Letter, W. L. Gulley to John W. Jenrette, Jr., May 24, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library.

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impossible to avoid. Carter's mismanagement of the Jenrette fiasco proved to be only one of the many setbacks in his common-man campaign to undo the imperial stigma of his office. The main impediment to smooth sale involved political infighting amongst the Washington bureaucracy. On May 24, 1977, Harold Brown sent the President a handwritten note informing him that the sale of the *Sequoia* had been carried out. Thomas Aquinas Malloy of Leisurecraft, Inc. submitted the winning bid. However the bid was in abeyance pending "an emergency meeting of representatives from the Department of the Interior, Defense and Justice to determine whether the sale is legal." Reporting for the *Washington Post*, Judith Martin quoted Under Secretary of the Interior James A. Joseph's correspondence with the Secretary of the Navy, who made the "strong recommendation that you proceed no further with the sale until determining whether the yacht qualifies as an historic monument. It's clear that the *Sequoia* is likely to meet the criteria for the National Register".<sup>20</sup> Though Thomas Malloy secured the winning bid, it turned out that Carter had not placated all of the necessary government agencies.

Robert M. Utley, Deputy Executive Director of the Advisor Council on Historic Preservation, sent a letter dated April 21, 1977 to Francis B. Roche, Director, Real Property and Natural Resources, Office of the Assistant Secretary of Defense regarding the lack of consultation regarding the sale of the *Sequoia*, contending that given what he saw as inherent "historical value", he felt the boat qualified for the National Register of Historic Places. Utley stipulated that under the law, the *Sequoia* was subject to the council for evaluation and the Department of the Navy could not sell the boat unless the

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<sup>20</sup> Article, "The Sequoia: The High Bid", "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Judith Martin, "The Sequoia: The High Bid", *The Washington Post* (May 19, 1977), C1; Letter, Harold Brown to The President, May 24, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library; Article, "Navigation Regulations", *Federal Register* 42:189 (September 29, 1977), 51574.

council so permitted.<sup>21</sup> Advisory Council member Leon Scherther expressed the true concern of the counsel:

I know what happens to these yachts.... They end up as gambling casinos in the Bahamas, or floating whorehouses. This could be a very interesting floating museum, but the maritime preservationists can't afford to compete with the multi-millionaires.

Nixon had tried to preclude past presidential yachts from being sold for “gambling casinos” or other “notorious use”. However the boats did not sell until that stipulation was removed. Scherther’s fears were heightened by the presence of Jack Gallagher, Vice President of Larry Flynt Publications (the company behind *Hustler* magazine), as a bidder. However, Flynt himself said, “[P]eople think of us as being in a seedy room, taking dirty pictures. But we're just as concerned about our corporate image as any other corporation.” In fact, Flynt’s intentions involved donating the vessel to the Ohio Historical Society.<sup>22</sup>

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<sup>21</sup> Utley included the January 25, 1974 edition of the Federal Register, most recently updating their jurisdiction. Advisory Council on History Preservation, “Procedures for the Protection of Historic and Cultural Properties: Establishment of New Chapter and Part”, *Federal Register* 39:18 (January 25, 1974), 3365-70; Letter, Robert M. Utley to Francis B. Rouche, April 21, 1977, “1/20/77-1/20/81” Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library.

<sup>22</sup> For the quotes see Article, “Hustler, History, Et Al Bid On Sequoia’s Presidential Past”, May 12, 1977, “Sequoia” Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Judith Martin, “Hustler, History, Et Al Bid On Sequoia’s Presidential Past”, op cit. On May 20, 1977 James A. Joseph, Secretary for the Department of the Interior’s Office of the Solicitor sent a letter to Secretary of the Navy W. Graham Claytor, Jr. regarding the National Historic Preservation Act of 1966 and how he saw it applying to the *Sequoia*. He suggested the boat be submitted for “determination of eligibility for the National Register”. Continuing Utley’s crusade, Joseph advised the top sailor that the *Sequoia* had a long and distinguished history and that the Advisory Council of Historic Preservation had jurisdiction to determine its fate. Reporting on this exchange and the larger “due process” scandal, Martin noted, “[I]f the yacht is sold to Malloy on Monday without its historic significance being sought, the Navy Department could be open to a lawsuit from the Department of Justice or anyone else charging that due process was not followed in the sale.” Martin reduced the scuffle to the Navy’s duty to sell the boat as per the President’s request versus the Department of the Interior’s prerogative to designate the boat as a historic monument. She concluded the later agency would not prevent the sale to Malloy (whose intention was to use the boat as a “historical tourist attraction”) but did resent the lack of consultation. See Letter James A. Joseph to W. Graham Claytor, Jr., May 16, 1977, “Sequoia 4-5/77” Folder, Box 142, Margaret McKenna Files, White House Counsel’s Office Files, 1977-1981, Jimmy Carter Library; Articles, “The Sequoia: A Victim of Due Process”, “Sequoia” Folder, Box 80, Hugh Carter Files,



In reaction to these accusations, Deputy Counsel to the President Margaret McKenna ascertained that the original statute governing sold real property and standards were designed to separate items of historical significance from those merely of historical interest. She contended that the *Sequoia* fell into the latter category and hence the sale could proceed. However, she noted that if questions persisted, that the item be sent to the Secretary of the Interior for evaluation.<sup>23</sup>

On May 23, 1977, White House Counsel to the President Robert J. Lipshutz reduced the council's complaint to a political slight, adding that all the bad press over due process had shadowed the larger importance of the sale, such as the symbolism and the money saved.<sup>24</sup> Lipshutz and McKenna sent a memorandum to Press Secretary Jody Powell listing the official time of sale and confirming that the Historical Preservation

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Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Judith Martin, "The Sequoia: A Victim of Due Process", *The Washington Post* (May 20, 1977), B8.

<sup>23</sup> For analysis of the statute in question see Memorandum, Margaret McKenna to Joe Cornelison, April 25, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library; Memorandum, Joe Cornelison to Margaret McKenna, April 26, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library. Cornelison noted that the statute applied only to property already included on the National Register of Historic Property however the Executive Order expanded the statute, allowing agencies to bring to the attention of the Secretary of the Interior any property within their jurisdiction that they deemed qualified for inclusion in the National Register. If the property is determined to belong on the National Register or is in question of belonging, then the agency is required to request judgment from the Secretary of the Interior, whose judgment in the matter is final. Only if the Secretary approves the property for inclusion in the register is there any further action to be taken by the agency. If the property does not qualify however, then the agency need not make any further responsibility to referral to the Secretary of the Interior. Cornelison then presented the standards for historical significance. The two-fold test for inclusion in the National Register is based first whether it is "associated with events that have made significant contributions to the broad patterns of our history [or] associated with the lives of persons significant in our past." The caveat is that properties achieving significance in the past fifty years are ineligible for consideration for the National Register unless it is of "exceptional importance". Cornelison concluded that though the boat met the first two categories, its significance materialized only in recent times and this fell under the caveat. See Richard Nixon, Executive Order, "Protection and Enhancement of the Cultural Environment", *Weekly Compilation of Presidential Documents*, Volume 7, Number 20, (May 13, 1971): 757-8; 16 United States Code 470 (1966); Memorandum, Joe Cornelison to Margaret McKenna, April 26, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library.

<sup>24</sup> Memorandum, Bob Lipshutz to Jody Powell, May 23, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Memorandum, Bob Lipshutz to Jody Powell, May 23, 1977, "Sequoia 4-5/77" Folder, Box 142, Margaret McKenna Files, White House Counsel's Office Files, 1977-1981, Jimmy Carter Library.

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Advisory Council, after consulting with the Department of the Interior and the Department of the Navy, suggested conditions of sale to which the purchaser agreed.<sup>25</sup> Thus the Council had been consulted, placated and satisfied while the Navy successfully covered itself legally. The sale was finalized but some of Carter's austerity message had been supplanted by a due process story. Press coverage gravitated to the story of how the boat came to be sold and the administration's follies in doing so more than the underlying message of why the sale occurred to begin with. Judith Martin and the other White House reporters spun the story into an evaluation of Carter's beltway savvy at the expense of his image as an austere and conciliatory president.

Members of Congress and other Washington insiders were not the only people frustrated by Carter's actions. The public also reacted overwhelmingly negatively to Carter's gesture of austerity. The dozens of letters received by the White house by and large missed the point of Carter's initiative and instead saw his move as an affront and insult to the office of their country's leader.

The clearest example of these sort of exchanges begun with a letter Dr. James M. Donnell, of the Wichita, Kansas Office of the Board of City Commissioners, wrote to President Carter asking for a "reprieve for that grand old lady who has served this

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<sup>25</sup> As such Leisurecraft agreed not to do any of the following without Navy approval. "First, change the configuration of the hull. Second, substantially modify the interior of the vessel. Third, change the vessel's colors, i.e. those parts of the vessel that are white will remain white, those that are varnished will remain varnished." See Memorandum, Robert Lipshutz and Margaret McKenna to Jody Powell, May 23, 1977, "Sequoia 4-5/77" Folder, Box 142, Margaret McKenna Files, White House Counsel's Office Files, 1977-1981, Jimmy Carter Library. Though on face the Council seemed placated, in a future memorandum to his fellow council members, Robert R. Garvey, Jr., Executive Director of the Advisory Council on Historic Preservation elaborated on what he considered a snub by the White House. John G. Kester called Garvey's memorandum "not entirely accurate, and does not appear very supportive of the President". The bottom line of the memorandum reiterated that the Council was not consulted before the boat was retired and sold. Garvey felt its requests to be consulted should have been heeded to sooner. See Memorandum, Robert R. Garvey, Jr. to Hugh Carter, July 6, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library.

country well.” Donnell resented the President’s intention to sell the boat and the appearance that the transaction was done surreptitiously. Frustrated that he had to pretend to be a buyer in order to view the boat, he claimed that since America already owns the boat that the President donate the boat “back to the people of America” as a “gift”. Donnell added,

What I object to – and what I think the American people would object to, if they knew this was happening – is that such a receptacle of our history is being stripped and sold into commercial slavery without so much as a no[d] – let alone a bow – from the country that for nearly 50 years she so ably served.<sup>26</sup>

While Donnell conceded the boat had a tainted past, insofar as it was the location Richard Nixon took refuge while he wrangled over his impending fate in the wake of Watergate, he insinuated that Carter placed personal décor above national interest. Donnell implored Carter to look past that one blemish towards the larger history of the boat. Further berating the President, Donnell likened Carter’s move to sell the boat to the flippant manner in which former Presidents sell their memoirs and television interviews.

However, just when it appeared likely that Donnell entirely missed the point of Carter’s venture, Donnell reframed his critique into the language Carter used to justify his move. Donnell conceded that the President began “with the *Sequoia* to make the presidency and its trappings a bit more human, understandable and approachable to the people of America.” Donnell then countered that there were better ways to save money than to sell off the *Sequoia*. Donnell accused the President of overlooking the distinguished history of the boat in a rush to “expunge the word ‘yacht’ from presidential

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<sup>26</sup> Letter, James M. Donnell to Jimmy Carter, May 15, 1977, “1/20/77-1/20/81” Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library.

parlance.”<sup>27</sup> The Kansas doctor concluded his letter by stating historical arguments why the boat should be salvaged and preserved rather than sold off to nefarious bidders.

Donnell also sent his letter to his local Congressman, Representative Daniel Glickman (D-KS). The member of Congress heeded his constituent’s call and took on his cause. Making arguably a rookie mistake, the freshman Democrat spoke out against the newly elected president and leader of his party. Beyond just forwarding the letter to the White House, on May 16, 1977, Glickman took Donnell’s case to the floor of the House of Representatives.<sup>28</sup> Talking on the floor of the House, Glickman called Congress to “Preserve the ‘*Sequoia*’”. While the Congressman applauded the President’s frugality, he believed the sale of the presidential yacht was a “ridiculous” move and he accused Carter of commercializing history and selling off a vital part of America’s past. Though he conceded that the boat “has not been used, and should not be used in the ‘imperial’ fashion that President Nixon was so accustomed to”, Glickman also added that the boat should not be merely sold but instead made a part of the “American heritage”, such as a floating museum. Glickman couched his concern in the balance between the money the measure might save and other intangible considerations. Though Glickman’s speech inherently targeted Carter, his call for action sought a Congressional resolution that still respected president’s prerogative.<sup>29</sup>

Glickman was the only Representative to mention the *Sequoia* on the floor of Congress during the entire Carter Presidency. As the only correspondence to make it to

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<sup>27</sup> Ibid.

<sup>28</sup> Glickman then forwarded Dr. James M. Donnell’s letter to Frank Moore. Glickman described Donnell as a “Wichita City Commissioner, former Mayor and a good Democrat.” Donnell’s passion for historical preservation brought him to send the letter. See Letter, Dan Glickman to Frank Moore, May 16, 1977, “1/20/77-1/20/81” Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library.

<sup>29</sup> *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 12:14779.

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the floor of the House of Representatives, Donnell's letter stands out beyond the rest of the White House correspondence. However, this singularity is also a reflection on the members of the House. While there may simply have been more important issues on the agenda, there may be underlying reasons that so little time and effort was given to Carter's austerity campaign. On one hand this Congress, one congress removed from the imperial congress of infamy, shared Carter's vision of a tame executive and perhaps even cooperation amongst the branches. However, these veteran members of the Washington establishment recognized the political capital the boat garnered inside the beltway. Since it was often members of Congress wooed on the presidential yacht, the boat represented, by extension, practically one of their perquisites as well. Resentment aside, members nonetheless did not want to appear as if they supported or condoned government bloat and spurious spending.<sup>30</sup>

On May 23, 1977, Deputy Special Assistant for Administration, Valerio L. Giannini, sent a letter to Dr. James M. Donnell responding to the letter Glickman sent to the President. He offered Donnell solace with the information that the new owners agreed, "to the maintenance and preservation of the vessel, thus assuring at least partial perpetuation of her dignity and history."<sup>31</sup> Thus the Carter administration tried its best to balance their goals while not alienating constituents or members of Congress. Giannini commended the doctor's logic and understanding of the gravity of the President's

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<sup>30</sup> Morris Fiorina argued that phrase "Washington establishment" was not just a campaign slam but rather there are career politicians, members of Congress who spend decades in office. See Morris P. Fiorina, *Congress: Keystone of the Washington Establishment*, (New Haven: Yale University Press, 1977); Morris P. Fiorina, "Keystone Reconsidered." in *Congress Reconsidered*, eds. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, D.C.: CQ Press, 2001), 141-162. David Mayhew argued that members of Congress are *a priori* seekers of reelection and all other goals are subsidiaries to that end. See David R. Mayhew, *Congress: The Electoral Connection*, (New Haven: Yale University Press, 1974).

<sup>31</sup> Letter, Valerio L. Giannini to James M. Donnell, May 23, 1977, "1/20/77-1/20/81" Folder, Box WH-9-3, White House Central Files, Jimmy Carter Library.





decision. Donnell understood why Carter sold the yacht, a fact that eluded many others who corresponded with the White House. This fact is as much a compliment to Donnell as it is indicative of Carter's failure to sell his program to the public. His message came out muddled, inciting feedback that often missed the logic of the president's decision.

On August 5, 1977, Senator Harrison Schmitt (R-NM) brought to the attention of the other chamber of Congress a letter he had received in July from Don Blair of Santa Fe regarding a comment made by Rodger Beimer of KOAT-TV in Albuquerque, New Mexico. Schmitt condensed Beimers' argument to the notion that the president should have certain luxuries that are not enjoyed by the larger public, such as "yachts and White Houses." Schmitt then reprinted Beimers' comment, including the following excerpt:

Well, there are certain things I expect of a President. I expect him in a big black limousine, I expect him to live in the White House, and I expect him to maintain the dignity of the Office, and I expect him to have a few things us common folks don't have. And the *Sequoia* is one of those things.

Beimer argued that the President went too far in his quest to be like everyone else, adding the critique that Carter had "released a historic landmark... to the claws of private business and the gullible tourist." The radio personality ended by declaring the sale a mistake and hoping the President did not go any farther, such as selling the White House and moving into a motel all in the name of saving money.<sup>32</sup> Though attacks from the opposition party are ubiquitous with American politics, Schmitt's commentary represented the only time during the Carter administration that a Republican or a Senator spoke on the floor about the *Sequoia*.

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<sup>32</sup> For Schmitt's floor statement see *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> session, 1977, Volume 123, part 22:27649. Speaking abstractly on this subject, Louis Koenig noted, "If the president himself lags in donning monarchic trappings, others will put them on him." Koenig gives the example of John Kennedy. Despite the Presidents austerity efforts, the press dubbed his White House a modern Camelot. See Louis W. Koenig, *The Chief Executive*, (New York, Texas: Harcourt Brace and World, 1960). See page, 13.

These two letters represent the best documented and most demonstrative examples of civilian correspondence. Jimmy Carter and his staff received many letters directly from members of Congress or their behalf or on behalf of their constituents. However, in the end only two members of Congress took their concerns (or their constituent's concerns) to the public record on the floor of their house of Congress. Many members were aware of Carter's actions and many more were had been on a President's yacht, but very few serving in Congress at the time spoke up on the issue.<sup>33</sup>

### *Sequoia's Legacy*

Beyond Carter's efforts to frame himself as a common-man president making conscious decisions not to repeat the imperial follies of his predecessors – a goal which met with mixed results – his efforts affected his successors as well. For example, when Ronald Reagan took office in 1981, he faced the decision to follow Carter's lead or restore the Presidential perquisite of an official yacht. As Reagan pursued his initial budget, Carter's legacy frustrated his successors' economic policy plans. This was made clear on June 17, 1981 when Representative Henry Gonzalez (D-TX) took the House

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<sup>33</sup> Glickman and Schmitt were not the only members of Congress to respond to constituent pressure and contact the White House. Another example of a member forwarding a letter to the White House is Representative Omar Burleson (D-TX) April 12, 1977 letter to the President on behalf of one of his friends and constituents, Bill C. Ray. Inquiring about the sale of the *Sequoia*. Ray wrote, "I personally think it would be a shame for the government to liquidate a heirloom of magnificence for a relatively low sales dollar, and later having a replacement for a President who might want to use a Presidential Yacht. I feel that if President Carter does not want to use "our boat" that "we" should place it in dry dock for the presidents in the future that might want the need of such a craft, and by using the dry dock, virtually all of the big expenses during President Carter's administration would be eliminated." See Letter, Omar Burleson to Jimmy Carter, April 12, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library. Some members did not write for constituents specifically but wrote generally to the White House. See, for example, Herb Upton letters on behalf of Hugh Carter to Representatives Marjorie S. Holt (R-MD) and Manuel Luján, Jr. (R-NM). Letter Herb Upton to Marjorie S. Holt, April 29, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library; Letter Herb Upton to Manuel Luján, Jr., April 25, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library.

floor to critique President Reagan. He chastised the President's hypocrisy of "asking all Americans, and especially the poor, to make sacrifices" while he himself was "looking for a yacht." Gonzalez juxtaposed the President's economic stability plan that the Congressman felt sought "to take away the very bootstraps by which [the President] exhorts the poor to raise themselves" with the President's renewed interest in a yacht after it had been recently docked on the Potomac River. The Congressman criticized the President for even considering reacquisition of the *Sequoia* – or any boat – on the grounds of its cost. He pointed out that even if Reagan took back the *Sequoia*, the upkeep would still be expensive. Gonzalez ended by sarcastically berating the President, noting that while he did not "begrudge" Presidential perks he wondered if perhaps the President could give some of the resultant jobs surrounding the use of a Presidential yacht to those who have lost their jobs because of the rest of Reagan's decisions.<sup>34</sup>

Gonzales' speech came just as the White House reached a similar conclusion, indefinitely postponing efforts to restore the presidential perquisite of a presidential yacht. Before the decision, White House Military Office Director, Edward Hickey had been investigating potential boats amongst the "ships in mothballs" at the Customs Bureau previously seized in drug smuggling raids. White House Press Secretary Larry Speakes noted there was displeasure amongst some people at the White House over President Reagan's inclination to re-commission a presidential yacht.<sup>35</sup>

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<sup>34</sup> *Congressional Record*, 97<sup>th</sup> Congress, 1<sup>st</sup> Session, 1981, Volume 127, part 10:12629.

<sup>35</sup> See articles, "Search For Presidential Yacht Quietly Sails Onto Back Burner" and "No Reagan Yacht Now", "Sequoia" Folder, Vertical File, Jimmy Carter Library; "Search For Presidential Yacht Quietly Sails Onto Back Burner", *The Washington Star* (June 4, 1981), 1; "No Reagan Yacht Now", *New York Times* (June 4, 1981). The buzz in the White House and in Congress stemmed from the announcement of the *Sequoia*'s new owner, the "Presidential Yacht Trust". The tax-exempt organization reacquired the boat and planned to restore it to its former glory and offer it (at no cost to the taxpayers) to the president for his use, if he so desired. Trust member Richard W. Arendsee noted, "The American people want a symbol of

However, as the Reagan years ended and the next decade brought the Clinton years, it became clear that Carter's noble effort to minimize superfluous luxury had brought unintended consequences.<sup>36</sup> On April 17, 1998 *Washington Post* reporter Ken Ringle criticized the boat's initial sale as "one of the least enlightened moments of the Jimmy Carter presidency." As proof for his claim, Ringle noted that Carter's motivation was "purportedly for economic reasons" but since 1977 presidents had retreated instead to places like Kennebunkport, Martha's Vineyard, and St. Thomas. There they still end up on the water, but fly there via Air Force One, which costs \$26,000 an hour to operate.<sup>37</sup> Ironically Carter's maneuver, designed to save money and reduce what he saw as ostentatious luxury, proved to have the opposite effect twenty years later. Carter tried to save the taxpayers money and remove the trappings of office. Ringle pointed out that without a Presidential yacht; Presidents since Carter have turned to other outlets for

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elegance in their country. We're the richest country in the world. This boat is not a gift to Reagan, it's a gift to the history of our country. We've only got 200 years of history – so why dump 50 of them?" In short, the trust's *a priori* motivation sought to undo the fundamental basis and ultimate purpose of Carter's initial action. Arendsee essentially sought to restore one of the trappings of presidential office. See Article, "Yacht Enjoyed By Presidents No Ship of State", "Sequoia" Folder, Vertical File, Jimmy Carter Library; Jane Mayer, "Yacht Enjoyed By Presidents No Ship of State", *Washington Star*, June 29, 1981. This exchange was reiterated in later articles and with quotes from other Presidential Yacht Trust members. See for example, Article, "Sequoia Returns to Home Port", June 29, 1981, "1/20/77-1/20/81" Folder, Sequoia Box, White House Vertical File, Jimmy Carter Library; David Remnick, "Sequoia Returns To Home Port", *Washington Post* (June 29, 1981), C1, C7.

<sup>36</sup> For an explanation of the law of unintended consequences, see Steve Gillon, *That's Not What We Meant To Do: Reform And Its Unintended Consequences in Twentieth Century America*, (New York: W. W. Norton & Company, 2000); Jonathan Bean, *Big Government and Affirmative Action: The Scandalous History of the Small Business Administration*, (Lexington, Kentucky: The University Press of Kentucky, 2001); Robert Merton, "The Unanticipated Consequences of Purposive Social Action," *American Sociological Review*, 1:6 (December 1936), 894-904.

<sup>37</sup> Article, "Ship of State Sails Out of the Past; Sequoia All Decked Out for Buyers", April 17, 1998, "1/20/77-1/20/81" Folder, Sequoia Box, White House Vertical File, Jimmy Carter Library; Ken Ringle, "Ship of State Sails Out of the Past; Sequoia All Decked Out for Buyers", *Washington Post* (April 17, 1998), B1.

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their pleasure. These alternates have proven to be equally lavish in nature but often come at a much greater cost to the taxpayers.<sup>38</sup>

### Limousines

Beyond measures that tamed what Carter saw as frivolous perquisites of office, the president also moved to trim the fat off his staff's perks. Describing his initiatives to make the government more "competent and compassionate", Carter noted that change started at the White House. Amongst the initiatives he cited were the elimination of "some expensive and unnecessary luxuries, such as door-to-door limousine service for many top officials, including all members of the White House staff." In a "Report to the American People", Carter added,

Government officials can't be sensitive to your problems if we are living like royalty here in Washington. While I am deeply grateful for the good wishes that lie behind them, I would like to ask that people not send gifts to me or to my family or to anyone else who serves in my administration.

Intent to not to get caught up in the pomp and formality of the office, and in an effort to have his common-man image be reflected in his staff, on his second day as president, Jimmy Carter began to investigate coordination of armored car use at the White House. Carter later reflected,

I wanted to eliminate some of the perquisites of Washington officials, beginning with my own immediate political family. Despite some subtle but persistent objections, I issued the appropriate orders. There were a lot of news stories when senior White House staff members began to arrive for work in their own automobiles, without chauffeurs – the great publicity confirmed to me that the change was long overdue. One of the White House drivers said that, before we arrived, he had ferried the pets of staff members to veterinarians as part of his driving duties! This man, a retired

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<sup>38</sup> The *Sequoia* is currently still afloat and available as of November 28, 2006 for rent or visitation. For more information see <http://www.sequoiayacht.com/> and <http://www.sequoiayacht.us/>.

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Army sergeant, had been offended by the extravagance of staff “perks.” He felt much closer and at ease with my White House staff – the kind of change I wanted.

Carter initially tried to place the same restrictions on his own limousine usage. However, while the president always travels on land via armored car, getting those cars to various domestic locations was (and remains) a ballet of ground and air transportation. Carter failed to realize the major logistical project transporting the President of the United States entailed. Carter’s intention was to preempt coordination concerns and maximize efficiency while minimizing cost. However, over time he came to realize that some of the “special arrangements” were necessity more than frivolity.<sup>39</sup>

Complimenting Carter’s internal inquiries, on January 31, 1977 Senator William Proxmire (D-WI) sent a letter to Hamilton Jordan identifying himself as Chairman of the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee and expressing his long-standing interest in the distribution and use of official cars by government officials. His letter served to remind the White House that the law, Title 31, Section 638a, stipulated that the officials’ cars could only be used for government business and are expressly forbidden from taking people and to and from their homes.<sup>40</sup> As such he sent a list of inquiries regarding the use of official cars in the White House; who had them and how much they cost.<sup>41</sup>

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<sup>39</sup> For the quotes see Jimmy Carter, Address, “Report to the American People”, *Weekly Compilation of Presidential Documents* Volume 13, Number 6 (February 2, 1977): 141-2; Carter, *Keeping Faith*, 26. For further discussion of the transportation ballet, see Memorandum, Jimmy Carter to H. S. Knight, January 21, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library. Though Carter received much praise for his action in the press, his staff sometimes missed their perquisites. (Ultimately though, they understood the nature of the measure.) See for example. “Just Call Him Mister”, *Time* (February 21, 1977), 11-12; “Hannibal Astride the Potomac”, *Time* (March 14, 1977), 14.

<sup>40</sup> Proxmire noted there were five exceptions to this rule, (1) The President, (2) members of his cabinet, (3) Physicians on Outpatient Duty, (4) Officials on “field service” far from their home, and (5) Ambassadors abroad. See, Letter, William Proxmire to Hamilton Jordan, January 31, 1977, “1/20/77-1/20/81” Folder,



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On February 10, 1977 Hugh Carter responded to Proxmire's letter and questions pertaining to who amongst the White House staff had assigned cars and in some cases, drivers. When drivers were used, they earned \$10,500 a year. There was no overtime pay since they were military drivers. The last question regarded the operating costs for vehicles. Hugh Carter said that each car was leased for \$600 per year including incidental maintenance (such as oil and anti-freeze). The motor pool paid for gas, which in 1976 (under Ford) ran to \$45,600. Hugh Carter expected that number to be lower in 1977.<sup>42</sup>

That same day, Secret Service Director H. S. Knight followed up on Carter's inquiry with a history of the program. Knight noted that armored car service began in the wake of President Kennedy's assassination and the review of Secret Service procedures made by the Warren Commission. Knight laid out the entire fleet of armored cars and their assignments, including the prospects for 1977 regarding acquisition and retirement of armored vehicles and use by visiting foreign dignitaries in 1976. Knight concluded by noting that "The problem of organized terrorism and the use of explosives and automatic weapons in terrorist acts continues unabated. The use of armored cars by the Secret

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Box WH-9-2, White House Central Files, Jimmy Carter Library. *Time* magazine noted, "Carter chose Hamilton Jordan, 32, his shrewd and affable campaign manager, to be his chief political adviser. Jordan has been a loyalist since 1966, when Carter was running his losing race for the Georgia governorship." See "The Quiet Revolutionaries", *Time* (January 24, 1977), 15.

<sup>41</sup> Letter, William Proxmire to Hamilton Jordan, January 31, 1977, "1/20/77-1/20/81" Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.

<sup>42</sup> Memorandum, Jimmy Carter to H. S. Knight, January 21, 1977, "1/20/77-1/20/81" Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library; Note, [Elian] to [Millie D.], no date, "1/20/77-1/20/81" Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library; Letter, Hugh Carter to William Proxmire, February 10, 1977, "1/20/77-1/20/81" Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library; Letter, Hamilton Jordan to William Proxmire, February 4, 1977, "1/20/77-1/20/81" Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.

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Service is, therefore, considered a necessity.”<sup>43</sup> Carter heeded the director’s assessment of necessity but he still saw fat. In response, Jimmy Carter instructed Treasury Secretary Mike Blumenthal to “Minimize purchase of armored limousines, buying only those for which we are firmly & irrevocably committed.”<sup>44</sup> Thus Carter tried to minimize expenditures and luxury while recognizing that security and the dignity of office ought not to be compromised.

To help compensate for the smaller fleet and to maximize the utility of the remaining limousines, Carter relished opportunities to invite guests into his limousine. Not only would this maximize time in a president’s busy schedule and give appointments some valuable face time with minimal interruptions, but it also allowed Carter to, in effect, car pool. This saved money and was environmentally friendly. For example, Jimmy Carter traveled to the October 21, 1977 Jefferson-Jackson Day Dinner with Jim Maloney of the Polk County Courthouse in Des Moines, Iowa. Both men planned to attend the event anyway and traveling together saved money while giving the two politicians time to meet.<sup>45</sup>

Though the symbolism and pragmatism of Carter’s initiative did not bring universal praise from Congress, at least one member recognized the President’s efforts. Responding to Carter’s initial investigations, Representative Paul N. McCloskey, Jr. (R-CA) sent a letter to Jimmy Carter. McCloskey applauded Carter’s action regarding limousine service as “an important act of leadership.” He then suggested a companion

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<sup>43</sup> Letter, H. S. Knight to Jimmy Carter, February 10, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.

<sup>44</sup> Letter, Jimmy Carter to Mike Blumenthal, February 15, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.

<sup>45</sup> Letter, Jimmy Carter to Jim Maloney, October 21, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.

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action would be to end the practice of subsidizing Executive Department parking spaces. McCloskey reported that the subsidization of the spaces in federally owned parking buildings could run as high as \$25 million annually. McCloskey described the system as a “fringe benefit” and government excess. He even suggested that Carter should encourage Congress to similarly clean house, as McCloskey estimated Congress subsidized over 7,200 spaces annually. McCloskey closed by commending Carter’s progress thus far. “Your words and actions thus far give many of us great hope. Keep up the pressure.” Frank Moore replied to McCloskey’s inquiry regarding the president’s decision to reduce the fleet of presidential limousines. Moore described the venture of as one of “a number of actions designed to curtail unnecessary spending in the Executive Branch.” Though McCloskey never incited major congressional action on this issue he did inspire some further discussion within the executive branch about excess spending and questionable perquisites.<sup>46</sup>

Outside of Washington, in the public, more skepticism brewed. For example, Raymond L. Lawson of Ashville, New York wrote the President about gasoline conservation. In light of all the recent press and scandal over gasoline consumption he cited statistics that in 1973 the 20 chauffeured limousines in White House service consumed 1,726 gallons of gasoline weekly. He was curious to know what the current consumption levels were and how much they had dropped. After drafts and discussion,

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<sup>46</sup> Letter, Paul N. McCloskey Jr. to Jimmy Carter, February 4, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library; Letter, Frank Moore to Paul N. McCloskey, Jr., February 17, 1977, “WH 2-1-3 1/20/77-1/20/81” Folder, Box WH1, White House Central Files, Jimmy Carter Library; Letter, Frank Moore to Paul N. McCloskey, Jr., February 17, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library. For examples of ensuing discussions see Letter, Steve Elkins to White House Staff, September 6, 1977, “WH 2-1-3 1/20/77-1/20/81” Folder, Box WH1, White House Central Files, Jimmy Carter Library; Memorandum Vicky McHugh to Mack Collins, March 9, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.

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again the onus to reply fell to White House Military Office Director, W. L. [Bill] Gulley. The response outlined that the fleet currently averaged 819 gallon per week for a net reduction of 907 gallons – over fifty percent – a statistic indicative of Carter’s larger plans for efficiency in government and a fiscally and environmentally friendly presidency.<sup>47</sup> Economic savings and environmentally friendly decisions were gestures that went hand in hand with efforts to stymie the image of an imperial presidency rife with trappings and frivolous expenditures.

Though limousine usage and presidential yachts are not monumental initiatives in the traditional sense that new presidents often pursue in their first 100 days, Carter’s choice of battles operated at a symbolic level as well as at a pragmatic one. Following Nixon, who placed the White House guards in regal uniforms, and Ford, who pardoned Nixon, Carter’s image as the common-man president was as much about eliminating government perquisites as it was about appearing to be a president of transparent motives and beyond reproach.

### Helicopters

Following a theme of economic and environmental conservation in the transportation of the president and his staff, Carter also moved to eliminate five of the thirteen helicopters in the White House fleet, cutting back helicopter usage 38% for an annual savings of \$2 million. The remaining aircrafts were the larger helicopters in the fleet. The total cost of operations for the helicopters was \$4.324 million, though not all of

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<sup>47</sup> Letter, Raymond L. Lawson to Jimmy Carter, May 3, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library; Letter, W. L. Gulley to Raymond L. Lawson, August 4, 1977, “1/20/77-1/20/81” Folder, Box WH-9-2, White House Central Files, Jimmy Carter Library.



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the costs were expected to be saved as the helicopters were to be used elsewhere as would be the personnel. Nonetheless, presidential usage of the aircrafts required more strenuous maintenance regimens, which would mean a net savings when the helicopters were reassigned.

The warrant for the shift was two-fold. First the president has little use for the smaller helicopters. Also, should the president need a smaller helicopter there were ones available from the Department of Defense. The only catch was that they were not configured for the president (such as webbed seating instead of customized seats). The number of pilots assigned to the White House, two, would not change. "The reduction in the helicopter fleet follows similar actions by the President in reducing the number of vehicles, exclusive of Secret Service cars, from 56 to 31, and the sale of the yacht *Sequoia* for \$286,000, at a savings to the taxpayer of \$800,000 yearly in operating, maintenance and personnel costs."<sup>48</sup> Overall the President's motivation was saving taxpayer money by cutbacks in frivolous and unnecessary amenities.

The headlines of austerity aside, Carter soon realized that some luxury stemmed from necessity. While the average person does not have a fleet of helicopters at their disposal, Carter learned that helicopter usage remained a practical necessity of office.

I soon learned that there were other times when presidential privileges were a necessity; some special arrangements simply proved more practical than my old way of doing things. I understood this clearly on my first trip home to Plains three weeks after the inauguration. I had instructed the Secret Service that, to save money, we would go to Plains by motorcade instead of by helicopter. But I discovered that because of the tremendous amount of effort that had to go into traffic control for road intersections, it was much less expensive to go by helicopter. A good portion of the Georgia State Patrol had been marshaled to block every country crossroad

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<sup>48</sup> White House Press Release, June 22, 1977, "Sequoia" Folder, Box 80, Hugh Carter Files, Record of the White House Office of Administration, 1977-1981, Jimmy Carter Library.

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for more than sixty miles! It was obvious that I was not simply one of the people anymore.<sup>49</sup>

Though Carter accepted that pragmatically (and in the big picture, economically) helicopters made more sense than a lengthy motorcade on a cordoned-off highway. Though the President felt he had won a personal victory by reducing the fleet size, no major public response emerged to his anti-perquisite crusade. At a minimum he realized that some government expenditures can appear frivolous to some but are actually necessary and requisite when compared with the alternative. Though Carter's helicopter program – like his other simpler lifestyle initiatives – did not manifest as clear successes, his efforts reaped their own reward. After years of presidents doing the wrong thing, Carter could be seen – or at least presented himself – as trying to do the right thing.

#### Conclusion:

Unlike his predecessor Richard Nixon, who had the White House guard don regal uniforms, Jimmy Carter tried at every turn to minimize the trappings and reverse the monarchical ambiance of the White House. Where past Presidents had talked a lot but done little, Carter followed through on a platform of austerity and simplicity. While in office, Carter scorned some of the perquisites and eliminated others that were uniquely and exclusively available to the President of the United States because of his prestigious position.

Tallying up the political victories and losses may not bear a clear positive outcome for Carter's austerity campaign. Also, in light of Kennebunkport, Martha's Vineyard, and other modern-day presidential hideaways, perhaps the pragmatic and

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<sup>49</sup> Carter, *Keeping Faith*, 26-7.

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50 On April 11, 1975, Carter's motivation for visiting places like Peking was to "fly there via the Great Wall of China." Out of the Past: Box, White House. Carter even kept the peace aside (i.e. Shengri-La as an "Camp David: A vacation. See for

economic legacy of Carter's decision is tarnished as well. However, the symbolism and the initial gesture remains a bold move to counter the previously prevailing negative image of the president. True to the common-man style of the thirty-ninth president and in line with his frustration with the luxury displayed by his predecessors, Carter enacted compact solutions to undo the damage done by those who served before him. Indeed, in light of the tarnished presidential image, Carter's battles counted more than his victories. Public faith and trust would take time to return but that does not mean the effort did not need to be made.<sup>50</sup>

On December 28, 1977, Public Broadcasting Service reporter Robert MacNeil asked Carter about a recent statement by Senator Gary Hart (D-CO) in which he said the President "had demythologized the imperial Presidency." However Hart worried that Carter had also "sacrificed some of the psychological weight and power that the Presidency had accumulated since Roosevelt's time." Thus MacNeil asked Carter if by "making [his] the Presidency of the common man and ridding [himself] of some of the imperial trappings [he] may have thrown away some of the clout?" Carter responded,

Many people think so. The pomp and ceremony of the office does not appeal to me, and I don't believe it's a necessary part of the Presidency in a democratic nation like our own. I'm no better than anyone else. And the people that I admire most who have lived in this house have taken the same attitude. Jefferson, Jackson, Lincoln, Truman have minimized the

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<sup>50</sup> On April 17, 1998 *Washington Post* reporter Ken Ringle criticized the boat's initial sale as "one of the least enlightened moments of the Jimmy Carter presidency." As proof for his claim, Ringle noted that Carter's motivation was "purportedly for economic reasons" but since 1977 presidents had retreated instead to places like Kennebunkport, Martha's Vineyard, and St. Thomas. There they still end up on the water, but fly there via Air Force One, which costs \$26,000 an hour to operate. See article, "Ship of State Sails Out of the Past; Sequoia All Decked Out for Buyers", April 17, 1998, "1/20/77-1/20/81" Folder, Sequoia Box, White House Vertical File, Jimmy Carter Library. Even still, for all that Carter sold off or got rid of, even he kept the crown jewel of presidential getaways, Camp David. Its use for brokering Middle East peace aside (i.e. the accords that bear its name), Carter frequently used the Marine base formerly known as Shangri-La as an escape for himself and as a place to entertain dignitaries and other notable guests. See "Camp David: A Palatial Retreat", *Time* (February 13, 1976), 10. Also, even Carter occasionally took vacations. See for example, "Rafting in the Rockies", *Time* (September 4, 1978), 12-13.

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pomp and ceremony and the pride, personal pride, that accrues sometimes to Presidents. I don't think we need to put on the trappings of a monarchy in a nation like our own. I feel uncomfortable with it. But I doubt if I feel quite as uncomfortable as the average citizen.

Long term unintended consequences aside, Jimmy Carter's initial motivation and agenda should not be lost.<sup>51</sup> Campaigning against Washington, against Watergate and imperial presidencies, Carter's symbolic actions were an important corrective for a nation that had gone too far down the wrong path.

Though due process infighting and disgruntled constituents hijacked much of his limelight and though in the long term Presidential excess returned with more intensity, Jimmy Carter demonstrated his honesty and accountability by following through on campaign promises. In general, Carter's actions represented a major step towards restoring the faith of the American people in the legitimacy and purpose of the Presidency. In a decade that saw secret wars in Cambodia and Laos (as part of the larger war in Vietnam) as well as the first sitting President to resign from office, Jimmy Carter brought America back from the precipice of disintegration. His gestures were political but also symbolic. Carter's austerity measures and anti-trappings initiatives sent the message that the President of the United States was no longer trying to be King or turn the White House into a palace, but instead was focused on being the leader of the nation and the head of one of the three equal branches of American government.

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<sup>51</sup> Jimmy Carter, Remarks, "Conversation With the President", *Weekly Compilation of Presidential Documents* Volume 13, Number 53 (December 28, 1977): 1954; Interview, Robert MacNeil, et al of Jimmy Carter, "Interview with the President", December 28, 1977, "Chronological" Folder, Box 12, Records of the Speechwriters Office, 1977-1981, Jimmy Carter Library. James Fallows also felt Carter's "style of thought" crippled him. "He thinks he "leads" by choosing the correct policy; but he fails to project a vision larger than the problem he is tackling at the moment." However Fallows did concede that Carter gradually became more adept at Congressional relations. See Fallows, 42-3.



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## CHAPTER 6:

### Jimmy Carter and the Legislative Veto: Fighting an Encroachment on Federal Comity

#### Introduction:

When Herbert Hoover reorganized the federal government in 1929, he balanced his request for executive discretion with a concession. Calling for dramatic change, more power and deference to the presidency, and more discretion to the federal bureaucracy, as a compromise, the President of the United States conceded to Congress the ability to nullify regulations by a one-house vote that is subject neither to approval of the other branch of Congress nor to presentment to the President for signature or veto. Thus Hoover conceded to Congress the power to veto presidential action. At the time, Hoover acknowledged that this legislative veto represented a new check on presidential power but if used in moderation it could be tolerated as a facet of the larger framework of federal checks and balances. When Franklin Roosevelt took over the presidency in 1933, he accepted the legislative veto as a fair price for leeway in executive power. Preoccupied with consensus building and drumming up support for his New Deal, Roosevelt accepted Hoover's compromise.<sup>1</sup>

Though every President from Franklin Roosevelt to Lyndon Johnson dealt with legislative vetoes, their encounters remained infrequent and occasional. Political Scientists Joseph Cooper and Patricia A. Hurley wrote that "One of the most significant

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<sup>1</sup> For a discussion of Hoover and Roosevelt see Justice White's dissent in *Immigration and Naturalization Service v. Chadha, et al.* 462 US 919 (1983). For further discussion of the origins of the legislative veto see Barbara Hinkson Craig, *The Legislative Veto: Congressional Control of Regulation*, (Boulder, Colorado: Westview Press, 1983), chapter 2; Martha Liebler Gibson, *Weapons of Influence: The Legislative Veto, American Foreign Policy, and the Irony of Reform*, (Boulder, Colorado: Westview Press, 1992), chapter 2; Jessica Korn, *The Power of Separation: American Constitutionalism and the Myth of the Legislative Veto*, (Princeton: Princeton University Press, 1996); Walter J. Oleszek, *Congressional Procedures and the Policy Process*, (Washington, D.C.: Congressional Quarterly Press, 1989), 266-8.

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institutional developments in Congress during the past half-century has been the emergence of the legislative veto as a prime oversight weapon.” However, as the arrogance and bravado of the imperial presidency peaked in the early 1970s under Richard Nixon, members of Congress fought back with the full arsenal at their disposal. This included a proliferation of legislative veto clauses as an exogenous check on federal power.<sup>2</sup> Cooper and Hurley later noted that in the 1970s, “use of the veto ... accelerated rapidly.” Arthur John Keeffe similarly noted that “Congress fell in love with the device.” Frustrated by the growing abuse of Presidential power, the number of legislative veto clauses passed by Congresses during Richard Nixon’s presidency – including the Gerald Ford interregnum – was almost triple the number during the time of Lyndon Johnson. By 1970s Congress had become so concerned with control that the bipartisan House leadership nicknamed the Ninety-Sixth Congress (1979-1981) the “Oversight Congress”.

Representative Elliot Levitas (D-GA), championed the device’s cause in Congress, a crusade that earned him the nickname, “Mr. Legislative Veto”. One of the many freshman members of Congress – especially Democrats – of the “Watergate class” (those first elected to office in 1974 three months after the Watergate scandal forced Nixon’s resignation and two months after Ford pardoned Nixon), Levitas firmly believed additional Congressional oversight would check abusive Presidents and runaway federal regulations. Though only starting his second term when Carter took office, Levitas had

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<sup>2</sup> Though this chapter focuses on the legislative veto it was by far not the only oversight initiative in Congress’ arsenal. There were many others from attempts to legislate morality to probing investigations. For example, in 1975, Senator Ted Kennedy (D-MA) attempted to legislate political morality (or at least moral politicians), making it a crime to lie to the public. See “Legislate the Truth”, *Time* (July 21, 1975), 12. Similarly, Senator Frank Church (D-ID) led a committee of senators probing into various nefarious and scandalous practices by presidents and their agencies. The report that bore his name – the Church Report – exposed violations of liberties and freedoms by the Federal Bureau of Investigation and the Central Intelligence Agency under the guise of information gathering and without cause or regard to morality or ethics. See for example “Nobody Asked: Is It Moral?” *Time* (May 10, 1976), 32-34.

already made a name for himself promoting the cause and sponsoring legislation (which in and of itself is impressive for a freshman Representative). More than just voting for legislative vetoes, Levitas' adamant participation in the debate over the device reflects what Richard Hall calls "legislative participation," i.e. actively promoting an issue.<sup>3</sup>

Amidst the scandals of Watergate and the Vietnam War, Nixon proved unable to muster the political capital to fight the proliferation. Similarly, Ford's pardoning of Nixon left him politically weak and he spent most of his remaining energies to help bind the nation's wounds, such as his Presidential Clemency Program discussed in chapter four. Thus Jimmy Carter embodied the first real chance for a President to combat Congress' power grab. Elected in 1976 on a platform of government cooperation and government reform, and against the backdrop of the Presidential sins of the last decade, Carter entered the office with the moral fortitude and political mandate to clean up Washington, including threats to the balance of power.

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<sup>3</sup> Evidence of Levitas' nickname is ubiquitous with in the literature and in the papers of Carter's staff. See, for example, Barbara Hinkson Craig, *Chadha: The Story of an Epic Constitutional Struggle*, (New York: Oxford University Press, 1988), ix. For the term "Watergate class" and Levitas crusade for the device see chapter 2. For a discussion of voting participation see Richard L. Hall, *Participation in Congress*, (New Haven: Yale University Press, 1996). For the term "legislative participation" see page 1. For a discussion of the added difficulty for freshmen Representatives to distinguish themselves see pages 102-3. Fifteen legislative vetoes were passed during Franklin Roosevelt's administration, followed by eighteen during the Harry Truman administration, thirty-one during the Dwight Eisenhower administration, twenty-two during the John Kennedy administration, and thirty-six during the Lyndon Johnson administration. However, during the Richard Nixon administration – including the Gerald Ford interregnum – that number jumped to one hundred and fifteen. See Article, "Legislative Veto and the Constitution - A Reexamination", March 1978, "Legislative Veto – Articles & Testimony" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Bernard Schwartz, "Legislative Veto and the Constitution - A Reexamination," *George Washington Law Review* 46:3 (March 1978), 351-2; Arthur John Keefe, "The Legislative Veto: Now You See it, Now You Don't (I)," *American Bar Association Journal* 63 (September 1977), 1296-1300. For Keefe's quote see page 1296. For the Cooper and Hurley quotes see Joseph Cooper and Patricia A. Hurley, "The Legislative Veto: A Policy Analysis", *Congress and the Presidency*, 10:1 (Spring 1983), 1. For charts graphically representing the proliferation see pages 3-4. For a discussion of the 96<sup>th</sup> Congress' nickname see Oleczek, 275-6.

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Carter's efforts started small and cordial.<sup>4</sup> Initially his opposition amounted to polite requests for alternate solutions and stern signing statements admonishing the legislative device. However, as the Congressional debate over legislative vetoes stalled, Carter followed up with a sterner message, sent directly to Congress, presenting his case against legislative vetoes and why he felt they were unconstitutional. When this still failed to get movement from Congress, Carter's administration moved to outright defiance of the legislative veto authority. Carter's administration refused to acknowledge the authority of Congressional rulings stemming from legislative vetoes. Fundamentally, on this issue Carter stood firm, demonstrating his prowess as a leader who would not be abused by Congress but would not use abusive tactics to achieve his goals. Carter's rejuvenation of the legislative veto debate incited scholarly discussion of the issue by historians, as well as by political scientist and legal scholars. However, for all of the renewed interest, the literature generally focuses on the legal implications of the legislative veto or the subsequent 1983 Supreme Court case (*Immigration and Naturalization Service v. Chadha*). Scholars have marginalized Carter's agency, a role that should neither be ignored nor glossed over. The Court's ruling and the political climate surrounding the legislative veto in the early 1980s could never have happened without the actions taken by Carter and his administration in the late 1970s.<sup>5</sup>

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<sup>4</sup> Carter began as cordial as possible but that eventually developed into balance – how to be fair but firm with Congress on legislative vetoes as well as on other issues as well. See for example “Carter Fires a Salvo”, *Time* (August 28, 1978), 10-11.

<sup>5</sup> The Supreme Court case, *Immigration and Naturalization Service v. Chadha, et al.* 462 US 919 (1983), will be discussed in more detail at the end of this chapter. For examples of legal analysis of the legislative veto issue see Gibson, op cit; Korn, op cit; Carl McGowan, “Congress, Court, and Control of Delegated Power.” *Columbia Law Review* 77:8 (December 1977), 1119-1174; Bernard Schwartz, op cit; Robert G. Dixon, Jr., “The Congressional Veto and Separation of Powers: The Executive on a Leash?”, *North Carolina Law Review* 56:3 (April 1978), 423-494; Harold H. Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair*, (New Haven, Connecticut: Yale University Press, 1990), 1-8.

### Constitutionalism:

While some of the intricacies and minutia of the legislative veto may be beyond the scope of this dissertation and this chapter, it is important to understand why the legislative veto causes such a huge debate and why Carter fought it so fiercely. In 1976 President-Elect Jimmy Carter's transition team received a memorandum apprising them of the status of the legislative veto debate. This memo serves as a useful window for explaining the constitutional concerns surrounding the legislative veto and why it caused such intense battles in Washington, D.C. in the late 1970s. The memorandum, written by Washington analyst Robert B. Barnett, explained why the incoming President ought to fight the device. The memorandum condensed the debate so that the transition team could brief the President-Elect. Barnett emphasized that no matter how "legalistic and intricate" the arguments may seem and how "minor and esoteric" the issue might appear, he assured the incoming administration that the issue was of the utmost importance.

You are not only making choices which will influence the success of your efforts to get reorganization authority from the Congress. You are also making choices which could restrict your ability to resist the inclusion of legislative veto provisions in future legislation.

He urged the transition team advisors to urge the incoming administration to take a hard stance against legislative vetoes, both for their unconstitutional grounding and for the threat they represented to Presidential prerogative and Carter's plans to promote balance in government.<sup>6</sup>

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For examples of the analysis of the Supreme Court decision see Craig, *The Legislative Veto*, op cit; Craig, *Chadha*, op cit; Seth Barrett Tillman, "A Textualist Defense of Article I, Section 7, Clause 3: Why *Hollingsworth v. Virginia* Was Rightly Decided, and Why *INS v. Chadha* Was Wrongly Reasoned", *Texas Law Review* 83 (April 2005), 2165-1732; Gary S. Lawson, "Comment: Burning Down the House (and Senate)," *Texas Law Review* 83 (April 2005), 1373-87.

<sup>6</sup> Memorandum, Robert B. Barnett to Carter-Mondale Transition Team, December 4, 1976, "Legislative Veto, (12/76-6/80), 12/1976-06/1980" Folder, Box 42, Records of the Domestic Policy Staff (Carter



The debate over the constitutionality of legislative vetoes reduces to interpretations of two paragraphs of the United States Constitution (Article 1, Section 7, clauses 2<sup>7</sup> and 3<sup>8</sup>). The founders defined the normal means by which bills – as well as orders, resolutions and votes – are to be passed by both branches of Congress and presented to the President before they can be law. Barnett suggested – and the Carter administration adopted – an interpretation of the Constitution based on the original intent arguing that normal means precludes the use of legislative vetoes. However, proponents of the device tended towards a looser and more progressive interpretation of the constitution. Calling for judicial activism, they interpreted the constitution more dynamically, not viewing the document as exclusively written. This clause and this debate would eventually be at the heart of the Court’s ruling in the *Chadha* case.

Moving beyond general descriptions of the history of the legislative veto and the segments of the constitution from where the debate arose, Barnett summarily broke down the main constitutional arguments that backed his position. Most prominently he argued that legislative vetoes violated the separation of powers envisioned by the framers of the

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Administration), 1976-1981, Jimmy Carter Library.

<sup>7</sup> United States Constitution, Article 1, Section 7, Clause 2: “Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.”

<sup>8</sup> United States Constitution, Article 1, Section 7, Clause 3: “Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.”

Constitution. Barnett added there are two tests to see if a law or action violates separation of powers. The first method is called the “Inherent Functions” test. The legislature passes the laws, the executive branch enforces the laws, and the judicial branch interprets the laws. By this standard, the legislative veto is unconstitutional because Congress is encroaching upon judicial authority to interpret law. By reserving the right to nullify, Congress is usurping judicial duty. Alternately, if it is to be viewed as oversight – extra regulation on executive agencies – then it is encroaching upon the executive branch’s job to enforce the law as it sees fit. The second test to see if a law or action violates the separation of powers is the “Balance of Power” analysis. This test determines if the law or action seeks to shift power between the branches of government. Legislative vetoes reduce executive discretion to be “exercised only at the pleasure of the Congress.” Normally, legislative law is implemented by executive discretion constrained by the regulations established by the legislature. Congress takes over a role of the executive branch with legislative vetoes and hence its power is expanded at the executive branch’s expense.<sup>9</sup>

Even if the legislative veto is defined as a legislative function, other problems arise. One-house vetoes invoke the bicameralism argument while two-house vetoes invoke the veto clause augments. Citing the Connecticut Compromise that provided the United States with a bicameral legislature, Barnett presented the constitutional concept of

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<sup>9</sup> Memorandum, Robert B. Barnett to Carter-Mondale Transition Team, December 4, 1976, “Legislative Veto, (12/76-6/80), 12/1976-06/1980” Folder, Box 42, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library. The debate over the constitutionality of legislative vetoes is well documented in the literature however this literature generally follows rather than precedes the Carter years. Some discussion came during or before Carter’s administration such as Harold H Bruff and Earnest Gellhorn, “Congressional Control of Administrative Regulation: A Study of Legislative Vetoes”, *Harvard Law Review* 90:7 (May 1977), 1369-1440. However, most discussions followed 1983 Supreme Court ruling on the subject. See for example, Craig, *The Legislative Veto*, op cit; *Immigration and Naturalization Service v. Chadha, et al.* 462 US 919 (1983).

bicameralism – that laws must be passed by both houses of Congress before they can become law. One-house vetoes allow a single branch of Congress to act unilaterally, bypassing the constitution. One house acting – either to approve law or negate executive regulation – denies the other house its constitutional right to weigh in and perhaps negate the first house. Two House vetoes respect bicameralism but still violate the veto (or presentment) clause as defined by Article I, Section 7 of the constitution, i.e. that every law passed by Congress shall be presented to the President for approval or disapproval. Barnett noted that the Presidential veto acted not to check “unwise legislation” but rather to check Congressional encroachment on executive power. The veto power was conceived as Presidential self-defense. Furthermore, the constitution makes no provision for transferring the power of the veto. It cannot be delegated to Congress and Congress cannot take legislative action without presenting it to the President for approval or disapproval.<sup>10</sup>

Legislative vetoes allow Congress to make laws that are untouchable by Presidential action. Rather than have to resort to a two-thirds override, Congress retains power and avoids the threat of a Presidential veto. The founders’ intent of this clear standing rule checking legislative power is further evidenced by the fact that founders specified the only instances when exceptions can be made. While even these are arguably not above separation of powers reproach, Barnett and other experts cite the following four instances.

- “The House of Representatives alone was given the power to initiate impeachments.” (Article I, Section 2, Clause 5)

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<sup>10</sup> Memorandum, Robert B. Barnett to Carter-Mondale Transition Team, December 4, 1976, “Legislative Veto, (12/76-6/80), 12/1976-06/1980” Folder, Box 42, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

- ▶ “The Senate alone was given the power to conduct trials following impeachment on charges initiated by the House and to convict following trial.” (Article I, Section 3, Clause 6)
- ▶ “The Senate alone was given final unreviewable power to approve or to disapprove Presidential appointments.” (Article II, Section 2, Clause 2)
- ▶ “The Senate alone was given unreviewable power to ratify treaties negotiated by the President.” (Article II, Section 2, Clause 2)

The clarity and universality of any rule – including bicameralism and presentment – are strengthened when a limited set of exceptions are already defined. Legislative veto proponents’ contention that the founders intended unicameral action to check federal regulation wanes in light of the reality that the founders specifically outlined rules and exceptions to the contrary. The founders specified when their rule could be broken and Barnett, Carter, and later Burger, all concluded legislative vetoes were not one of those instances.

Barnett conceded that it could be argued that legislative vetoes are not traditional or constitutional legislative acts and therefore not confined or bound by the bicameralism or veto clauses. “Yet the policy decisions and legal consequences of a legislative veto are indistinguishable from the policy decisions and legal consequences of ordinary legislation.” Barnett refuted the argument that legislative veto simply reverses the process of legislative action. He considered it a tough sell to equate Congressional inaction with the deliberation and “detailed process” of Congressional consideration that precludes any bill’s vote.<sup>11</sup>

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<sup>11</sup> Ibid.

Barnett balanced his legal and constitutional arguments with what he called “political and practical considerations.” Often Presidents accepted legislative veto provisions attached to legislation that the President needed to be passed or that he simply lacked the political capital to fight. Barnett also noted that members of Congress generally favor legislative vetoes, not only because they provide an exogenous check on Presidential power but also because it allows them to re-assess legislation post-passage and post-implementation. Legislative vetoes allow legislative oversight to operate as a “fall-back” measure for Congress.

With the legislative veto as a fall-back, oversight device, Congress need not undergo the often-painful process of anticipating contingencies, specifying boundaries, and controlling delegations of power. Because it can always use the legislative veto, Congress escapes the necessity for careful consideration of statutory enactments.

In essence, Barnett argued that legislative vetoes give Congress a second bite at the apple causing sloppy lawmaking and increased backlog. If Congress faced less pressure to get everything right the first time Barnett predicted there would be a growing deference to pass it first and fix it later. Subsequently, vaguer bills would be passed and members would actually spend more time monitoring existing regulations than they currently spent drafting and debating potential legislation.<sup>12</sup>

Barnett’s blueprint of how to confront this issue proved close to the strategy Carter actually employed. For example, Barnett urged Carter to use “report-and-wait” clauses as a palpable alternative. Under this scenario, one adopted by the Carter

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<sup>12</sup> Ibid. Approximately six months later Harold H. Bruff and Ernest Gellhorn would reach a similar conclusion about the impact of legislative vetoes on Congressional backlog and productivity. See Bruff and Gellhorn, 1424. Future scholars would also criticize legislative vetoes because of the relationships they promote between committees and special interest groups. For example, Joseph Cooper and Patricia A. Hurley argue that legislative vetoes lead to “subsystem politics” and “cozy triangle” situations. See Cooper and Hurley, 14.

administration, federal regulations would be sent to Congress for comment before implementation. However, Congress could not unilaterally rescind actions once put in place. Ultimately Barnett recommended that the incoming President do everything in his power to avoid legislative veto clauses. This included trading to get the clauses out of bills or acquiescing to other oversight mechanisms. He added that this give and take would be easier in the Senate than in the House because of staunch advocates such as Representative Elliot Levitas (D-GA).<sup>13</sup>

Further confirmation about the challenge Carter would face in Congress came a month after the new President took office. In February 1977 the Senate Government Operations Report, "Study on Federal Regulation," devoted an entire chapter to the legislative veto issue. The report outlined the benefits of the provision, primarily citing excerpts by Levitas as evidence. For example, the report noted that,

Proponents of the legislative veto argue that current oversight mechanisms are inadequate to control bureaucratic excesses. The veto mechanism is also needed, it is contended, because passing an act of Congress is too cumbersome and time consuming a tool to effectively control the regulatory bureaucracy.

The report also quoted Levitas as arguing that Congress was too lax with delegating legislative authority to the executive without guidelines. Elsewhere, Levitas added that legislative vetoes provide "the people, through their elected representatives, an input into and a control over the rules that govern their lives." He argued legislative vetoes put more regulatory control back into the hands of elected representatives and out of the hands of unelected bureaucrats. This was offered in response to the accusation that

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<sup>13</sup> Memorandum, Robert B. Barnett to Carter-Mondale Transition Team, December 4, 1976, "Legislative Veto, (12/76-6/80), 12/1976-06/1980" Folder, Box 42, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

legislative vetoes act as a fall back mechanism and lead to laxity in Congress. The report concluded that legislative veto provisions – as with any oversight mechanism, even ones used sparingly – could lead to better legislation. However, the report also concluded that legislative vetoes would most likely not solve laxity of delegation or advance more stringent regulations.<sup>14</sup>

Despite the one-man show defending the legislative veto, Levitas' arguments faced a strong bombardment in the Committee's report from the arguments against the device. The report acknowledged the problems of the legislative veto, including the increased delay in the regulatory process and the increase in pressure on Congress. Agency records would matter less and agencies would be discouraged from rulemaking. Even the Senate's own report acknowledged that there might be a substantial increase in the Congressional workload. The report concluded that "the across-the-board legislative veto approach embodied in some proposals is undesirable. Equally undesirable is the routine addition of a Congressional veto to every bill that Congress considers." In general, the Senate Committee on Government Affairs and its Chairman, Senator Abraham Ribicoff (D-CT), concluded the legislative veto may "Have an adverse effect on the entire regulatory process". Ultimately the report confirmed Barnett's findings and his prediction that legislative vetoes had stronger support in the House than in the Senate.<sup>15</sup>

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<sup>14</sup> Senate Government Operations Report, *Study on Federal Regulation*, Volume II, February 1977, "Legislative Veto Paper, (9/29/79 – 1/8/80), 09/29/1979 – 01/08/1980" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Congress, Senate, Committee on Government Operations. *Study on Federal Regulation*. 95<sup>th</sup> Congress, 1<sup>st</sup> Session, Study. For the quote see page 116-7; Craig, *The Legislative Veto*, 123.

<sup>15</sup> Senate Government Operations Report, 117, 122. Historian Barbara Craig confirmed Senator Ribicoff's doubts of the benefits of the legislative veto in her 1983 monograph on the device. She reflected that "Congressional use of the legislative veto power over the rule making process has thus far had none of

### Early Battles:

In 1977, as Carter was just getting his feet wet in Washington, when initially confronted with legislative veto clauses Carter reacted with calm and a complacency that would evaporate later on in his term of office. This initial spirit is best demonstrated by HR 186, “A bill to implement the Convention on the International Regulations for Preventing Collisions at Sea”. Introduced on January 6, 1977 by Representative John Murphy (D-NY), the bill went directly to the House Committee on Merchant Marine and Fisheries.<sup>16</sup>

On July 12, 1977, when the bill returned to the House floor, Murphy moved to suspend rules, pass and implement the bill, including a section allowing for a legislative veto. Murphy argued that rules are key and it is important that they keep up with technology. “HR 186 preserved Congressional participation in this process while still expediting adoption of regulation revisions through the mechanisms of a legislative veto, here in the form of a concurrent resolution initiated by either House.” Representative Mario Biaggi (D-NY) noted that President Gerald Ford had pocket-vetoed this bill when it was last proposed on account of a one-house veto clause. Murphy proposed a concurrent resolution this time in hopes of preventing future Presidential vetoes. His efforts paid off. These were the only two people to speak on the bill and their speeches only lasted twenty minutes. The next day Senator Robert Byrd (D-WV) read the bill and

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the functional consequences promised by its proponents.” See Craig, *The Legislative Veto: Congressional Control of Regulation*, 135.

<sup>16</sup> *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, 1977, Volume 123, part 1:347; *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, 1977, Volume 123, part 16:19871.



it passed by consent in the Senate without debate. Another day passed and the Speaker of the House signed the bill. On the fourth day it went to the President for approval.<sup>17</sup>

On July 28 1977, Carter signed HR 186 into law but in a signing statement, he expressed “clear constitutional reservations” about a section of the law that allowed “Congress, by concurrent resolution, to disapprove a proposed amendment to the convention.” Carter added that he believed this provision “may violate” Article I, Section 7 of the constitution. By using a Presidential signing statement Carter respectfully criticized Congressional methods for legislative oversight while not rejecting what he considered to be an otherwise strong bill. Intent to try and put comity before conflicts, Carter tried at every turn to exhaust cordial means to thwart the use of legislative vetoes. However, patience would only go so far.<sup>18</sup>

By his second year in office, Carter recognized the adamancy of Congress – especially the House – on the legislative veto issue. Carter began to fight back with more tenacity and fervor. Two bills demonstrate Carter’s early battles with Congress and the legislative veto. Moving beyond subtle and polite commentary, the White House began actively campaigning to quash legislative veto legislation.

On March 23, 1978 Department of Justice Assistant Attorney General John M. Harmon sent a memo to White House Counsel to the President Robert Lipshutz and Chief Domestic Policy Advisor Stu Eizenstat noting that on February 23, 1978, “Mr. Legislative Veto” – Elliot Levitas – introduced HR 11112 that would require all rules to

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<sup>17</sup> *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, 1977, Volume 123, part 18:22470-2, 22772, 22998, 23063; *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, 1977, Volume 123, part 19:23481. For the quote see page 22471.

<sup>18</sup> Signing Statement, Jimmy Carter, July 28, 1977, “Legislative Veto – Bills with Veto Provisions, (1978)” Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; *Congressional Record*, 95<sup>th</sup> Congress, 1<sup>st</sup> Session, 1977, Volume 123, part 21:26185.

be submitted to Congress for review. In short, it would add a legislative veto clause to every bill. Determined to be the champion of the legislative veto in Congress and in the eyes of the press, this bill encapsulated Levitas' "crusade" to make every rule subject to the device. This bill, like Levitas' past ones, invoked opposition from the administration because of constitutional failures, specifically regarding Article I, Section 7. Harmon argued that the likely Congressional support for the bill created a "concomitant need for an early Administration response." In general, he argued the biggest objections to the bill are the delay injected into the process, the decrease of public participation in the rulemaking process, and the distortion of the relationship between rulemaking and judicial review of rulemaking.<sup>19</sup>

Three weeks later, on April 13, 1978, Domestic Policy Staff (DPS) Associate Director for Government Reform Si Lazarus sent a memo to Office of Management and Budget (OMB) Deputy Director Bo Cutter and Executive Associate Director Harrison Wellford regarding Harmon's memo, soliciting their thoughts as the administration formulated its response. Given how much Levitas' bill had been a "continual source of vexation" for them all, Cutter replied with a memorandum from OMB Assistant Director for Budget Review Dale McOmber arguing that legislative vetoes "would impose an enormous burden on both the Congress and the President." Congress would have a barrage of added issues, thousands of regulations and rules to pass judgment on annually. Meanwhile the President would need to be ready to fight Congress on each and every

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<sup>19</sup> Specifically HR11112 called for "A bill to amend section 553 of title 5, United States Code, to require submission to Congress of rules promulgated thereunder, and to provide for disapproval of such rules by enactment of a joint resolution of disapproval," in essence every rule would be subject to legislative veto. Memorandum, John M. Harmon to Robert J. Lipshutz and Stuart E. Eizenstat, March 23, 1978, "Legislative Veto, (12/76-6/80), 12/1976-06/1980" Folder, Box 42, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library. For the commentary on Levitas, see Craig *Chadha*, chapter two. For the quotes see page 38.

issue should the legislature so desire. On the other hand, he conceded that if Congress saw the sheer volumes of regulations out there, they might have second thoughts about passing some of the bureaucracy. In sum he suggested trying to move Levitas from legislative veto to pushing for an alternative form of legislative oversight.<sup>20</sup>

Though HR 11112 never reached a vote on the floor, another bill made it much farther through the legislative process. In addition to trying to push the legislative veto as an independent bill granting universal oversight, as a second option and a compromise, Levitas pursued legislative veto clauses as amendments to other bills. On January 24, 1978 Levitas pushed hard for the legislative veto to be retained when HR 3816, the Federal Trade Commission Amendments of 1978, went to conference, noting that the legislative veto amendment had passed in the House by a 2-1 majority.<sup>21</sup>

Four days later, DPS General Counsel Richard Neustadt sent a memorandum to Stu Eizenstat, incoming OMB Director Jim McIntyre, and Congressional Liaison Frank Moore regarding the status of HR 3816. He predicted that the bill would likely leave conference without a legislative veto and at worst a 30 day report-and-wait clause. McIntyre responded, expressing the views of his agency on HR 3816. His concerns with the Senate-passed bill focused on substantive issues while his concern with the House-passed bill centered on inclusion of a legislative veto statute. McIntyre expressed

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<sup>20</sup> Memorandum, Si Lazarus to Bo Cutter and Harrison Wellford, April 13, 1978, "Legislative Veto, (12/76-6/80), 12/1976-06/1980" Folder, Box 42, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Dale McOmber to Bo Cutter, April 26, 1978, "Legislative Veto, (12/76-6/80), 12/1976-06/1980" Folder, Box 42, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>21</sup> *Congressional Record*, 95<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1978, Volume 124, part 1:531-2.

opposition to the provision for its violation of Article I, Section 7. The bill made no provision for Presidential veto or other check on Congressional action.<sup>22</sup>

On February 9, 1978, Neustadt reported to Eizenstat, McIntyre and Moore that they were successful and HR 3816 left conference without any legislative veto language.<sup>23</sup> However while Neustadt knew that his staff, along with the help of members of Congress such as Representative Robert Eckhardt (D-TX), kept the legislative veto out of the conference report, Levitas would likely still try to reinsert the clause when the bill

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<sup>22</sup> McIntyre had just assumed the position at OMB because of the Bert Lance affair. His previous boss and the man who last held his job left amidst scandal and disgrace of alleged nefarious business practices. Though McIntyre had worked in the OMB and under Lance, there was initial skepticism as to whether he had the intestinal fortitude for the job. See "Soft Touch at the OMB", *Time* (June 5, 1978), 74. Quick to prove naysayers wrong, McIntyre laid out the rules for the FTC bill. "The House-passed version of H.R. 3816 contains an amendment providing for Congressional review and possible veto of FTC rules. This amendment states that the FTC must submit a copy of each rule to the Congress at the time it is promulgated and that no such rule could become effective (1) if both Houses adopt a concurrent resolution disapproving it within 90 calendar days of continuous session after promulgation, or (2) if, within 60 days after promulgation, one House adopts a "concurrent" disapproval resolution and transmits it to the other House, and the other House does not disapprove the resolution within 30 calendar days of continuous session." See Letter, Griffin B. Bell to Warren Magnuson, January 27, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Rick Neustadt to Stu Eizenstat, et al, January 28, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Letter, James T. McIntyre to Harley O. Staggers, January 31, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>23</sup> Neustadt followed up the next week with a barrage of thank you notes for their efforts on HR 3816 to the following people: Edward Merlis, Staff Director, Senate Committee on Commerce, Science, and Transportation; Peter Kinzler, Counsel, House Subcommittee on Consumer Protection and Finance; Martha Maloney, Senate Subcommittee on Consumer. Si Lazarus sent a similar pat on the back letter to Neustadt commending his work. See Memorandum, Rick Neustadt to Stu Eizenstat, et al, February 9, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Letter, Richard M. Neustadt to Edward Merlis, February 20, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Letter, Richard M. Neustadt to Peter Kinzler, February 20, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Letter, Richard M. Neustadt to Martha Maloney, February 20, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Si Lazarus to Rick Neustadt, February 20, 1978, "Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

returned to the floor. Both Eckhardt and Neustadt called upon the leadership to block Levitas noting that the Senate would stand firm in their position (keeping the legislative veto clause out of the bill) and that Carter would veto the bill if it came to him with a legislative veto. Irwin Arieff reported in *Congressional Quarterly* that the legislative veto provision “dogged” the Federal Trade Commission (FTC) bill throughout House debate. Elsewhere, the *Congressional Quarterly* reported the strong indication to members by Neustadt that Carter would likely veto any bill with a legislative veto clause. “We got strong signals from the White House that they would veto the bill if it contained the legislative veto provision” said an unnamed member about the FTC bill.<sup>24</sup>

While Levitas did reintroduce a legislative veto clause amendment, he offered what he considered a compromise. Not prepared to concede defeat, on March 6, 1978 Levitas switched his plans (though Si Lazarus called it more of an “ambush”), converting his one house veto into a veto by joint resolution. The catch is that joint resolutions can be vetoed by the President. Lazarus explained,

Hence, this resolution would give the legislative veto nuts on the Hill a significant piece of what they want, but satisfy Justice’s constitutional anxieties about protecting the veto power (and in the process, give the President new power over the independent agencies, or at least this particular one).

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<sup>24</sup> Memorandum, Rick Neustadt to Jim Free, February 22, 1978, “Legislative Veto – FTC, (1/30/78-2/28/78), 01/30/1978 – 02/28/1978” Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Fact Sheet, FTC Amendments of 1978 (HR 3816): Fact Sheet, no date, “Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979” Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Article, “‘Congressional Veto’ Stalls FTC Bill”, March 18, 1978, “Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979” Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Irwin B. Arieff, “‘Congressional Veto Stalls FTC Bill”, *Congressional Quarterly* (March 18, 1978), 701.

The one-house veto now became a two-house veto. Lazarus' memo touted the differences of this incarnation, such as how it expedited challenges and prevented a single branch of Congress from subverting regulations.<sup>25</sup>

Beyond his changed plans, Levitas also realized that future direct conflict with the White House would best be avoided. To this end he requested a sit down with Neustadt and Eizenstat to try and reach a compromise. On March 22, 1978 Neustadt reported on the meeting the three of them had. Called by the Representative, at the meeting he vetted his compromise bill with these three elements: (1) a one house veto (with the potential for override from the other house) (2) report-and-wait provisions for some executive agencies and (3) a sunset provision for the whole bill after three to five years. Levitas argued that the President currently had no control currently over independent regulatory commissions and hence this change would not be a loss of power. Furthermore Levitas said he would not accept the bill without a one house veto. However, Neustadt also reported that FTC counselors Michael Pertschuk and Michael Sohn stood firmly against the idea, stating they would rather lose the improvements in HR 3816 than accept a legislative veto.<sup>26</sup>

Though the meeting was both respectful and cordial, it was clear that neither side planned to budge. Deference to federal comity requires the respectful interaction

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<sup>25</sup> Memorandum, Si Lazarus to Rick Neustadt, March 6, 1978, "Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Article, "House Defeats Compromise on FTC Bill", March 4, 1978, "Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>26</sup> Memorandum for the File, Rick Neustadt, March 22, 1978, "Legislative Veto – Chron, 3/22/78 – 2/5/80, 03/22/1978 – 02/05/1980" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Mike Sohn to Rick Neustadt, March 27, 1978, "Legislative Veto – Chron, 3/22/78 – 2/5/80, 03/22/1978 – 02/05/1980" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

between the branches of government but not necessarily a confluence of opinions. In a follow-up memo, Neustadt explained why Levitas' compromise solution should be rejected. His concerns distilled to a critique of the legislative veto clause and why it would uniquely be counterproductive in this situation focusing on the arguments of deadlock and legislative logjam. Also, should Carter sign into law any incarnation of a legislative veto it might impair any future efforts by the administration to pursue their legal challenges.<sup>27</sup>

As the bill came up for final debate and vote in September, Neustadt told Eizenstat to warn the leadership that, though not a major piece of legislation, the FTC bill might be vetoed. Neustadt also convened a meeting with FTC, Justice, and others to discuss the FTC bills impending return to the floor.<sup>28</sup> On September 6, 1978, Pertschuk asked Neustadt if the President or Vice-President would call Levitas about the FTC authorization conference report (slated for House action the following week). Pertschuk thought that Levitas would go along with the conference report if he received a call from a "high level person" from the White House. However Neustadt told Pertschuk that in light of the President's obligations and seclusion at Camp David, such a scenario might not be possible but that he would try to get Eizenstat to make the call instead.<sup>29</sup>

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<sup>27</sup> Memorandum, Rick Neustadt to David Rubenstein and Si Lazarus, March 28, 1978, "Legislative Veto – Chron, 3/22/78 – 2/5/80, 03/22/1978 – 02/05/1980" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>28</sup> Memorandum, Rick Neustadt to Stu Eizenstat, August 23, 1978, "Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Stu Eizenstat and Rick Neustadt to Frank Moore and Les Francis, September 1, 1978, "Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Rick Neustadt to Les Francis, et al, August 25, 1978, "Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>29</sup> As this domestic policy battle waged in Washington, D.C., Jimmy Carter had already begun his

The conference report passed the Senate without debate but as the Carter administration expected, the same could not be said of the reports' fate in the House. Representative Robert Eckhardt (D-TX) argued that despite Levitas' best efforts, even the Senate rejected across the board legislative vetoes. Eckhardt pushed for what he saw as an acceptable compromise – both houses vote and Presidential signature is required. He argued that without compromise, no bill would pass and hence no oversight at all. This is the same Eckhardt who – in line with the administration – tried to get all legislative veto language out of the bill. Hence his compromise, complete with presentment to the President, reads more like a victory for the Carter administration. Representative Henry Waxman (D-CA) concurred, rationalizing that a compromise beats no bill and hence no FTC oversight at all. Representative Don Edwards (D-CA) added that while he had reservations about the legislative veto from a policy standpoint he considered the compromise a fair middle ground. "I support this provision, because it is a fair compromise between the strong positions of the two Houses and, most important, because I believe it is constitutional, unlike the so-called 'one-House veto.'" These members saw this diminutive legislative veto as a middle ground between Levitas and Carter.<sup>30</sup>

Countering Eckhardt's compromise solution and siding with Levitas, Representative William Moore (R-LA) defended the legislative veto on different

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marathon twelve day foreign policy negotiating session with Egyptian President Anwar Al Sadat and Israeli Prime Minister Menachem Begin at Camp David. On September 17, 1978 Carter's would emerge from seclusion with the two world leaders and announce his famous Camp David accords. See Memorandum, Rick Neustadt to Stu Eizenstat, September 6, 1978, "Legislative Veto – FTC, (3/4/78-11/12/79), 03/04/1978 – 11/12/1979" Folder, Box 43, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>30</sup> *Congressional Record*, 95<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1978, Volume 124, part 21:28528-35, 28682; *Congressional Record*, 95<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1978, Volume 124, part 24:32323-35.



grounds, arguing that the vote came down to whether or not members of Congress supported “regulatory reform and a strong legislative veto.” Those who did would vote against compromise and those who were not concerned would vote for it. He argued that the compromise represented a restatement of the *status quo*. If the point of the bill is to resolve problems with the *status quo* then passing a do-nothing bill seems useless. Chairman of the full committee Representative Harley Staggers (D-WV) flipped Moore’s critique, suggesting that if the bill was the *status quo* there was no reason not to pass it. Moore responded by noting that this bill is designed to give a check on the FTC just as the Congress currently checks the President. Put bluntly he added,

But I have a sneaking suspicion, from what many of you have said in the last few months, that we have got to get a control of the bureaucracy, and the mindless regulations which come out of there have to be controlled by elected representatives responsible to the people. Now is your chance. You can put up or shut up, or maybe get out.

Moore’s rejoinder reflected the subtle genius of Eckhardt’s compromise. By presenting an alternative that has all the symbolism of Congressional oversight but none of the constitutionally-questionable teeth of Levitas’ amendment, Eckhardt allowed members to vote for oversight while still endorsing a bill they knew Carter might actually sign. Eckhardt’s compromise mitigated the encroachment on Presidential power represented by Levitas’ amendment.<sup>31</sup>

Ultimately on a vote of 174 to 214 (with thirty four not voting), the House rejected the Conference Report. The Carter administration stood its ground and rallied enough support in Congress to carry its position on the legislative veto. Contrary to some of Carter’s early political bungling and the negative image imposed by some critical

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<sup>31</sup> *Congressional Record*, 95<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1978, Volume 124, part 24:32330.

historians, Carter's efforts on the legislative veto manifested into clear and decisive political victories. Carter took strong stands and acted commandingly yet he did so in a way that respected Congress and the constitution.<sup>32</sup> Carter followed up on these victories in 1978 with an even clearer statement of opposition to legislative vetoes. In June of that year Carter sent a formal message to Congress presenting his case against the contested device.

#### Message to Congress:

Amidst the continued debate over the legislative veto and especially due to Levitas' universal legislative veto bill (HR 11112), by April 1978 Carter and his White House staff realized a clear yet firm stance needed to be transmitted to Congress outlining his views and his administration's formal position on legislative vetoes. As Neustradt and other White House staffers met to begin to work out the details, they realized that the gesture could only succeed if they proceeded with caution and invited frequent consultation from Congress. This mindset tied directly to the larger attitude of the White House. Even when taking a harsh and divisive stance, respect for the legislative body of government and its members remained crucial. Though this logic may sound ubiquitous to politics, the imperial presidencies of years past defied this rule and spurned cooperation. For example, Neustadt told Congressional Liaison Bill Cable to set up a meeting with the Speaker of the House, Tip O'Neill (D-MA) and discuss the administration's plan. Beyond being the leader and the most powerful Democrat in

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<sup>32</sup> *Congressional Record*, 95<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1978, Volume 124, part 24:32332, 32335. The quote is actually from the July 17, 1978 edition of the *Courier Journal*. For an example of the critiques of Carter's Presidential performance, see Clark R. Mollenhoff, *The President Who Failed*, (New York: MacMillan, 1980).

House, O'Neill represented the epitome and prominent face of the northern liberal Democratic contingent. O'Neill and Carter worked well together and understood each other's agenda. As the Republican Party of Goldwater became the Party of Reagan, O'Neill's leadership and symbolic value grew in importance. These meetings with O'Neill and various other Washington insiders begat early drafts of the speech. Neustadt called for suggestions and advice from anyone and everyone in the White House and Congress. He knew that if this message did not come across exactly as designed, it might destroy Carter's political capital in Congress.<sup>33</sup>

In response, the next week Office of Legal Counsel Attorney-Advisor Larry Simms sent a memo to Lipshutz and Eizenstat with his draft of the memorandum for the President. Endorsing a formal statement outlining the President's views on legislative vetoes, he supported the idea of sending a message to Congress idea because the administration's policy needed to be clearly established in a way that could be "uniformly implemented by all agencies of the Executive Branch which are subject to your control." Simms and Lipshutz also contributed suggestions, arguing that the message should lay

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<sup>33</sup> [Memorandum of Meeting], Legislative Veto Meeting, April 12, 1978, "Legislative Veto – Presidential Statement, 6/28/78, (4/12/78 – 6/1/78), 04/12/1978 – 06/1/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Rick Neustadt to Bill Cable, April 15, 1978, "Legislative Veto – Presidential Statement, 6/28/78, (4/12/78 – 6/1/78), 04/12/1978 – 06/1/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Rick Neustadt, to Si Lazarus and Larry Simms, May 22, 1978, "Legislative Veto – Presidential Statement, 6/28/78, (4/12/78 – 6/1/78), 04/12/1978 – 06/1/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library. O'Neil served the Massachusetts Eleventh district in Congress after John Kennedy vacated the seat in 1953. In that time O'Neill has grown to great power and prominence in the House and the Democratic Party, indicated by his ascension to the Speaker position in 1977. The "tough-minded Boston liberal" was known for his early support and continued cooperation with Carter. For a discussion of O'Neill's politics, leadership role, and relations with Carter see "Two Who Will Run the House", *Time* (December 20, 1976), 23; "Scramble for Power on Capitol Hill", *Time* (December 6, 1976), 16-18; Merle Black and Earl Black, *The Rise of Southern Republicans*, (Cambridge, Massachusetts: Harvard University Press, 2002), 396-8; James MacGregor Burns, *Running Alone: Presidential Leadership – JFK to Bush II: Why it Has Failed and How We Can Fix It*, (New York: Basic Books, 2006), 126; Thomas P. O'Neill, Jr. with William Novak, *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill*, (New York: Random House, 1987).

out the constitutional objections to the legislative veto yet also recognize “the legitimate interest Congress has in oversight of Executive Branch activities.” Beyond making the case for why he objected to legislative vetoes, they suggested Carter needed to define a universal response that he could apply to all current and future legislative veto bills. While noting that the Presidential veto is often a useful tool in subverting legislative vetoes, a tactic most recently employed successfully by Lyndon Johnson, they suggested as a more respectful alternative that the President should push for “report-and-wait” provisions and joint resolutions which are, in and of themselves, subject to Presidential veto.<sup>34</sup>

By June the message – still in draft form – began to take shape. Commenting on the draft, Department of Justice Assistant Attorney General John Harmon gave the following recommendation to Neustadt and Eizenstat.

We recommend that any Presidential statement be of general applicability rather than oriented towards a specific piece of legislation such as the Housing and Community Development Amendments of 1978. We see no need for the President to speak definitively more than once on this issue...<sup>35</sup>

This comment was matched by many others, though perhaps none more poignant than one from Attorney General Griffin Bell. The head of the Department of Justice (DOJ)

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<sup>34</sup> Memorandum, Larry L. Simms to Robert J. Lipshutz and Stuart E. Eizenstat, April 21, 1978, “Legislative Veto – Presidential Statement, 6/28/78, (4/12/78 – 6/1/78), 04/12/1978 – 06/1/1978” Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Draft Memorandum for the President, “Administration Policy Regarding Legislative Vetoes”, April 21, 1978, Larry L. Simms to Robert J. Lipshutz and Stuart E. Eizenstat, April 21, 1978, “Legislative Veto – Presidential Statement, 6/28/78, (4/12/78 – 6/1/78), 04/12/1978 – 06/1/1978” Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>35</sup> Memorandum, John M. Harmon to Robert J. Lipshutz and Stuart E. Eizenstat, June 6, 1978, “Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978” Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

sent a handwritten note to Neustadt with pointed concern about the language of the latest draft of Carter's speech and how it would fit in with his larger political message.

Rick –

If our objective really is “to work together to restore trust between the branches” (p.6), I question whether we are wise to take such a hard line against the legislative veto, which is the only realistic mechanism Congress has to restrain bureaucratic abuses in an age of Administrative Law.

That is an objection to our policy. The other main objection I have on this is the unpersuasiveness of saying these vetoes are bad because they are such an imposition on Congress (pp. 3, 5). If Congress thought they were an imposition they wouldn't enact them, and they don't need JC to tell them that.

I've edited the draft, which, considering the policy framework Stu apparently wants to pursue, seems OK to me. I did dig up a surviving draft from the work I did on this last December, which I pass along just for your information in case there is something in it you want to use.

Cheers –  
Griffin<sup>36</sup>

Bell laid out in the brief note one of the largest gambles of the message to Congress. He bluntly told his friend and colleague that Carter could not afford to appear as being discourteous or disrespectful to Congress. Carter wanted to get his point across but he did not want to burn bridges and he knew support in Congress would neither be automatic nor universal.

By mid June Neustadt sent Eizenstat a revised draft of the message to take to the President, reflecting input and changes from a myriad of outside sources.

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<sup>36</sup> Letter, Griffin to Rick, no date, “Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978” Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library. A lawyer from Atlanta and a former United States Court of Appeals Judge, Bell had been a close aide and confidant of Carter since he was elected to the Governor's office in Georgia in 1971. Six years later, elected President of the United States, Carter promoted Bell to Attorney General. See “A ‘General’ Named Bell?”, *Time* (December 27, 1976), 15-16; “Jimmy's Pal Rings a Bell, Off-Key”, *Time* (January 3, 1977), 41.

The message incorporates comments from Congressional Liaison, NSC, W.H. Counsel, the speechwriters, and Justice. Frank Moore's people have run the main points by the House and Senate leadership and the Judiciary Committee chairmen, and I checked it with Muskie. None of them have any objections.

The former Vice-Presidential candidate (the bottom half of Hubert Humphrey's ticket in 1968), Senator Edmund Muskie (D-ME), was a trusted voice in the Carter administration. In 1980 the Senator would replace Cyrus Vance as Secretary of State in the last year of the Carter Administration. After seeing the draft, Carter wrote back to Eizenstat regarding this draft noting "ok – on a message to Congress the language should be more formal – 'Violation of historical precedent' not adequately emphasized". At every step of this process, White House leaders and staff solicited Congressional advice and respected Congressional dignity in an effort to ensure Carter's message reflected the larger good government goals of his administration. Carter recognized what Griffin Bell and others were saying. This was a moment for Carter to tell Congress and the nation his position but it was also a time to connote clear signs of respect. The entire nation would be an audience to his speech. Better they should hear the commanding yet respectful speech of their leader than the arrogant and forceful tirade of an imperial president.<sup>37</sup>

Given the nature of Carter's impending letter it is an even greater testament to Carter's commitment to federal comity that his staff took great efforts to get the opinion of (or even just give him a heads up to) the chief legislative veto proponent,

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<sup>37</sup> Memorandum, Rick Neustadt to Stu Eizenstat, June 16, 1978, "Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Memorandum, Stu Eizenstat and Rick Neustadt to The President, June 19, 1978, "Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library. For a discussion of Muskie's politics see Theo Lippman, Jr. and Donald C. Hansen, *Muskie*, (New York: W. W. Norton and Company, 1971). For his relationship with Carter see Jimmy Carter, *Keeping Faith*, (Toronto: Bantam Books, 1982), 37, 61, 67, 519-21, 536-8, 558.

Representative Elliot Levitas (D-GA). Of course, consultation does not guarantee support. On June 20, 1978, after meeting with Levitas, Eizenstat reported what was to be expected; that Levitas “does not agree with the thrust of the message and would prefer that we at least exclude independent regulatory agencies from its coverage.” Eizenstat reminded the President that they do not agree with this exclusion. Levitas asked to meet or speak with Carter personally but the president declined. While Carter meant no disrespect to the member of Congress, he knew what the legislator planned to say and he had heard it before. Levitas began his political career in Atlanta at roughly the same time as Carter. The two had served briefly together in the Georgia State Congress. Levitas continued to serve in the Georgia State House while Carter was Governor and when Carter was working for the Democratic National Committee, Levitas was running for the United States House of Representatives. Nevertheless, being respectful does not mean always accepting requests for meetings and indeed Carter had met on other occasions with Levitas and other legislative veto supporters.<sup>38</sup>

After all the revisions and consultations, Carter delivered his message to Congress on June 21, 1978. Carter accepted stronger and more proactive Congresses. He respected their level of engagement but called for constructive – and more constitutional – use of their efforts. Laying out his views on the legislative veto, he encouraged his

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<sup>38</sup> Part of Carter’s style, he often met with members of Congress or brought them to the White House – especially if they disagreed with him on an issue. Part skillful wooing, part comity and deference, Carter wanted to make sure all voices were heard and all positions defended on any given issue. See “Just Call Him Mister”, *Time* (February 21, 1977), 11-12. For discussion of the circumstances of this meeting see Letter, Stu Eizenstat to The President, June 20, 1978, “Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978” Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; Letter, Rick Hutcheson to Stu Eizenstat, June 21, 1978, “Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978” Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

Congressional counterparts to pursue other means for oversight; ones that resided more clearly within the constitutional separation of powers and the purview of federal comity.

In recent years, the Congress has strengthened its oversight of Executive Branch decisions. I welcome that effort. Unfortunately, there has been increasing use of one oversight device that can do more harm than good – the “legislative veto.”... This proliferation threatens to upset the constitutional balance of responsibilities between the branches of government of the United States. It represents a fundamental departure from the way the government has been administered throughout American history.<sup>39</sup>

Carter briefly told his audience the history of legislative vetoes and how they had come into greater use in recent times. However, Carter cautioned Congress against treating legislative vetoes as panaceas for past presidential sins.

The desire for the legislative veto stems in part from Congress’ mistrust of the executive, due to the abuses of years past. Congress responded to those abuses by enacting constructive safeguards in such areas as war powers and the budget process. The legislative veto, however, is an overreaction which increases conflict between the branches of government. We need, instead, to focus on the future. By working together, we can restore trust and make the government more responsive and effective.

He welcomed Congressional oversight and encouraged Congress to keep working towards the constitutionally dictated separation of powers, no more and no less. Carter nevertheless maintained, “it is my view, and that of the Attorney General, that these legislative veto provisions are unconstitutional.”<sup>40</sup> Carter added that legislative vetoes

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<sup>39</sup> Press Release, Jimmy Carter to Congress of the United States, June 21, 1978, “Legislative Veto, 6/21/78-5/7/79” Folder, Box 107, Records of the Office of Congressional Liaison (Carter Administration), 1976-1981, Jimmy Carter Library. A formal copy of the message to Congress was printed, amongst other places, in the *Weekly Compilation of Presidential Documents*. See Jimmy Carter, Message, “Legislative Vetoes: Message to Congress, June 21, 1978”, *Weekly Compilation of Presidential Documents* Volume 14, number 25 (June 26, 1978): 1146-9.

<sup>40</sup> Press Release, Jimmy Carter to Congress of the United States, June 21, 1978, “Legislative Veto, 6/21/78-5/7/79” Folder, Box 107, Records of the Office of Congressional Liaison (Carter Administration), 1976-1981, Jimmy Carter Library. A formal copy of the message to Congress was printed, amongst other places, in the *Weekly Compilation of Presidential Documents*. See Jimmy Carter, Message, “Legislative



actually slow the pace of reform because they overburden an already full Congressional agenda.

Carter proposed a conciliatory and congenial “report-and-wait” alternative to pure compliance with legislative vetoes. Respecting Congress and the constitution, Carter offered solutions and alternatives, not just rejections and defiance.

I urge Congress to avoid including legislative veto provisions in legislation so that confrontations can be avoided. For areas where Congress feels special oversight of regulations or other actions is needed, I urge the adoption of “report-and-wait” provisions instead of legislative vetoes. Under such a provision, the Executive “reports” a proposed action to Congress and “waits” for a specified period before putting it into effect. This waiting period permits a dialogue with Congress to work out disagreements and gives Congress the opportunity to pass legislation, subject to my veto, to block or change the Executive action. Legislation establishing “report-and-wait” procedures has been introduced. Even these procedures consume resources and cause delays, however, so they should be used sparingly.

Carter came to office to restore the balance of power. True to his nature and his campaign promises, Carters’ message to Congress reflected his overall persona and larger political message. Even when Carter felt the need to send a stern and formal message to Congress, the thirty-ninth President made every effort to do so in a way that conveyed dignity and respect.<sup>41</sup>

The day after the message went to Congress, Neustadt told Eizenstat to follow up to help prevent a row with Congress over the Message. This included communication with the Congressional Liaison, Frank Moore, and a media blitz, trying to get articles

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Vetoes: Message to Congress, June 21, 1978”, *Weekly Compilation of Presidential Documents* Volume 14, number 25 (June 26, 1978): 1146-9.

<sup>41</sup> For both quotes see Press Release, Jimmy Carter to Congress of the United States, June 21, 1978, “Legislative Veto, 6/21/78-5/7/79” Folder, Box 107, Records of the Office of Congressional Liaison (Carter Administration), 1976-1981, Jimmy Carter Library. A formal copy of the message to Congress was printed, amongst other places, in the *Weekly Compilation of Presidential Document*. See Jimmy Carter, Message, “Legislative Vetoes: Message to Congress, June 21, 1978”, *Weekly Compilation of Presidential Documents* Volume 14, number 25 (June 26, 1978): 1146-9.

printed in the *Washington Post* or the *New York Times* that crystallized Carter's perspective and downplayed any friction. He also suggested that Eizenstat attend the Friday legislative liaison meeting to urge lobbyists to discuss the issue with the Representatives they work with. Neustadt added, "A massive lobbying effort is needed because the issue will be decided on the House floor."<sup>42</sup> Neustadt's follow-up campaign won an early victory when Speaker of the House Tip O'Neill (D-MA) concurred with Carter that Congress overstepped its bounds in its pursuit of legislative veto provisions. Responding to Carter's message to Congress, the leader of the House of Representatives did not officially endorse Carter's message but he conceded that in some instances, Congress overstepped their rights.<sup>43</sup>

Too savvy to leave Carter's position to sell itself, White House staff took extra precautions to make sure the messages' meaning resonated clearly and to the right people. Neustadt knew he needed to win the perception battle in order to win the legislative veto war. However, despite Carter's message and the best efforts of Neustadt and other White House staff, legislative veto oversight clauses persisted in Congress prompting the Administration to resort to more drastic tactics.

#### GEPA (General Education Provisions Act):

Historian Barbara Craig framed the climatic legislative veto showdown of the Carter years in terms of the "dubious" position the Department of Education (DOE) –

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<sup>42</sup> Memorandum, Rick Neustadt to Stu Eizenstat, June 22, 1978, "Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>43</sup> Article, "O'Neil Backs President in Row Over Veto Rights", [June 23, 1978], "Legislative Veto – Presidential Statement, 6/28/78, (6/6/78 – 6/29/78), 06/06/1978 – 06/29/1978" Folder, Box 44, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; "O'Neil Backs President in Row Over Veto Rights," *New York Times* (June 23, 1978), A8.

formerly the Office of Education (OE) – holds in legislative veto history. The first federal agency to be subjected to the Congressional oversight of a legislative veto, by 1980 the cordial debate Education policy oversight devolved into defiance and a political showdown. Carter tried to be amicable and steer Congress towards alternate oversight solutions but when members remained adamant about exercising legislative veto power, Carter and his administration reacted with stronger tactics. On May 4, 1980 the newly created DOE officially assumed control of education regulations (including those dictated by GEPA), and just two weeks later Congress vetoed four of the new agencies regulations (two on May 15 and two on May 21).<sup>44</sup>

On June 5, 1980, Attorney General Benjamin Civiletti sent a memorandum to the newly empowered Secretary of Education Shirley Hufstedler. Her office had only been created the previous year and she had assumed bureaucratic control a month earlier.<sup>45</sup> Despite the recent Congressional vetoes of GEPA regulations, and for a long list of logistic and constitutional reasons Civiletti concluded that Hufstedler was “entitled to implement the regulations in question in spite of Congress’ disapproval.” The GEPA, as amended, gave Congress the right to disapprove (veto) federal regulations. In this case, Congress revoked four federal regulations. The head of the Department of Justice explained to the head of the Department of Education why it would be administration policy to respectfully but willfully ignore the Congressional action.

The Attorney General cited the same constitutional arguments presented previously by White House Staff and discussed elsewhere in this chapter. Civiletti told

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<sup>44</sup> Craig, *The Legislative Veto*, chapter four. See especially pages 67, 71, 86-91; Korn, chapter five.

<sup>45</sup> Shirley Hufstedler was new her post but her name had been kicked around as a possible appointee to the Carter administration since 1976. See “Jimmy’s Talent File”, *Time* (December 20, 1976), 12-14.

Hufstedler that the administration did not recognize this right as legitimate and hence the regulations should still be treated as in full effect. The Attorney General told the Secretary of Education to disavow the Congressional decision. Respecting the balance of power is not always the same as respecting Congress. In this case Congress had stretched their power too far. Civiletti added,

...to regard these concurrent resolutions as legally binding would impair the executive's constitutional role and might well foreclose effective judicial challenge to their constitutionality. More important, I believe that your recognition of these concurrent resolutions as binding would constitute an abdication of the responsibility of the executive branch, to preserve the integrity of its functions against constitutional encroachment.

Despite previous cordial efforts by Carter to pursue alternative oversight mechanisms and the fact that there were cases currently under review challenging the constitutionality of the legislative veto, Congress insisted on continuing to exercise a power it knew would cause political strife. On this issue members of Congress placed a desire to check Presidential power above a desire for a balance of power. Unwilling to compromise and rather than wait for judicial rulings, Congress proceeded with its questionable measures.<sup>46</sup>

The next day, Hufstedler sent a memorandum to her assistant secretaries regarding recent Congressional activity and forwarded the letter she received from the Attorney General. She informed her assistants that despite Congressional disapproval of Education Department regulations, in concurrence with the President and the Attorney General, said regulations will still be treated as "final and effective rules". Hufstedler tried to balance this harsh stance towards Congress by adding that despite this situation,

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<sup>46</sup> Memorandum, Benjamin R. Civiletti to Shirley M. Hufstedler, June 5, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library. For discussion of Hufstedler's promotion see Carter, 60, 76.

the Executive Branch and the Education Department would continue to respect Congressional opinion when said input referenced flaws or imperfections in Education policy.

Civiletti's memo read like a history lesson on the legislative veto and might be perceived as rude had Hufstedler not been so recently appointed to her new post. However, the clear and certain terms by which Hufstedler was told to ignore the Congressional action mattered more than the memorandum's tone. These sentiments were reiterated in the July 1980 edition of *Federal Focus*, the "interpretative report for school administrators on federal education programs", reiterating the general statement made by the Attorney General that no matter their form, all legislative vetoes are unconstitutional. Quoting the memo to Hufstedler, "I believe that your recognition of these concurrent resolutions as legally binding would constitute an abdication of the responsibility of the Executive Branch." If actions are not subject to Presidential approval or veto then they are outside the boundaries of the constitution.<sup>47</sup>

Later that month, Hufstedler sent a memo to the President laying out the course of action she – in concert with Cutler and Civiletti – believed best. She noted that when she followed the Attorney Generals' recommendation to ignore the Congressional decisions she received much criticism for an "arrogant defiance of legitimate Congressional powers." However, while she did not propose any action that would undermine the administration's position in the fight with Congress, she suggested middle ground on the

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<sup>47</sup> Memorandum, Shirley M. Hufstedler to F. James Rutherford, et al, June 6, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library; Memorandum, Benjamin R. Civiletti to Shirley M. Hufstedler, June 5, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library; Article, "Turf Wars: Ed Strikes Back," Jule 1980, "Legislative Veto" Folder, Box 16, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library; "Turf Wars: Ed Strikes Back," *Federal Focus* 5:7 (July 1980), 1-8.

affected DOE regulations that “reflect our sensitivity to specific Congressional objections to the technical features of these ... regulations.” Her suggestions respected Congressional input but in no case overtly deferred to it. Carter approved.<sup>48</sup>

This conflict came to a face-to-face showdown on September 18, 1980 when the House Committee on Education and Labor, Subcommittee on Elementary, Secondary, and Vocational Education held a hearing to vet all sides of this confrontation. The Subcommittee convened the entire hearing solely to discuss this application of GEPA section 431. As written, it allowed Congress to “disapprove final regulations for education programs, within 45 days of publication and transmission, if Congress finds they are inconsistent with the authorizing statute.” Specifically the Subcommittee convened the hearing to discuss the four disapproved regulations that had come into controversy. The members of the Subcommittee sought to “provide a forum for a discussion of the status of these four specific sets of regulations and also the general issue of Congressional disapproval of regulations.” Though only a day long, it provided ample time for all sides to voice their opinion and answer to Congressional inquiry.<sup>49</sup>

Representative William Goodling (R-PA) – a member elected in the wake of Watergate like Elliot Levitas – asked Department of Justice Assistant Attorney General John M. Harmon if the Attorney General and the President were “seeking a court test”. Harmon replied that there was a case – with Congressional representation – currently awaiting verdict from the Ninth Circuit. He clarified that the administration sought a

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<sup>48</sup> Memorandum, Shirley M. Hufstедler to the President, [July 21, 1980], “Legislative Veto” Folder, Box 16, Records of the Domestic Policy Staff (Carter Administration), 1976-1981, Jimmy Carter Library.

<sup>49</sup> Congress, House, Committee on Education and Labor, Subcommittee on Elementary, Secondary, and Vocational Education, Oversight Hearing on Congressional Disapproval of Education Regulations, 96<sup>th</sup> Congress, 2<sup>nd</sup> Session, September 18, 1980, Hearing, pages 1-2.

ruling but not a confrontation.<sup>50</sup> Representative Arlen Erdahl (R-MN) – the freshman member of Congress continued, asking Harmon if the administration sought to deny Congressional power. “Unless I misheard you, you seem to say that since Congress delegated the power, we do not have the right to come back and reclaim it. In layman’s terms, once the cat has escaped from the bag, we in the Congress can’t stuff it back in again.” Harmon replied that the administration recognized the Congressional power to reconsider and redo legislation but that this power is restricted to constitutional means including, amongst other things, presentment to the President of the United States for approval. He argued that the President and his delegate – in this case the Secretary of Education – have an obligation to apply the law as passed by Congress. If an individual disagrees with a law they can take the Secretary to court and if the Congress disagrees with a law they can write new superseding laws. He concluded that those are the only legitimate ways to oppose the Secretary’s actions.

Despite Harmon’s frank and crisp answer, the elder statesman, Representative William Ford (D-MI) disagreed with this interpretation, arguing the legislative veto was only another check in the founder’s vision of checks and balances.

You are fascinating me with that kind of argument. What you’re saying would sound really great at a cocktail party. It doesn’t make any sense in this city, because a lot of things have happened since Mr. Madison did his writing. The balance of power between the branches of government exists with checks.

Ford argued that Harmon erred when he and the President believed that Levitas “had invented something new” when he presented the legislative veto as a clause in Congressional legislation. Ultimately Ford argued that Harmon, Civiletti and Carter were

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<sup>50</sup> Ibid, 3-23. For Goodling’s question see page 23.

all misinterpreting the constitution and “what Madison really meant.” He argued that the provision sought to check executive regulations that distort the Congressional intent of legislation, a practice he noted, that happened all too often during the Nixon administration.<sup>51</sup>

Representative Ford conceded that the GEPA legislative veto manifested as a reaction to Nixon’s imperial tendencies. “We threw the regulation review amendment at a President when he was under threat of being impeached and he accepted it when he was asserting executive privilege for everything you could possibly imagine.” He argued that since the law took effect, three succeeding Congresses came to accept the rule as their own – and not just as “Mr. Levitas’ baby”. Ford further purported that the DOJ had long since accepted the clause before this fight. Ford then compared oversight regulation (such as legislative vetoes) to atomic weapons. He argued that in both cases the threat of use served as enough of a deterrent. He argued the clauses were designed to prevent conflict rather than incite it. However he felt Carter’s resistance to legislative vetoes was inconsistent with his larger “good government” approach. He alleged that the President who campaigned on a platform of good government and federal comity had now devolved to picking fights that eschewed the opposite image.<sup>52</sup>

Following the DOJ case made by Harmon, Mr. Legislative Veto himself, Representative Elliot Levitas (D-GA) issued a prepared statement and then testified.

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<sup>51</sup> Ibid, 23-5. At the time of the inquiry Ford was serving in his eighth Congress. He would serve in seven more for a total of fifteen before retiring. For the implications and limitations for defining oneself as a freshman Representative (such as in Erdahl’s case), see Hall, op cit.

<sup>52</sup> Ibid, 26, 41. Ford specifically referenced an incident in June 1978 where Carter investigated use of the tennis courts. Carter sought to minimize the trappings of government at every turn involve himself with all aspects of his office. At times this even included reviewing the schedule for which staffed booked the tennis courts at Camp David during Presidential visits. For further description of Carter’s tennis courts campaign, see for example James Fallows, “The Passionless Presidency,” *Atlantic Monthly* 243:5 (May 1979), 38.



Levitas thanked the committee for the opportunity to speak, noting that he had previously spoken often with the Attorney General, the President, and Harmon. He also commended Ford and his committee for taking the lead in “the practical utilization of this mechanism”. Levitas proceeded to deny the premise of the Carter administration’s constitutional question. He argued that issue was not one of constitutionality or legality. He argued that since a President had signed the clause into law it was not the prerogative of any President – the same or future – to decide not to obey said law.<sup>53</sup>

The final major witness provided a rejoinder for the White House Position. Secretary of Education, Shirley Hufstедler issued a statement and then spoke extemporaneously on the subject. Her interrogation revolved mostly around her willingness to work with Congress and ways to avoid future confrontations. The conversations dealt with the legislative veto but they dealt more with the general understanding of the DOE relationship with the Committee on Education. Hufstедler responded to the claim that this issue was dropped on her doorstep.

It would have been a fine and happy day if I hadn’t been confronted within 10 days after the Department was formed, finding myself in the middle of a long-time constitutional match, to use – and I don’t mean it at all frivolously – I was just flying by and suddenly found out I was the birdie in the middle of a constitutional badminton game which is a little unnerving.<sup>54</sup>

Though technically the defiance was her action, and though she supported Carter’s position, her testimony minimized her role in the imbroglio. She framed the debate as a battle between Congress and the White House (via the DOJ), where the DOE was just a means to the fight.

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<sup>53</sup> Ibid, 27-37.

<sup>54</sup> Ibid, 64-79, 82. For her interrogation see pages 79-91. For the quote see page 82.

After the GEPA showdown, Hufstedler continued to follow White House policy with regard to Congressional oversight of DOE regulations. For all newly signed regulations, administration policy followed the report-and-wait model. On November 12, DOE General Counsel Betsy Levin and White House Counsel to the President Lloyd N. Cutler informed Secretary Hufstedler regarding two legislative veto provisions Carter signed into law with the Education Amendments [Act] of 1980. Levin and Cutler informed the secretary that as per Carter's message to Congress, these clauses should be treated as "report-and-wait" provisions. The next week, Chairman of the Committee on Education and Labor's Subcommittee on Elementary, Secondary, and Vocational Education, Representative Carl Perkins (D-KY) sent a letter to Hufstedler commending her departments' progress in improving Education regulations. However he still had some suggestions to offer. Hufstedler replied to Perkins, the same Chairman who had presided over the GEPA hearings two months earlier, assuring the Congressman that her department would consider his suggestions thoroughly and reply to him when they transmitted the regulations for publication.<sup>55</sup>

However, while Hufstedler and Perkins were having this cordial exchange Representative Ken Kramer (R-CO) issued a statement regarding a lawsuit that was about to be filed against Hufstedler. He and his co-plaintiffs filed suit against Hufstedler because of her disregard and failure to comply with the GEPA regulation vetoes. The

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<sup>55</sup> Note, Betsy Levin to Shirley M. Hufstedler, November 12, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library; Note, Lloyd N. Cutler to Shirley M. Hufstedler, October 16, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library; Letter, Shirley M. Hufstedler to Carl D. Perkins, December 16, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library; Letter, Carl D. Perkins to Shirley M. Hufstedler, November 20, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstedler Collection, Jimmy Carter Library.

suit sought judgment on the constitutionality of the legislative veto. Kramer, seventeen other Representatives and four Senators brought suit against her for her actions. Seeking declaratory and injunctive relief they hoped to force compliance. Though the battle lines on the legislative veto debate were basically drawn on partisan lines, the logic and arguments put forth were often based in sound logic rather than just allegiance and standardized talking points. However, the court action bore none of the redeeming hallmarks of logical argument; it was based squarely in the realm of partisan politicking and election year shenanigans. Twenty of twenty-two plaintiffs were Republican (freshman Senator Carl Levin (D-MI) and freshman Representative Larry McDonald (D-GA) being the only Democrats), making the gesture seem more akin to an election year ploy than a legitimate challenge (especially since the suit was later withdrawn). Beyond Carter's impending challenge from California Governor Ronald Reagan, all of the Representatives faced re-election as well.<sup>56</sup> Reduced to stunts and gimmicks, members of Congress had exhausted all available political capital on the issue. Unable to outflank Carter on the merits of the device, some members resorted to weaker tactics.

### Conclusion:

Carter's tenure in office marked a major shift in the history of the legislative veto.

When Herbert Hoover accepted the measure, he had no idea how it would proliferate in

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<sup>56</sup> Statement, Ken Kramer, December 12, 1980, "Legislative Veto Issue (2), 04/28/1980 – 12/12/1980" Folder, Box 5, Shirley M. Hufstедler Collection, Jimmy Carter Library. Kramer's co-plaintiffs were Representatives Trent Lott (R-MS), Larry Hopkins (R-KY), John Ashbrook (R-OH), Robert Lagomarsino (R-CA), Tennyson Guyer (R-OH), L.A. (Skip) Bafalis (R-FL), Thomas Petri (R-WI), Jon Hinson (R-MS), John Erlenborn (R-IL), Edward Derwinski (R-IL), Willis Gradison (R-OH), Manual Lujan (R-NM), Robert Walker (R-PA), Larry McDonald (D-GA), Daniel Crane (R-IL), W. Henson Moore (R-LA), James M. Collins (R-TX), and Senators William Armstrong (R-CO), Carl Levin (D-MI), Pete Domenici (R-NM), and Barry Goldwater (R-AZ); Craig, *The Legislative Veto*, 90-91. For a discussion of the seemingly ubiquitous re-election goal of members of Congress see David Mayhew, *Congress: the Electoral Connection*, (New Haven: Yale University Press, 1974).

the future. Though previous Presidents had voiced their opinion of the measure, none had been as adamant or forthright as Carter. His implementation of report-and-wait interpretations, coupled with his formal message to Congress and the respectful defiance by his staff constituted a turning point in the legislative veto history. Carter tried polite and respectful tactics but when they proved insufficient to deter the staunch proponents of legislative vetoes, the thirty-ninth President shifted to more aggressive measures. Contrary to the negative historical image often imposed on Carter (discussed in chapter one), describing him and Gerald Ford as failures and place-holders between the strong leaders of Richard Nixon and Ronald Reagan, Carter's fight against the legislative veto proves he was a strong President in his own right but that his power came from putting federal comity first; putting the cooperative presidency over the imperial one. Carter proved Presidents can lead through cooperation and not resort to positions of arrogance.

One of the clearest legacies of Carter's action and major proofs of his success manifested in the Supreme Court case *Immigration and Naturalization Service v. Chadha* (1983). In 1966, Jagdish Chadha entered the United States on a student visa. In 1972, when the visa expired Chadha remained in America illegally. When ordered to leave the country, he appealed to the Immigration Court for a stay in his deportation. In 1974, after an Immigration and Naturalization Service (INS) inquiry, a judge ordered Chadha's deportation suspended. However, the immigration law, as written, gave Congress legislative veto authority over the immigration court and hence the power to reinstate Chadha's deportation. On December 12, 1975, Chairman of the Judiciary Subcommittee on Immigration, Citizenship, and International Law, Representative Joshua Eilberg (D-PA), introduced H Res 926, a "resolution opposing the granting of permanent residence

in the United States to [six] aliens,” including Chadha. Approved by the House Committee on the Judiciary, it returned to the House where it was passed by consent.<sup>57</sup>

Chadha appealed the legislative veto of the INS decision on grounds that such Congressional action is unconstitutional. His case rested on the logic that his deportation (or more accurately the legislative veto of the stay in his deportation hearing) constituted an unconstitutional encroachment of power by Congress on the jurisdiction of the executive. Carter’s administration followed and supported Chadha’s case as he appealed defeats until he reached the penultimate victory before the Supreme Court, where by a vote of seven to two, the highest court in the land agreed with his and Carter’s position. On June 23, 1983, Chief Justice Warren Burger affirmed Chadha’s right to stay in the United States seventeen years after he first entered the country.

The Court’s decision had implications far greater and broader than the fate of Jagdish Chadha. The Court struck down the legislative veto, a tool used by Congresses since the presidency of Franklin Roosevelt but one that had come under intense scrutiny in recent years. Bruised and marginalized by Lyndon Johnson and Richard Nixon, members of Congress in the late 1970s acted with a conviction to make sure no President ever amassed that much power again. To some, such as Representative Elliot Levitas (D-GA), this included provisions – such as legislative vetoes – that checked areas of law and the constitution where the President and the executive branch otherwise had sovereign jurisdiction. However, Jimmy Carter made great efforts to move Congressional oversight

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<sup>57</sup> *Immigration and Naturalization Service v. Chadha, et al.* 462 US 919 (1983). See also, Barbara Hinkson Craig, *Chadha*, chapter 1; Martha Liebler Gibson, chapter 3; *Congressional Record*, 94<sup>th</sup> Congress, 1<sup>st</sup> Session, 1975, Volume 121, part 3:40247, 40800.

elsewhere, arguing that legislative vetoes hurt government and violate separation of power, therefore doing more harm than good.<sup>58</sup>

Though this ruling came during Ronald Reagan's presidency, the major showdown over the device occurred during Carter's time in office. Despite the gestures of Ford and the presidents before him, the major battle occurred on Carter's watch. While the Court's ruling formally struck down legislative vetoes, informal oversight mechanisms – *de facto* legislative vetoes – persisted in some instances. However, these mechanisms operated in ways that respected the constitution and the Presidency. Though to lawyers and political scientists Chadha's name may be more ubiquitous with the legislative veto, historians should heed the impact Carter had on the device's legacy.<sup>59</sup>

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<sup>58</sup> Barbara Hinkson Craig, *Chadha*, chapter 7 and epilogue; Barbara Hinkson Craig, *The Legislative Veto*, epilogue.

<sup>59</sup> Oleczek, 268.

## CHAPTER 7: Conclusion

Even after George W. Bush left office, accusations of nefarious actions undertaken while he was president did not cease. As Americans looked to Barack Obama to reconcile the nation, some were not ready to forget about the man who served as President before him. Pundits in Washington and some Americans believe Bush's tenure in office constituted a return to an imperial presidency. From questions over unitary executive theory to executive privilege, to Department of Justice firings to the use of torture in Guantanamo Bay, Bush's two terms were filled with scandal and moments where he sought to expand presidential power. Barack Obama's ascension to the presidency is historic because of race but also because of the legacy of presidential power he inherited. His campaign of hope and change served as notice that while he would inherit the presidency from Bush, he would not be an imperial president like Bush.

Thirty-five years ago, two presidents faced a similar situation. Presidents Gerald Ford and Jimmy Carter also entered office after a unique political turn spurred by an over-zealous president who expanded presidential power. Ford and Carter took office after the twin scandals of the Vietnam War and Watergate. The first strained American patience and faith in government, as a limited foreign engagement devolved into a quagmire with no clear exit strategy and dwindling chances for victory. The later scandal fractured public faith in government further as *Washington Post* reporters Bob Woodward and Carl Bernstein uncovered a botched attempt by Richard Nixon's operatives ('Plumbers') to repair surveillance equipment on the Democratic National Committee Headquarters during the 1972 election cycle. By the time Richard Nixon

resigned from office on August 9, 1974 – the first president to do so – he and the presidents before him had tarnished the image of the office and sullied the reputation of those who served in it. Nixon and those before him had given the White House a black eye.

Gerald Ford took the oath of office at 12:00pm on August 9, 1974. With that ceremony he became the first president to assume office by the newly ratified twenty-fifth amendment and the first president to take office having not been vetted as a presidential or vice-presidential candidate in the previous election cycle. Fred Greenstein notes that for this reason his tenure in office is often defined by these circumstances.

The 895-day presidency of Gerard R. Ford is generally viewed as interregnum, but it offers valuable insights into the problems of presidential leadership, if only because Ford had to respond to the challenge of being the first chief executive who was elected neither president nor vice president.<sup>1</sup>

I argue in this dissertation that Ford's importance stems not from the circumstances that brought him to office but the way he conducted himself once he got there. He and Jimmy Carter tackled the daunting task of restoring Americans' faith in their leader and credibility to the office in which they served. Ford began this process by assuage American frustrations and trying to move past the contentious issues. He pardoned Richard Nixon so that the "wars of Watergate" could end.<sup>2</sup>

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<sup>1</sup> Fred I. Greenstein, *The Presidential Difference: Leadership Style From FDR to Clinton*, (New York: Martin Kessler Books, 2000), 112.

<sup>2</sup> The phrase "wars of Watergate" is an allusion to the definitive book recounting the ordeal up to and through Ford's pardon. See Stanley I. Kutler, *The Wars of Watergate: The Last Crisis of Richard Nixon*, (New York: A. A. Knopf, 1990). Richard Nixon later reflected on the Watergate scandal in much saltier terms. "Nineteen seventy-three was a great time. We had a week before the news of the cover-up business came to me, and then the Watergate bullshit came along. Imagine – that silliness!" For the quote see Monica Crowley, *Nixon Off the Record*, (New York: Random House, 1996), 149. For analysis of the



Two years later, Ford faced his first presidential election and while he squared off against Democratic Georgia Governor Jimmy Carter, Carter ran his campaign against Richard Nixon. Ford's act of mercy – his pardon – doomed his political stock in the next election but it, along with other gestures of reconciliation, helped the presidency recede from apocalypse. Campaigning on his outsider status and squeaky clean peanut farmer image Jimmy Carter pledged to further reconcile the nation.<sup>3</sup> Both presidencies carried their own public face and relations in a way that was above reproach and conveyed dignity and respect for the public. They extended this same courtesy to the other branches of government, especially Congress. Past presidents had developed a presidential hubris, equating election with apotheosis. Ford and Carter respected the constitutional rights and duties of Congress. They knew that the founders did not expect cooperation but they did envision a modicum of respect.

The phrase “imperial presidency” comes from the title and subject of Arthur Schlesinger's seminal 1973 book. He argued that the gradual expansion of presidential power since the nation's inception left a plaque of monarchy on the White House. “Nixon's presidency was not an aberration but a culmination... [which] carried to reckless extremes a compulsion toward presidential power.” However, in addition to proscribing the problem, Schlesinger alluded to the solution. Schlesinger called for strong presidents within the constitution; he should be “neither a czar nor a puppet” and

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quote, see James MacGregor Burns, *Running Alone: Presidential Leadership – JFK to Bush II: Why it Has Failed and How We Can Fix It*, (New York: Basic Books, 2006), 105. Also, while there is speculation that Ford's nomination to the vacant Vice-Presidential office after Spiro Agnew's resignation was contingent upon his willingness to later pardon Nixon, there is no credible evidence to this fact.

<sup>3</sup> Carter's farming roots and populist style was embodied in the title of his aircraft. While Ford flew around the nation campaigning in Air Force One, Carter campaigned in a jet named Peanut One. See M. B. Darwin, “Of Peanuts and Politicians”, *American Speech* 53:2 (Summer 1978), 166; Yanek Mieczkowski, *Gerald Ford and the Challenges of the 1970s*, (Lexington: University of Kentucky Press, 2005), 321.

certainly “no larger than the law.”<sup>4</sup> I have presented evidence that Ford and Carter shaped their presidencies along these lines of solvency.

Ford and Carter acted to reconcile the nation in three specific ways. First, both men acted to restore domestic comity, restoring cordiality and respect amongst the members of government. Second, both presidents worked to restore the separation of powers and boundaries of power between the president and congress. Third, both presidents polished the public image of the president. After the twin traumas of Vietnam and Watergate, the image and reputation of the American presidency left much to be desired. Ford and Carter stepped in at a critical juncture and restored the dignity and prestige of the oval office that the founders intended.

Chapters two and three presented Ford’s treatment of the War Powers Resolution. Enacted in 1973, members of Congress, still fuming over the revelations crystallized by the Pentagon Papers that the Gulf of Tonkin Resolution was a sham, sought to prevent future Presidents from starting future Vietnam Wars. The first president to deal with this landmark piece of legislation, Ford’s attitude and acquiescence reflected his efforts to heal the nation. Though Ford voted against the measure twice as a Congressman, as President he respected the law and Congress enforcing it. However, since Ford left office the War Power Resolution’s intent has been lost in its unintended consequences. As I quoted in chapter three, historian Arthur Schlesinger concluded, “Certainly the War Powers Resolution, the most publicized shackle of all, turned out to be a toy handcuff... The resolution began by yielding the president what he had heretofore lacked: statutory

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<sup>4</sup> Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973), xxviii.

authority to begin wars without congressional consent.”<sup>5</sup> Many conflicts have since begun under the statutory consent of the War Powers Resolution; none reflect the intent of the legislation.

Where chapters two and three spoke of Ford’s actions with regard to one specific issue and legislation, chapters four and five continue expand into other realms of Ford and Carter’s policies. Specifically, these chapters address draft amnesty and imperial trappings, two issues not often juxtaposed to the legislative juggernaut of the War Powers Resolution. However, like its more popular counterpart, all these issues presented opportunities for Ford and Carter to act in a manner that counteracted the imagery of an imperial presidency. In light of Iran Contra, the war in Iraq, and other foreign engagements in the past three decades, the War Powers Resolution often receives the lion share of historical attention. However, amnesty and austerity represent key endeavors which begat short term results and symbolic value. Chapters four and five discuss some of the more symbolic gestures undertaken to heal the nation. Amnesty allowed draft resisters, be they right or wrong in their cause, to return home to their families. It also allowed one of the final chapters of the Vietnam War to be closed. Similarly, Carter’s austerity moves represented a notably public shift from Richard Nixon’s imperial White House guard uniforms and capital improvements scandals.

Chapter six returns to substantive and legislative issues, addressing Carter’s imbroglio with Congress over the use and abuse of legislative veto devices. While Carter sought at every turn to restore the separation of powers between the executive and the

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<sup>5</sup> Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973, 1989), 433-4. For similar arguments see Ann Van Wynen Thomas and A. J. Thomas, Jr., *The War-Making Powers of the President: Constitutional and International Law Aspects*, (Dallas: Southern Methodist University Press, 1982).

legislative branches, he did not plan to throw the baby out with the bathwater. He promoted a relationship that respected each branch but also the law and the constitution. He argued (and the Supreme Court would later affirm) that legislative vetoes represented an unconstitutional encroachment by the legislature on the executive. The same members who passed the War Powers Resolution fearing another Vietnam pressed for legislative vetoes to extend Congressional oversight into every corner of the federal bureaucracy. As Carter faced off against members of Congress – most notably Representative Elliot Levitas (D-GA) – he demonstrated that comity did not preclude leadership and cooperation did not mean acquiescence.

By the time Nixon left office, presidential power had reached such an extreme that some scholars argued nothing could stand in the way of a sitting president. Writing in 1970, George Reedy could not imagine Watergate but he knew it would take a scandal of that magnitude for the trends in presidential power to be rethought. “[N]o one is going to act to interfere with the presidential exercise of authority unless the president drools in public or announces on television that he is Alexander the Great. And even in these extreme cases, action would be taken hesitantly indeed.” Reedy later added, “So long as a man stands without peers at a summit of power, he can be removed from office only by what amounts to a *coup d’ état*.”<sup>6</sup>

One of the questions that I frequently asked while writing this dissertation and I suspect many others will ask after reading this is: how did Americans boomerang from thorough rejection of the imperial presidency of Richard Nixon to embracing the cowboy diplomacy of Ronald Reagan six years later? In later editions of the *Imperial Presidency*,

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<sup>6</sup> George E. Reedy, *The Twilight of the Presidency*, (New York: New American Library, 1970), 168, 179.

Schlesinger argued that Reagan spoke with a focus and led the nation with a direction that Carter never mastered.

Reagan understood, as Carter never did, that politics is ultimately an educational process. Where Carter gave the impression of regarding presidential speeches as disagreeable duties, to be rushed through as perfunctorily as possible, Reagan knew that the speech is the vital weapon of presidential leadership.<sup>7</sup>

Schlesinger argued that Carter never conveyed where he wanted to go, remaining mired in where he wanted to begin. Furthermore, he argued that Carter never fully explained why his direction for the nation was right.

*New York Times* reporter Steven Weisman presented a similar contrast when reflecting on Reagan's inauguration and closure to the Iran hostage crisis. When the hostages were released, Reagan noted that "Above all we must realize that no arsenal or no weapon in the arsenals of the world is so formidable as the will and moral courage of free men and women." He contrasted this with Carter's statement on his inaugural day, four years earlier, "even our great nation has its recognized limits." Though Weisman did not use the words, he implied that the shift in styles that came with the changing of the chief executive was a shift back to an imperial style presidency, with all the trappings and arrogance due to a monarch. Many scholars, political scientists, and journalists cited

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<sup>7</sup> Arthur Schlesinger, *The Imperial Presidency*, (Boston: Houghton Mifflin, 1973, 1989), 438. Similar arguments have been made elsewhere about Carter's style. See for example, Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush*, (Cambridge, Massachusetts: Belknap Press, 1993), 362, 364-5; Dilys M. Hill and Phil Williams, "Introduction" to *The Carter Years: The President and Policy Making*, ed. M. Glen Abernathy, Dilys M. Hill, and Phil Williams (London: Frances Pinter, 1984), 10. Even Carter had trouble restoring the trust and faith after Watergate and Vietnam. Halfway into his term as President, apprehensions lingered as to his job performance and his success at de-imperializing the presidency. See "The State of Jimmy Carter", *Time* (February 5, 1979), 10-11.

the Iran hostage crisis as one of the major factors in Regan's defeat of Carter. Imperial presidents may be bad, but Americans placed national security above leadership style.<sup>8</sup>

In the first decade of the Twenty-First century, Americans endured a President whom scholars and pundits have labeled as imperial. In 2001 George W. Bush took the oath of office with two of Ford's closest aides in his confidence. Dick Cheney served eight years as Bush's Vice-President and Donald Rumsfeld served as Secretary of Defense for most of Bush's time in office. On one hand, these experienced Washington insiders brought a modicum of structure and knowledge to the outsider Governor from Texas. However while serving under Ford, they saw first hand the battle for the balance of power. Ford tried to be congenial and cooperative with Congress, but the legislative branch did not reciprocate in kind. Scarred by the abuses of the Vietnam War and Watergate, Congress stymied Ford's presidential power. Cheney and Rumsfeld made it their business to never let another president they served be pushed around in that manner. Both served under George H. W. Bush but their attitudes towards presidential power manifested more clearly in their service to George W. Bush.<sup>9</sup>

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<sup>8</sup> Steven R. Weisman, "FREEZE SET ON HIRING; Californian Stresses Need to Restrict Government and Buoy Economy 'Government Is the Problem' Oldest to Assume Presidency Reagan Takes Oath of Office as 40th President Bush Takes Oath of Office Carter Gives Word on Hostages" *New York Times* (January 21, 1981), A1, B8. Dick Cheney developed his views on the presidency during his time in the Ford administration. As Ford's term waned and the campaign trail heated up, Dick Cheney played an increasingly important role in advising the president and choosing his speeches. However, even Cheney understood that "The President sets the style for this White House. And that's the way it should be." He was adamant that no one else should get in the President's way. He came to believe that Ford's cordial style was ineffective. See "Where Has All the Power Gone", *Time* (May 24, 1976), 18-23. For a more detailed account of Cheney's role in the Bush administration see for example Charlie Savage, *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy*, (New York: Little, Brown and Company, 2007); Barton Gellman, *Angler: The Cheney Vice-Presidency*, (New York: Penguin Press, 2008).

<sup>9</sup> The literature accusing George W. Bush of imperial presidencies is deep. See especially Savage, op cit.; Andrew Rudalevige, *The New Imperial Presidency: Renewing Presidential Power After Watergate*, (Ann Arbor: University of Michigan Press, 2005); James R. Silkenat and Mark R. Shulman, eds., *The Imperial Presidency and the Consequences of 9/11: Lawyers React to the Global War on Terrorism*, 2 vols.,

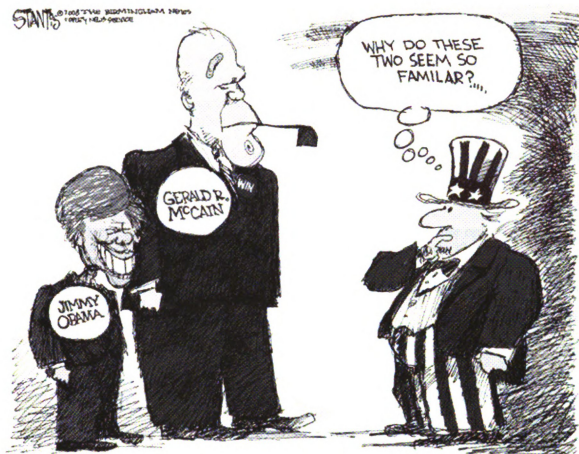
As I submit this dissertation, America is has just finished a presidential election cycle. Without a sitting President or Vice-President set to accept their party's nomination, Americans chose between two outsiders trying to frame their fresh look on the presidency as the right recipe for America. Both Senators John McCain (R-AZ) and Barack Obama (D-IL) understood the imperial nature – or least the imperial accusations – tied to the George W. Bush presidency. Each tried to campaign against Bush arguing – to varying degrees – that they would be different. Much like in 1976, both parties pledged to restore the reputation of the presidency.

I am not alone however, in drawing parallels between 1976 and 2008. Many pundits and politicians have drawn comical and logical lines from Jimmy Carter to Barack Obama and from Gerald Ford to John McCain. Senator Obama is likened to his Democratic predecessor because of his outsider status and visions of hope. He is also tied to Carter because of questions about his experience and reservations about his ability to lead. Meanwhile, McCain is compared to Ford because both presidents carry the stigma of throwaway candidates filling the ballot for a Republican Party bruised by the previous president. Like Ford, McCain has an impeccable record of service Congress but questions loom about his age and his tendency to bumble. The parallels are also evident in their prescriptions for the ailing economy. In 2008, like 1976, there is a need to “Whip Inflation Now” (though neither candidate's plan directly mirror's Ford's strategy of the same name. Recently, a Scott Stanis cartoon for *The Birmingham News* depicted this comparison.<sup>10</sup>

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(Westport, Connecticut: Praeger Security International, 2007).

<sup>10</sup> *The Birmingham News* (June 10, 2008), Available online at <http://townhall.com/cartoons/cartoonist/ScottStantis/2008/06/10>, (Accessed February 9, 2009).



Humor and analogies aside, Senator Obama prevailed and President Obama faces a task similar to the one Ford faced in 1974 and Carter faced in 1977. Just as Ford and Carter needed to act quickly and decisively to restore cooperation in government, respect for its members, and revive the public image of their office, so too would Barack Obama.<sup>11</sup> Their presidencies had its failures but they worked hard to reconcile the rift between the American people and White House and between Congress and the Presidency. As Abraham Lincoln did in the 1860s and as Barack Obama must do in 2009, Ford and Carter worked to bind the nation's wounds.

<sup>11</sup> As I submit this dissertation the parallels are only just starting to manifest. Obama is currently making moves to make the White House more transparent and restore public faith in the Presidency. See for example, "Vowing Transparency, Obama OKs Ethics Guidelines", *CNN* January 21, 2009. Available online at <http://edition.cnn.com/2009/POLITICS/01/21/obama.business/index.html>. Accessed January 21, 2009.



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