

Lecture by Congressman Les AuCoin
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WHO SENDS AMERICA TO WAR?

This is a different kind of academic course. I don't know of another like it. A Congressman's schedule on Capitol Hill is diced up into meetings that normally last 15 minutes, occasionally a haaallffff-hour, rarely 45 minutes. Into those slots are tucked meetings with, say, the Chief of Naval Operations, school board members from back home, Indian tribal councils, foreign diplomats, advocacy group representatives, businessmen, labor leaders, national intelligence officials, vacationing tourists, personal staff members, colleagues and a constant string of news reporters. The juxtapositions are often bizarre. I recall once meeting in my office with an arms control expert from the Soviet Embassy -- while out in my reception room, waiting next in line, were a Navy Admiral from the Defense Intelligence Agency and his uniformed entourage -- plus four women from the Oregon PTA!

When you run through that kind of schedule, with so many shifts in gears, the time for full discussion is rare. What is different about this course is that it puts me, a Congressman, and you, a student, together for one and a half hours once a month to probe critical issues of the day, not by means of sound bites but way of uninterrupted discussion. This is rarely possible between Members of Congress and the people they work with or represent but you and I are making it possible in this class. Together, we will try to see how America works -- examining the distinctions between democratic governance in theory and as it is practiced by real people with real passions, fears, prejudices, principles, cynicism, and idealism.

Each month, we will focus on a different issue or policy problem. I will give you the gift of candor. I'll try to strip the varnish and let you see the grain. If we are successful, we will shatter some treasured misconceptions about America's federal government and we will see where some public figures have served us well and where others have let us down. Candor need not to foster cynicism. It can and should promote the healthiest kind of idealism -- an idealism supported not by illusion but by a sure grasp of reality. An open-eyed idealism which, if put to good use, can protect and regenerate this great American experiment in self-government.

Self government. Consent of the governed. These are remarkable concepts. They are also in danger. This will be one of the recurring themes throughout the semester.

Nowhere is there more inherent tension between governors and the governed than in foreign policy, particularly the making of war. The most solemn act any government can ever take

is to send its citizens to war, to ask them to willingly make the supreme sacrifice, if necessary, in pursuit of its foreign policy.

The Founders gave the Congress, alone, the power to declare war. This is stated in Article I, Section 8. The fall edition of the chronicle called *The Constitution*, published by the Bicentennial Commission, described it well: "[The Framers's] grant of authority to Congress 'to declare' war almost certainly was intended to give Congress control over all involvement of American forces in combat except in response to sudden attack on this country."

The experience of the Framers was that monarchs, removed from the public, had a disposition for armed hostilities not shared by the governed. Thus, placing the power to declare war in the hands of the legislature, the branch closest to the people, would be a restraint against the rash spillage of American blood in battle. The idea was to make it hard to go to war, to avoid unnecessary wars caused, as Tom Paine put it, by "the pride of kings."

To the President, the Philadelphia Convention gave the powers of "commander-in-chief." This was stated in Article II, Section 2. So war powers were sharply divided: one article said that Congress would *initiate* war and the other said the commander-in-chief would control the *conduct* of it.

One consideration did introduce a small measure of ambiguity. In an emergency, where the vital interests of the country were threatened, the Founders empowered the President to commit forces to battle without prior Congressional approval. The record of the debate and the context of the times make it clear they were thinking in terms of a surprise attack on the country itself. But over the course of 200 years, as the Nation developed into a modern superpower with vital interests stretching across the globe, the powers of the commander-in-chief to act alone have come to be seen as applying to the protection of those foreign interests as well as responding to direct invasion. As a result, the Presidency subsumed more and more power for war-making. Presidents have dispatched forces abroad about 200 times since the founding of the Republic and Congress has passed only five declarations of war. In some instances, Congress did pass laws authorizing Presidents to take military action. But in most cases, Congress acquiesced to the President's actions, weakening itself as a partner in war-making.

Our tragic experience in Vietnam triggered a resurgent Congressional claim of authority and, in 1973, the House and Senate passed the War Powers Resolution over the veto of Richard Nixon. The late Senator Jacob Javits described this resolution as "the first legislation in our history to establish a statutory framework in which Congress and the President could function so as to give meaning to the Constitutional authority over war."

The War Powers Resolution does three key things:

- 1) It requires the President to consult with Congress in every possible instance before introducing forces into hostilities or imminent hostilities unless war has been declared or there is other Congressional authorization.
- 2) It also requires the President to report to Congress when forces are introduced into hostilities, imminent hostilities, or into a foreign territory while equipped for combat.
- 3) Once the report is submitted or is "required to be submitted" under Section 4 (a)(1), Congress has 60 to 90 days to authorize the continued use of forces. If it does not, the troops must be withdrawn.

With this background, consider the events in the Persian Gulf. The United States has unleashed the most powerful air campaign in military history and is poised for the largest tank and infantry battles in history. I find disturbing flaws in our policy. But I what I find more disturbing is President Bush's view that he, alone, has the power to wage this war -- notwithstanding the terms of the War Powers Resolution or Article I, Section 8 of the Constitution.

It is true that the President ultimately, belatedly, submitted a resolution of authorization to the Congress. But a principle is in dispute here. *In point of fact, the President asserts that he had no obligation to do so, that he could engage in this war alone -- and that he could do so even if Congress had disagreed with him!* Other Presidents, it's true, have also ignored the War Powers Resolution and every President who has lived with it -- Nixon, Ford, Carter, Reagan and Bush -- has believed it to be unconstitutional. But it has never been put to the constitutional test! And while it was disturbing when it was ignored in Grenada, Lebanon, Libya, and Panama, those cases are minor compared to the mobilization for all-out war in the Persian Gulf. In the Gulf, we have deployed almost half a million troops, a number comparable to troop levels of Vietnam.

The war plan being executed was actually designed against a *Soviet* invasion of the region! In this context, Presidential refusal to follow the law, under the War Powers Resolution, seems particularly egregious. Could there have been any doubt, from the first deployment of 18,000 paratroopers less than 100 miles from occupied Kuwait, that our forces had been introduced into hostilities -- or "*imminent hostilities?*" I visited those troops in September. I saw them exercising with live ammunition. I saw how jumpy they were. And I say they *were* facing imminent hostility. The Administration said they weren't -- but of course if the Administration had agreed with me, it would have lost its excuse for avoiding the War Powers Resolution. This reached the peak of absurdity when Defense Secretary Dick Cheney ordered imminent danger pay bonuses for the Desert Shield forces, but then refused to acknowledge that our troops were facing hostilities! He argued that the standard for danger pay was "broader" than the imminent hostilities language of the War Powers Resolution -- a distinction no legal scholar had detected, heretofore!

What we have here is a President who refused to follow the law. His Administration went to ridiculous lengths to define "hostilities" so as to avoid sending a report to Congress that would have triggered the War Powers Act and required an affirmative vote by Congress in order to maintain the troop deployment.

This presents a very practical problem with an important question. What recourse does the Congress have in such a case? One scholar from the George Washington University Law School, Professor Peter Raven-Hansen, said there are two choices: a cutoff of funds or impeachment. Theoretically that is correct.

But in the real world, are these really choices? Let's say you're a Congressman, returning from recess last August. The troops have been dispatched and a nervous world is on full alert. Are you actually going to introduce a resolution of *impeachment*? Are you really going to cut off funds when those forces, once deployed, are perhaps the only thing standing between Sadaam Hussein and the Saudi Arabian oil fields? Probably not. The urgency to stop further aggression will probably take precedence, over the question of law, as it did for Congress. *We'll deal with the law later, when the world is less dangerous, you tell yourself.*

That was in the fall, with two months remaining in the Congressional session.

After Congress adjourned for the elections, the Administration decided to suddenly escalate the mobilization, shift to an offensive strategy, and obtain the January 15 deadline from the U.N. Security Council for Iraq to withdraw from Kuwait, or else. The new Congress was in the limbo of have just been elected but not sworn in. Forty-three of us brought suit in Federal District Court to enjoin the President from starting a military offensive without prior authorization from the Congress. Trapped between Congressional sessions, it was all we could do.

The outcome of our suit illustrates how leery the courts are to referee fundamental disputes between the Executive and Legislature. Judge Harold Greene held that he could not enjoin the President in the absence of a majority of the members of the House and Senate joining the suit. Try accomplishing that when your colleagues are in recess and scattered across the globe! This brings up a point to remember: the courts have never stepped into disputes of this kind between Congress and the President.

So, then, the first realistic chance Members of Congress had to debate the issue was on January 10th, seven days after the 102nd Congress was sworn in, with the President having put America's prestige on the line with 400,000 troops in place or on their way, and with the United Nations deadline only five days off. The debate, in many ways, did credit to Congress by being free the usual slurs and petty partisanship. But I will go to my grave with the conviction that the timing of the vote gave the President the winning margin on the resolution to go to war.

What lessons can we draw from this? First, a crisis like that in the Persian Gulf shows that Presidents who are determined enough can make skillful use of the calendar to achieve their ends. Secondly, the ability of a President to "create facts" -- in this case, obtaining the U.N. resolution to "use any possible means" to liberate Kuwait and ordering troop movements -- gives the Presidency enormous *de facto* power beyond what the Constitution provides. And finally, there is the intangible power of the Presidency as a symbol of the country itself. If a President lays his prestige on the line at a time of crisis, a domestic political challenge to his prestige is easily misconstrued as a challenge to America's prestige and therefore rarely occurs.

This is extremely dangerous to representative democracy in two respects above all others. First, it denigrates Constitutional checks and balances that protect the consent of the governed in the conduct of foreign policy. Secondly, it encourages Executive arrogance that can become truly threatening to the most basic concepts of democracy, including the principle of the rule of law.

Watergate is an example of the latter. "But," you might say, "Watergate was a quirk of history: the system took care of it by naming the President an "unindicted co-conspirator" and forcing him to resign before he was impeached and convicted." Ah, but you are wrong!

Only 11 years later, the Iran-Contra Affair exploded. Here was a case of Ronald Reagan and his administration *illegally* soliciting third countries to financially support the Contra Army in Nicaragua and then *unlawfully* selling arms to Iran, a terrorist state, and using the profits to *illegally* fund and equip the Contras. Each act was in direct violation of absolute prohibitions placed in law -- including the Boland Amendment, which banned direct or indirect support to the Contras.

Last November, Bill Moyers did a program in his PBS series, *Frontline*, which used the Freedom of Information Act to gain access to documents and evidence that the special Congressional committee of inquiry did not bother to examine. It showed how men in the

administration of yet another determined President, the ideologically driven Ronald Reagan, financed and directed a secret war against the Sandinistas for at least a year -- wholly outside of the law and in defiance of the will of Congress. Moyers shows that when the truth began to come out, Colonel Oliver North, Attorney General Ed Meese, and National Security advisers Bud MacFarland and William Poindexter lied to Congress and the public, covered up the crime, and permitted potentially impeachable evidence against President Reagan to be destroyed by Oliver North with his paper shredder.

This was an American foreign policy known only to a few men in the White House. A war the public and Congress opposed and believed had been banned was actually being run out of the White House. No checks, no balances, no rule of law, no consent of the governed.

Here is what Bud MacFarland, the man who served at the time as Ronald Reagan's National Security adviser told Bill Moyers: *"This was a matter of the President going on with a very strong will to do what he wanted to do."* One member of the committee of inquiry, Senator Warren Rudman, described it this way: *"Here was a case where the Congress' absolute power to fund the foreign policy of America was subverted by a White House that was determined to do something else."* Moyers, himself, said: *"[It] was, in effect, a coup."*

What do you think about that? Does it make you *feel* anything? Think back to the heyday of Oliver North during the Iran-Contra hearings on Capitol Hill. Do you remember being taken with him? If you were, you had lots of company. The public was so enamored of a resolute man in uniform, a white knight, that Ollie North T-shirts were the rage. Polls gave him a huge approval rating. He became a kind of folk hero, much more charismatic than those tedious members of the Congressional investigating committee, feebly trying to lay a glove on him. Today Oliver North is still on the lecture circuit at \$15-\$20,000 a speech.

It's a case study in just how fragile democracy can be.

This class *must* see this Bill Moyers program or read the transcript. It is entitled "High Crimes and Misdemeanors."

Are we seeing a similar disregard for Constitutional checks and balances in the War against Iraq that President Bush and General Powell are leading? Though hardly as chilling as the Iran-Contra "enterprise," the Gulf Crisis from the buildup through the breakout of the war itself, was marked by a disregard for the power of Congress, in the name of the people, to decide questions of war or peace. Military censorship has been imposed to such a strict degree that the ability of a free people to make informed decisions about our leaders' management of the war has been seriously compromised. And if the calendar hadn't been manipulated, if the President had asked for "stand-by" authority *at the beginning* to go to war, I am convinced that economic sanctions would be our weapons of choice in the Gulf today, not the Marines.

The one thing you can say about policies born of Executive arrogance is that they are seldom successful. Usually, they lead to catastrophe. It was the case in the Iran-Contra Affair, in Watergate, in Vietnam, and I fear that the Gulf War may have an equally disastrous ending, although I pray to God that it won't.

Let me discuss the flaws I saw in our Gulf policy when I voted against giving the President authority to go to war.

I am not a pacifist; I am an Army veteran who volunteered. I simply subscribe to the view that war is a foreign policy instrument of last resort. This war wasn't a last resort. It was an early option, chosen sometime in the fall for reasons that may never be clearly known, and mobilized after the elections were over. (*By the way, why wouldn't it have been proper to have set this policy out for debate during the elections and to have trusted a free people to have made an informed decision on a policy of this magnitude?*) In my judgment, we should have stayed with economic sanctions while maintaining a defensive force to stop further aggression. Don't let anyone tell you that they weren't working! Congressman Lee Hamilton, the Chair of the Middle East Subcommittee of the Foreign Affairs Committee pointed out in the floor debate that in five short months, they had sanctions cut Iraq's Gross National Product in half! They had eliminated 98 percent of Iraq's exports. In sum, they were strangling Iraq's war machine.

The larger flaw is that the White House has not thought through the ultimate consequences of this war. A law of physics states that for every action, there is a reaction. It is the same in human events. You cannot do *one* thing! Yet, no one in the Administration has considered the long-range result of a Western power taking up arms against an Islamic nation to protect rich oil sheikdoms which represent only four percent of the region's Islamic population.

My committee chairman, Congressman Whitten of Mississippi, asked Secretary Cheney what will happen after we win the war. Cheney acted like he had never dreamed of such a question. His answer was, "Well, Mr. Chairman, we've been so tied up working to win the war, we haven't had time to think much about that."

If the President had consulted Arabists in the academic world and in his own State Department, I think Mr. Cheney would have had an answer. And it would not have been rosy.

I have no doubt that we will win it, but a major ground war with Iraq will be long and barbarous. I have had estimates as high as 50,000 casualties and tens of thousands of Americans killed in action. Iraq's infantry and tanks are dug into a network of trenches, tunnels, and bunkers that reach back for miles behind the front lines. According to our intelligence estimates are that 500,000 mines have been planted in front of Iraqi positions -- the equivalent of one for each American soldier in the region.

A bloody war is likely to ignite a firestorm of Moslem wrath engulfing the region, triggering popular uprisings against Mubarak of Egypt, the royal family of Saudi Arabia, King Hussein of Jordan, and other regimes with whom we are now allied or have worked for what measure of stability has existed in the area. Jordan's population is 50 percent Palestinian. Tens of thousands are demonstrating in the streets of Amman for Sadaam Hussein. When the Scud missiles were falling on Tel Aviv, some Palestinians stood on the roofs of buildings and cheered! If Jordan erupts, the war spills over into Israel. Then I do not know who has any notion of what happens to the American-led coalition. Every day, I read intelligence reports of rising support among the Islamic masses in Egypt and across the whole of North Africa. Mubarak's predecessor, Anwar Sadat, was assassinated by Islamic fundamentalists because he cooperated too closely with the West. Should anyone have been surprised that Mubarak, who committed his armed forces to our side, was threatened last week with assassination?

With the recent bombings of American offices in Greece the Philippines, we're beginning to learn that Arab rage won't be confined to the Middle East. Europe and America itself will be theaters of terrorist counter-operations. Two weeks ago, *The Los Angeles Times* reported that U.S. intelligence services have discovered leads to what they believe is a network of terrorists

trained in Baghdad and in position around the globe. The first effects are already evident in Washington. Police marksmen are posted on the rooftops of Congressional offices. Specially trained Police dogs sweep through the halls of Congress, patrol parking garages, and inspect even the Speaker's car when it drives through the guard station to the Capitol building.

The war will cost \$80 to \$100 billion, according to Senator Sam Nunn. Those are funds we said we didn't have for national health care, for student financial aid, for youth gang prevention, or for assistance to the new democracies of Eastern Europe. But the costs won't stop there. After the war, the United States will not be able to just pick up and leave. That would create a power vacuum which some new Sadaam Hussein might fill -- or Iran, or Turkey, or Syria. So make no mistake: a continuing U.S. troop presence will be called for and that will bring constant engagements with Islamic resistance fighters. A continuing presence will also create new manpower demands. If I'm right, this means revived calls for the draft within a year. And that's still not all. There will also be funds for at least partial reconstruction of Iraq, to support a more moderate regime. And there will be foreign aid for adjacent countries who are now bankrupt and will soon be buckling at the knees with millions of refugees.

So when George Bush speaks of a "New World Order," I see disorder. Disorder, instability, and danger.

I cannot tell you that all of this is bound to happen because no one can foretell the future. But these are realistic possibilities, based on opinions of six former Secretaries of Defense who testified against an early war in the Gulf and gleaned on hours of briefings from expert witnesses. These are at least the *risks* we are undertaking. And if the risks are so substantial, what does this say about the erosion of the power of Congress to declare war? What does it say about a population so transfixed with new "smart" weapons that it forgets to care about Constitutional principles? Do you know one of the things I'm hearing most from my constituents about the war? Opposition to the amendment I am writing to ensure that military censors suppress only those items which deal with tactical and strategic secrets -- and not any other news. But people are telling me they want *more* censorship!

You are going to be America's elite. You will have an influence on the power of the state versus the rights of the individual. I leave these facts with you for your sober reflection.

In the meantime, let me take you back to the politics of authorizing the Gulf War. When the President was convinced he could get a war resolution passed, he did finally send one up to Capitol Hill for action. Many of my constituents who think it was a mistake to embark on an all-out war, at least at this time, have asked me how my side could have lost the vote.

The first reason is something I already alluded to -- the *fait accompli* the President created by deploying such a massive force in the desert. A deployment of such magnitude virtually preordains its use. After having reached such astronomical troop strength numbers and creating an eyeball-to-eyeball confrontation with Sadaam Hussein with the whole world watching, it would have seemed like a veritable retreat to have reduced troop levels and fallen back on economic sanctions. A lot of Members voted with the President for this reason. And the President had to know they would.

A psychological syndrome was also at work, rather like the one that led to the outbreak of World War I. Congressman Jack Murtha of Pennsylvania expressed this view best when he rose in support of the President's war resolution and described his visits in the desert with the troops.

"[It's so hot that, if] you put your hand on metal...you get a third degree burn. It is easy for the Congress to sit back here in our air conditioned offices and say, "We are going to allow these troops to sit out there in the sand for an unlimited period of time." We cannot do that, and they cannot sustain that, physically." In other words, as in World War I, the mobilization created its own imperative to move to the next stage, the real thing.

(One of my colleagues countered by saying that he'd rather have our troops sweating in the desert than being buried in the desert! But a different psychology was at work on the floor that day.)

Congressman Stephen Solarz of New York said the war authorization was imperative because the unprecedented coalition the United States had put together was "fragile" and might not last long enough for the sanctions to work. (Pat Schroeder of Colorado and I asked, if the coalition was so fragile before the first bullet was fired, why would anyone believe it would hold up under combat. We got no answer, perhaps because the other side already had the votes.)

Others said a vote for war was really a "message" to Sadaam Hussein, as if that was all it was, overlooking the deadly license it authorized. This argument was one of the hardest for me to swallow. In my floor speech, I said the time for a deterring "message" to be sent was at the end of July, when President Bush's Ambassador to Iraq met face-to-face with Sadaam Hussein. But instead -- even as Iraqi troops were massing on Kuwait's border -- Ambassador Glaspie looked Sadaam in the eye and said, "*America has no defense treaty with Kuwait.*" Was someone surprised that the Iraqi army went into Kuwait within a week?

The last major argument that carried the day for the President was best expressed a few days later by Oregon Senator Bob Packwood who said that this vote was a declaration of a basic principle -- in his words, "Thou shalt not attack thy neighbor!"

That's a breathtaking concept of American foreign policy! Carried forward, it would mean that whenever and wherever there are border hostilities between nations, American lives will be put into uniform and sent in under arms to settle the dispute. If a China decides to invade a Tibet this means we would go to war against China. In turn, the American treasury will be put into the service of those adventures even though people are homeless in our cities, millions of Americans have no access to health care, schools and banks are failing, and other nations are employing their people to build smart consumer products while we siphon off our resources to develop smart bombs.

Let's be serious! The real issue is, was, and will be: oil. In the early fall, the Administration's supporters on the Hill were frank to say this but they quickly discovered that the idea of sending Americans to the desert to kill and be killed for oil did not impress the Nation. Still searching for a clear goal for possible military action, Secretary of State Baker told a Congressional committee in September that our mission was to save "jobs." That didn't work with the public either. It's concept of a jobs program was different. So by the time the debate occurred, words like "oil" or "jobs" were left out of the lyrics of the Administration's floor leaders. Instead the rhetoric of high principle filled the air. But the sound of the rhetoric couldn't be heard in Beijing where the student dissidents were even then being put on trial, or in Lithuania, where Soviet Black Berets were storming newspaper offices and broadcast stations.

Today, we here are not going to solve the Gulf Crisis. But we can consider the underlying issue of how we can return decisions on war policy to a basis that is more faithful to the vision of the Founders.

That should start with legislation which lifts the suffocating censorship which the Pentagon has imposed on American war correspondents. These Defense Department regulations are far more stringent than needed to keep Sadaam Hussein guessing. They are unnecessarily keeping a free people guessing back at home, making them unable to make informed decisions on who to hold accountable for the conduct of this war. As I've indicated, I am drafting an amendment to overturn these regulations while protecting bona fide military secrets.

Next, the War Powers Resolution must be fixed. The act should be amended to automatically prohibit appropriations for foreign military operations within 60 to 90 days from deployment, , unless the President has submitted the report, consistent with the War Powers Resolution.

But in the final analysis, it's up to you. And the American people. This was expressed best in a letter I got from a political science professor I respect very much, who is in this room. He ended his letter with this quotation from Arthur Schlesinger, in the book, *The Imperial Presidency*:

"A constitutional Presidency, as the great Presidents [have] shown, [can] be a very strong Presidency indeed. But what [keeps] a strong President constitutional, in addition to checks and balances incorporated within his own breast, [is] the vigilance of the Nation. Neither impeachment nor repentance would make much difference if the people themselves had come to an unconscious acceptance of the Imperial Presidency. The Constitution [cannot] not hold the Nation to ideals it [is] determined to betray. The reinvigoration of the written checks in the American Constitution [depend] on the reinvigoration of the unwritten checks in American society."