



Goldwater had an elaborate ham radio station, which patched over 200,000 phone calls from servicemen in Vietnam to their families in the United States.

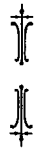
the best educated nation in the world with incredible skills in communications and yet fail to sell ourselves and fail to expose our enemies?

To summarize, a meaningful foreign policy for the United States must encompass three new directions: (1) We must renounce forever the tragic doctrine of graduated deterrence and replace it with a policy of the proper use of our strength. (2) Foreign aid must be restricted to do away with the conditional gift and replace it with regional banks making loans based on bankers' criteria. (3) We must always, in the future, remember the vital nature of the perimeter of the Pacific. Only then will we be able to preserve peace, not only in the Pacific and Asia, but peace throughout the world—a priceless gift that only our great country can bestow.

## CHAPTER 16

# DOMESTIC ISSUES

**W**e have selected issues that continue to resonate in American political debate. They are arranged by the date they first arose for Senator Goldwater. (And because some were recurring, we continue with the subject once we open it.)



### PRESIDENTIAL WAR POWERS

#### *Statement on Senate Floor (April 6, 1972)*

*During the congressional debate on the War Powers Resolution (whereby the Congress placed strictures on the president's powers to commit troops without congressional approval), Goldwater expressed his views—and those of other conservatives—that such action by Congress was unconstitutional. The core of his argument is found in the following excerpt.*

I might start by recalling that the Constitutional Convention rejected a clause giving Congress the power "to make war" and substituted for it only the power "to declare war." From brief records of the debate, it is quite clear that the framers at least had a purpose of "leaving to the Executive the power to repel sudden attacks." How much else the Founding Fathers meant to leave with the president is not specified in this debate, but it is significant that they had a difference in mind between the two terms and left the making of war with the president.

Next, I believe we should review the many passages of the Federalist Papers focusing on the safety of the people. That the ultimate decision over when to act for the safety of the nation was left with the president, rather than Congress, is apparent from the writing by Madison and Hamilton in the Federalist No. 19. Here they state that the Constitutional Convention expressly rejected as being too weak the then-current political model of the Germanic Empire in which the Diet, or legislative

body, was vested with the sole power to commence war. In any emergency, they wrote, "military preparation must be preceded by so many tedious discussions . . . that before the Diet can settle the arrangements the enemy are in the field."

While the focus of these writings was on the purpose of protecting the national safety, it is also important to consider Madison's instruction in the Federalist No. 37 that the framers intentionally had removed the direction of the military forces from Congress, where it had been deposited under the Articles of Confederation, because it is "particularly dangerous to give the keys of the Treasury and the command of the army into the same hands." Thus, we should observe that the Founding Fathers not only were concerned about depositing too much power with the executive office but also were watchful that they did not enable congressional usurpation to occur.

Moreover, we must remember the setting of the times in which the framers ratified the Constitution. Professor David Watson, who wrote a two-volume textbook on the Constitution, found that of all the explanations of why the Constitution should make its president commander in chief:

none seems more reasonable than the fact that during the Revolution Washington experienced great trouble and embarrassment resulting from the failure of Congress to support him with firmness and dispatch. There was a want of directness in the management of affairs during that period which was attributable to the absence of centralized authority to command. The members of the Convention knew this and probably thought they could prevent its recurrence by making the president commander-in-chief of the army and navy.

The power of the chief executive as commander in chief has long been interpreted by constitutional authorities as being free of the policy directives of Congress. In 1862 William Whiting wrote a book on war powers in which he declared that "for the military movements and measures essential to overcome the enemy—for the general conduct of the war—the president is responsible to and controlled by no other department of government." Whiting added that the Constitution "does not prescribe any territorial limits within the United States, to which his military operations shall be restricted."

Numerous constitutional writers have shared the same conclusion. Voluminous citations on this subject can be found in two law review articles that I have inserted in the *Congressional Record*, one on February 9 and the other on February 15 of this year. The first is a short quote by Professor Willoughby, who wrote a three-volume work on constitutional law. He observes that the president's power to send troops outside the country "as a means of preserving or advancing the foreign interests or relations of the United States" is a "discretionary right constitutionally vested in him, and, therefore, not subject to congressional Control." The other is a reference to the statement by William Howard Taft, who wrote in the *Yale Law Journal* that "it is clear that Congress may not usurp the functions of the Executive . . . by forbidding or directing the movements of the army and navy."

Added to these writings is a remarkable chain of precedents that presidents have forged over the years. There have been at least 197 hostilities in America's history and only 5 of them have been declared. Almost 50 percent of these military actions lasted more than a month and well over one-half took place outside the Western Hemisphere. Though these undertakings have been questioned as precedents for full-scale modern warfare overseas, they have in fact always involved whatever amount of force presidents have deemed necessary to accomplish their national defense objectives. The military activities of the past twenty-five years cannot be omitted from this list simply because it would suit the purposes of those who challenge presidential power. When these recent incidents, such as the Korean War and the Cuban naval quarantine, are fitted in with the military actions that preceded them, we can notice the development of a consistent line of precedents in which presidents have always adapted the degree of their military actions to accord with the military technology and capabilities of the times.

Another point about these 197 presidentially authorized hostilities that we should notice is the fact that Congress has never once passed a law blocking or ordering a halt to one of them. The question has come up many times, and Congress has taken many votes on the issue since the birth of the nation. The fact that Congress has never before prohibited any presidential hostility should be given heavy weight in reading the construction that history itself has put on the constitutional allotment of the war powers. For anyone to say that this long

continued arrangement may now be overturned by a sudden reversal of interpretation demands that he should bear the burden of proving his case by far more extensive evidence than has been offered to date.

**Statement on Senate Floor (September 28, 1983)**

*A decade after first expressing his opposition to the War Powers Resolution (passed in reaction to Vietnam over Nixon's veto), Goldwater provided specific examples of the problems with Congress trying to control the commander in chief. In 1983, when American troops were being killed in Lebanon and Congress sought to employ the War Powers Resolution against President Ronald Reagan, Goldwater opposed the action—notwithstanding his early opposition to President Reagan's decision to send troops to Lebanon. Thus, while he disagreed with the policy, he did not think Congress should try to substitute its judgment. So when the debate commenced, Goldwater returned to the subject of the ill-advised War Powers Resolution.*

I would like to discuss the general subject of the war powers and the folly of congressional efforts to tie the president's hands in making military decisions. Look at what happened in 1975 when President Ford asked Congress to join with him in the decision to evacuate Americans from Saigon. As you will recall, Congress never granted his request. Caught between the choice of strict adherence to the 1973 statutory prohibition on U.S. activities in, over, or off the shores of Indochina and his duty to uphold the lives and interest of his countrymen and women, President Ford ignored the legislative restriction and took into his own hands the protection of Americans.

Weeks later, while Congress was still tied up with its debate on the matter, President Ford announced that the Indochina evacuation was completed. Then, he pleaded for funds to pay for purely humanitarian assistance and transportation of refugees, but Congress rejected this request the very next day.

This episode reveals all too clearly the inability of Congress to act decisively in time of need. Last Tuesday I mentioned an earlier moment in history when Congress also neglected its duties. It was a time when only the strong actions of President Franklin Roosevelt, taken independently of Congress, enabled this nation to aid Great Britain and thereby defend our own security before Pearl Harbor.

The point is that the president had the vision to see that democracies avoid disasters only by confronting the obvious threats to their survival. Yet if the war powers resolution had been in effect in the early 1940's President Roosevelt could not have landed and kept troops in Greenland; he could not have sent and reinforced several thousands of marines on Iceland; he could not have escorted British shipping in the Atlantic; and he could not have done the many other things, several of them held secret at the time even from the State Department, which prevented a total collapse of resistance to Hitler. The war powers resolution would have brought about a complete disaster in the 1940's, and it may well bring about a catastrophe of similar proportions in the future if it is not repealed.

The fact is that the United States, as the strongest free nation in the world has a stake in preventing totalitarian conquest. The president has a duty to resist challenges in the early stages and cannot wait until the challenge is so clear that the cost of resistance is prohibitive. The danger in the war powers resolution and any other legislative effort like it, which is intended to restrict the president's defense powers, is that it takes away all flexibility to deal with unforeseen events. The failure of Congress to approve even humanitarian legislation to support the evacuation of American citizens from Saigon offers convincing proof that Congress cannot be counted on to deal quickly with future problems as the need arises. Unlike the president, an assembly of 535 Secretaries of State does not rush to a decision.

Anyone who reviews history will know that presidents have always exercised independent defense powers, whether or not their statutory authority was clear, and occasionally in the face of direct congressional restrictions. In fact, presidents have used force or the imminent threat of force on more than two hundred occasions without any congressional declarations of war. George Washington settled this issue, when, as our first president, he ordered his secretary of state, Thomas Jefferson, to threaten Spain with military force if she would not open the Mississippi River to navigation by American citizens. When he became president, Thomas Jefferson sent a squadron of armed ships into the Mediterranean without any congressional authority, with orders to sink, burn and destroy vessels that may threaten American commerce. Only half a year after he issued military orders and four months after a naval blockade and battle had occurred did Jefferson inform Congress. Jefferson gave an indication

of the principle that guided his decision making, when he wrote on September 20, 1810, that: "A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws are of necessity, of self-preservation, of saving our country when in danger, are of higher obligation." Jefferson's concise statement summarizes why the Framers vested the president with independent powers to act for the safety of the nation. The majority of Framers had served in the army of militia during the War of Independence and they were intimately familiar with the restrictions which the Continental Congress had imposed on General Washington's activities, restrictions they knew had nearly lost the American Revolution. It was in order to correct this known weakness of the Articles of Confederation that the Framers made the president the "commander in chief" under the new Constitution. . . .

*Note: Goldwater was unsuccessful in getting Congress to repeal the War Powers Resolution. Even in retirement, he offered to raise money for a lawsuit to take it to court, but that did not happen either.*



## ABORTION

On January 22, 1973, the U.S. Supreme Court issued its ruling in *Roe v. Wade*, holding that state and federal laws prohibiting women from having an abortion violated a constitutional right to privacy under the due process clause of the Fourteenth Amendment. The ruling, one of the most controversial in the Court's history, made abortion a hot political issue. Like all members of Congress, Goldwater received a steady stream of mail on the subject, and over time he prepared a series of sample letters for his staff to respond to the avalanche of mail he received. These letters show he took an increasingly nuanced stance on the issue, although after leaving the Senate he became decidedly pro-choice, which appears to have been his feeling all along. Unlike many issues, on this subject he was not as blunt as he was on others. We have gathered the core points in the evolving responses.

### *Letter (February 27, 1973)*

*This letter contained Goldwater's initial response to the Supreme Court's ruling on *Roe v. Wade*.*

Each State has the right to adopt laws giving a woman a right to an abortion and the Supreme Court decision, while I don't agree with the length to which it went, nevertheless made some specific boundaries in such a power.

I know you want my opinion in this and while you may disagree with me, I think that abortion should be legalized because whether it is legal or not, women are going to have it done. If it is legalized and done with a doctor's consent, the woman will not run the risk to her own life that she does now of having to sneak off to Mexico or England, or have it done in some clandestine way.

### *Letter (March 19, 1973)*

*In this letter, Goldwater slightly modified his wording when responding to those who opposed the Supreme Court's ruling on *Roe v. Wade*—dropping his politically inflammatory suggestion that abortion be legalized.*

The Supreme Court has now ruled that each state has the right to adopt laws giving a woman a right to an abortion and its decision, while I don't agree with the length to which it went, nevertheless made some specific boundaries in such a power.

This leaves the issue squarely up to each state legislature to define and, as it is currently before the Arizona legislature, I recommend you contact your local representative about this.

### *Letter (October 4, 1974)*

*When a movement for a Constitutional amendment overturning *Roe v. Wade* developed, Goldwater said he was willing to study it. Efforts to make abortion more difficult did not trouble him, however, and when his office was barraged by supporters of amendments to laws that barred the use of federal money to pay for an abortion, he embraced them.*