

TAKING CONGRESS AND THE CAPITOL SERIOUSLY AS NATIONAL SECURITY INSTITUTIONS

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Responsibility for the [seditious violent attack](#) on the United States Congress of Jan. 6, 2021, rests with serious afflictions within our civic culture, with a series of costly errors regarding the security of the Capitol, and with then-President Donald Trump's mendacious inspiration, assembly, and direction of a massive, frenzied, armed mob to march on the Capitol.

Also operating here to leave the Congress insufficiently warned and the Capitol inadequately defended was a general, longstanding failure among many to regard the Congress and the Capitol as national security institutions of paramount importance. Although the crowd was large and violent, it is hard to imagine such a mob ever – or at least so quickly and extensively – penetrating security at other public sites well understood to be vital to the nation's security, such as the White House or the Pentagon, and halting for hours their ability to execute their responsibilities under the Constitution. Better protection would certainly flow from a proper appreciation of the nation's legislature and the iconic temple of democracy in which it meets as central to the nation's survival and very identity. Ultimately, better security must be balanced with the public access imperative in an open society, in a way that preserves both.

Congress could not be more vital to the nation. The Framers intentionally made Congress the Constitution's first branch. Congress is composed of the elected representatives of the people. It writes "the supreme Law of the Land," has "All legislative Powers," and controls all federal spending. No treaties enter into force, and no justices, judges, or top civilian or military officers are confirmed without the Senate's advice and consent. Congress counts the electoral votes before the President and Vice President are inaugurated—something that was, of course, underway during the insurrection of Jan. 6. When no candidate wins a majority of electoral votes, the House chooses the President. Congress also has the power to impeach and remove federal officials, and then to disqualify them from further office – as the Senate must quickly do regarding former President Trump.

Congress's powers specific to national security are extensive, and its national security work at the Capitol is intensive. Congress's constitutional authorities [bind the military](#) and [Commander in Chief even in war](#), and receive great [deference from the courts](#). Indeed, Congress has more enumerated powers over national security in the Constitution than over any other subject, and more than the other two branches combined. These include, among others, the powers to tax and spend "for the common Defence," regulate immigration, define and punish offenses on the high seas and against international law, "declare War," create and maintain a federal military, "[make Rules for the Government and Regulation of the land and naval Forces](#)," and call forth and govern the militia. (Mourn the irony: the self-organized so-called militias that participated in the Jan. 6 sedition were violently assaulting the very Congress that the Constitution's plain text gives authority over the militia). Congress continually conducts oversight of the national security apparatus and annually enacts multiple [extensive](#) and [expensive](#) national security statutes. These laws include [classified annexes](#) with legal force. Four decades

worth of Congress's [secret laws](#) presumably are stored in special secure rooms in the Capitol complex along with documents, computers, and other information on the nation's most highly classified activities, including covert actions, current military operations, nuclear weapons, counter-terrorism, cyber security, and foreign intelligence surveillance. As was the case during this month's assault, the first three successors to the Commander in Chief are often at the Capitol: the Vice President (also the President of the Senate, who [reportedly](#) often is accompanied by a military aide with a nuclear "football" and launch codes), the Speaker of the House, and the President Pro Tempore of the Senate.

Finally, the Capitol building is a profoundly important symbol. The three major attacks on the Capitol in our nation's 245 year history – its burning by the British Army during the War of 1812, its likely targeting by the fourth hijacked plane on Sept. 11, 2001, and the seditious attack of Jan. 6, 2021 – underscore the importance of the Capitol as an emblem and idea. There is no more powerful symbol of our nation and its republican self-government, nor of the civilizational causes of democracy and liberty for which America stands, than the white marble Capitol dome.

Despite all of this, it was fair to say before Jan. 6 that Congress and the Capitol were not taken seriously enough in national security terms. It is impossible not to see that pattern – and that error – now. How did this happen?

A short list of reasons begins with the creation of a massive, permanent national security apparatus within the Executive Branch after World War II to confront the Soviet threat, and its perpetuation after the Cold War to support American global leadership and security. Where the military and intelligence enterprise has become large, specialized, and professionalized, Congress as a legislative body composed of elected Members and underpaid staff has remained much smaller, necessarily more generalized, and only partially professionalized regarding national security matters. Meanwhile, our standing military and espionage armies have answered to an imperial presidency, a single chief executive with near-monarchical authority over nuclear launch and other uses of force, [thanks to the feared immediacy of the threat and congressional acquiescence](#). Legal theories of [executive supremacy in national security](#) at odds with the [structure and original understanding of the Constitution](#), with [the balance of our constitutional history](#), and with [Supreme Court jurisprudence](#) have become an influential minority view of separation of powers. Congress also does vital legal, budget, and policy work regarding defense, intelligence, and foreign affairs, but most of its work naturally is on domestic policy and politics, not national security matters. The net effect of these trends is that until insurrectionists had breached the Capitol and halted Congress's constitutional vote counting for several hours, too few people on Capitol Hill, elsewhere in government, and among the public were thinking of Congress and the Capitol in the same national security terms that they do the President and the White House, or the Secretary of Defense and the Pentagon.

Of course, the physical security of Capitol Hill is not the only imperative going forward. The Capitol is different in important ways from, say, a military installation such as the Pentagon. The Congress represents the people. The Capitol must be a public space. Its heavy fortification and obvious militarization in the wake of the Jan. 6 attack – with soldiers massed in the Capitol

reportedly for the [first time since the Civil War](#) – were inevitable responses to the insurrection but had their own cost in jarring images that only further risks undermining our reputation and that of democracy worldwide. A full appreciation of Congress’s national security importance must be balanced with a compelling interest in the Capitol’s restoration as a symbol of liberty.

In doing this security/liberty balancing work we need not and cannot pick one or the other. Security without liberty would not be worth securing. Liberty without security cannot endure. A new balance that robustly protects both may not be easy but must be struck. It must include better intelligence and warning, coordination, planning, training, threat response, and leadership for the Capitol Police and other responsive security forces, together with enduring access for the public in a welcoming, non-threatening atmosphere. Congress has all the authorities and resources it needs to do this important work in concert with other organs of government and the public. The nation’s legislature also needs to work on a bipartisan basis to de-escalate American politics and facilitate de-radicalization of the militant elements that on Jan. 6, 2021 appallingly attacked their own Congress and sacked their own Capitol – the most sacred and vital of institutions to our nation’s security and the future of liberty, in our land and across the globe.

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