

Forcing the President's Hand: How the US Congress Shapes Foreign Policy through Sanctions Legislation

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Given the US president's leading role in many areas of American foreign policy, one might expect the president to prevail in executive-legislative clashes over economic sanctions. In this paper, I show that, with surprising frequency, US legislators overcome presidential opposition to their sanctions proposals and induce the president to take foreign policy actions that he or she would not otherwise take. My argument explains why the president often signs and implements sanctions legislation despite considering it inadvisable, as well as how sanctions legislation can influence foreign policy actions, the behavior of foreign governments, or international diplomacy in other ways. I support the argument with descriptive statistics based on an original data set of over a hundred legislative sanctions proposals and a case study of the effects of legislative initiatives targeting Iran over a period of two decades. The paper's findings show that legislative activity is more important than some previous research on sanctions and US foreign policy suggests.

Introduction

Economic sanctions have been used in international politics with growing frequency in recent decades and are now the world's preferred vehicle for nonmilitary coercion. The United States has been central to this trend, as it has been the primary sanctioning country in about half of bilateral sanctions episodes in the modern era (Hufbauer et al. 2009; Morgan, Bapat, and Kobayashi 2014).

While the US proclivity to employ sanctions is well-known, the role of the US Congress in driving a large share of sanctions activity is less widely understood. Between 1945 and 2005, American legislators initiated 38 percent of all US-led efforts

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to threaten or impose sanctions on other countries (Morgan, Bapat, and Kobayashi 2014). As I show in this paper, legislators have also spearheaded important US sanctions efforts since 2005.

Understanding the significance of US sanctions legislation is therefore a key part of understanding the politics of international sanctions generally. When legislators propose the imposition of sanctions on another country, are they typically carrying out the president's agenda or acting contrary to the president's preferences? To the extent that Congress advances sanctions legislation that the president opposes, is the legislation frequently consequential? If so, how does it influence US foreign policy?

Given the president's leading role in foreign policy and ability to veto legislation, one might expect that sanctions legislation only rubber-stamps presidential policies or serves a symbolic purpose. However, I argue that sanctions legislation regularly challenges presidential policies and has foreign policy effects.

I first explain why Congress and the president are often at odds over sanctions legislation. Legislative proposals to impose sanctions on foreign governments tend to be popular among members of Congress because they provide a vehicle to demonstrate action on an issue of concern, without legislators running much risk of being held accountable by domestic constituencies for any resulting economic or diplomatic costs. By contrast, the president's greater accountability and broader responsibilities in foreign policy make the president more attuned to the costs of sanctions and more concerned with preserving diplomatic flexibility that could be threatened by a sanctions law.

I further explain how sanctions legislation can have international consequences despite the president's objections to it. In many cases, the president signs and implements sanctions legislation even though he or she considers it ill-advised. Sometimes this is because the legislation's strong backing from domestic constituencies and members of Congress in both parties would make a presidential veto politically costly. Members of Congress also often make the legislation more tolerable to the president by linking it to a bill that the president values or by providing the president with the authority to opt out of implementing it. Yet even when sanctions legislation includes opt-out provisions, it frequently has international effects. By forcing the president to take a concrete action to avoid imposing sanctions, opt-outs increase the political costs that the president would incur from maintaining the status quo. As a result, presidents often apply legislated sanctions that they would rather not impose.

In addition, sanctions legislation with or without opt-outs can have a variety of indirect or second-order international consequences. While legislators are considering it, a sanctions proposal can lead the president to take foreign policy steps that are designed to weaken the case for the proposal and thereby make its approval by Congress less likely. In a similar logic of anticipatory action, proposed or enacted sanctions legislation can induce foreign governments or firms to adjust their behavior to avoid being sanctioned. Less happily, the legislation can cause the sanctions target to dig in its heels or retaliate against the United States. Sanctions laws and legislative proposals can also alter diplomatic negotiations. On the one hand, they can enhance the president's bargaining leverage; on the other hand, they can prevent the president from offering the target a complete repeal of sanctions or a credible assurance that a deal will not be undermined by a new US law.

I support this argument with descriptive statistics based on an original data set of US sanctions legislation and a case study of the effects of legislation targeting Iran. The data set includes information on congressional and presidential positions and actions regarding more than a hundred legislative sanctions proposals considered between 1983 and 2014. These data show that sanctions legislation typically generates bipartisan congressional support and presidential opposition and that the president frequently signs and implements it despite considering it misguided. The

case study further demonstrates that sanctions legislation has influenced a variety of developments concerning Iran through the causal pathways highlighted by my argument. This case study draws on interviews I conducted of US policymakers and experts who were involved in Iran sanctions debates,¹ as well as on congressional and executive branch documents, contemporaneous reporting by journalists, and other sources. In the paper's conclusion, I also briefly show that some of the key dynamics highlighted by the paper have continued to operate under President Donald Trump.

More broadly, the paper's findings add to knowledge about the politics of sanctions and the politics of US foreign policy. An extensive literature has examined the effects and effectiveness of sanctions (Baldwin 1985; Pape 1997; Drezner 1999; Marinov 2005; Hufbauer et al. 2009; Peksen and Drury 2010; Allen and Letzkian 2013; Peterson 2013; Barry and Kleinberg 2015; Early 2015; Bierstecker, Eckert, and Tourinho 2016; Rosenberg et al. 2016). I contribute to this literature by enhancing understanding of how institutional dynamics in the country imposing sanctions shape the use and outcomes of sanctions. Some prior work has highlighted the influence of Congress on US sanctions policy (Jentleson 1986; Hatipoglu 2014; Miller 2014). However, several leading scholars have argued that Congress is weak relative to the president in sanctions policy making (Whang 2011, 792; Milner and Tingley 2015, 68, 115, 148) or that US sanctions legislation is largely inconsequential because it typically includes opt-outs (Martin 1992, 113; Drezner 1999, 316). I show that sanctions legislation is more important than these studies suggest and explain how it is consequential.

I also contribute to a long-standing debate about the overall influence of Congress on US foreign policy. Whereas some scholars argue that the president dominates foreign policy or that Congress is typically passive on international matters (Hinckley 1994; Weissman 1995; Fisher 2000; Rudalevige 2006; Fowler 2015; Edelson 2016; Goldgeier and Saunders 2018), my findings reinforce work highlighting the direct and indirect influence of Congress in a variety of foreign policy areas (Lindsay 1994; Howell and Pevehouse 2007; Carter and Scott 2009; Kriner 2010; Krutz and Peake 2011; Lavelle 2011; Auerswald and Campbell 2012).

At the same time, the paper provides new insights about US foreign policy bipartisanship. A substantial body of research has found that Congress is highly polarized on foreign policy or that partisan motivations frequently shape the foreign policy behavior of elected officials (McCormick and Wittkopf 1990; DeLaet and Scott 2006; Kupchan and Trubowitz 2007; Snyder, Shapiro, and Bloch-Elkon 2009; Kriner and Shen 2016; Schultz 2017; Jeong and Quirk 2019). To the extent that foreign policy bipartisanship does exist on Capitol Hill, scholars tend to associate it with support for presidential positions (McCormick and Wittkopf 1990; Meernik 1993).² I show that legislators in both parties regularly cooperate with each other to drive foreign policy changes that the president opposes, pointing to the underappreciated prevalence of antipresidential bipartisanship (Tama 2018; Tama 2019).

How Sanctions Legislation Is Consequential

Sanctions legislation routinely attracts bipartisan congressional support and presidential opposition in large part because of differences in the foreign policy accountability and responsibilities of the president and legislators. Since the president is held responsible by voters for the health of the economy and the protection of national security, the president has a strong incentive to pursue foreign policies that

¹ I conducted some of these interviews on a not-for-attribution basis in order to preserve the interview subject's anonymity.

² On the persistence of areas of bipartisanship in foreign policy, see also Busby and Monten (2008); Chaudoin, Milner, and Tingley (2010); Maxey (2018); Smeltz et al. (2018); Kertzer, Brooks, and Brooks (2019).

are likely to advance overall national welfare and interests (Krasner 1978, 63–64, Meernik and Oldmixon 2008, 187, Howell, Jackman, and Rogowski 2013, 37–39, Milner and Tingley 2015, 32). By contrast, legislators are sometimes held accountable by voters and interest groups for their positions on issues but are rarely held accountable for policy outcomes (Mayhew 2004). This gives them more incentive to advance foreign policies that are favored by domestic constituencies, regardless of whether those policies might be ineffective or generate substantial costs. Even when legislators act on foreign policy based on their own convictions (Lindsay 1994, 42–43, Carter and Scott 2009), their limited accountability for the results of policy choices can free them to back legislation without weighing carefully its likely effects.

While these differences in presidential and legislative incentives exist in foreign policy generally, certain aspects of sanctions politics are especially conducive to disagreement between legislators and the president. Sanctions tend to be popular with voters and are often supported by interest groups (Lindsay 1986, 166–68, Kaempfer and Lowenberg 1992; Whang 2011; Hatipoglu 2014). However, the imposition of sanctions on other countries can harm the US economy and strain US relationships with other governments. As a result, the president tends to be more cautious than legislators about the use of sanctions and frequently considers congressional sanctions proposals to be ill-advised. To be sure, presidents favor the use of sanctions in many circumstances, either because they think sanctions will help address a problem or because they want to demonstrate that they are doing something about it. But even in situations where the president and legislators agree that sanctions should be employed, the president often considers congressional sanctions bills to be too far-reaching and inflexible.

Differences in the roles and responsibilities of the president and Congress only compound the difference in their propensity to support sanctions legislation. On the one hand, the president's role directing US diplomacy should make the president all the more attuned to the international costs of sanctions and provides the president with other means to influence foreign governments. On the other hand, legislators tend to be less exposed to information about the international repercussions of sanctions and possess fewer alternative means of acting on a foreign policy issue of concern.

But why would the president sign sanctions legislation despite considering it wrong-headed? Three political considerations or legislative devices often lead the president to sign unwanted sanctions bills. First, vetoing legislation that is backed by voters or interest groups can carry political costs. Since sanctions legislation is usually directed at governments engaged in behavior that most Americans find objectionable, vetoing such legislation can make the president particularly vulnerable to criticism that he or she is not standing up for US values. In addition, it can be difficult for the president to explain to the public why a more subtle approach to an issue of concern would be preferable to sanctions because the public tends to favor one-dimensional policies that attack problems directly (Arnold 1990, 21–25, Mayhew 2004, 138).

Moreover, the strong congressional support for many sanctions bills means that Congress often has the capacity to override a presidential veto of sanctions legislation. Scholars have found that Congress is more likely to override a veto when a bill has previously been approved by a majority of Republican and a majority of Democratic legislators (Rohde and Simon 1985, 414–47). If a bill has such bipartisan congressional backing, the president will often have an incentive to sign it rather than experience a politically embarrassing veto override (Copeland 1983, 702).

Second, Congress often gives the president an additional incentive to sign sanctions legislation by attaching it to legislation that the president supports or that is even more difficult politically to veto. In international negotiations, issue linkage can facilitate agreement by generating a deal that is advantageous to each of the participants (Davis 2004). Along these lines, Congress sometimes ties sanctions

legislation to a bill that the president values or that is considered “must-pass” legislation, such as annual legislation authorizing all US military programs. In such cases, the president may decide that the sanctions measure represents an acceptable price to pay for the enactment of the high-priority legislation.

Third, Congress frequently makes sanctions legislation more tolerable to the president by including in it provisions that allow the president to waive the imposition of the sanctions based on a determination that it is not in the US national interest to impose them or a certification that the target country has met certain conditions. In cases where the president has very strong reservations about sanctions legislation, the inclusion of such waiver or certification provisions can sometimes be necessary to avoid a veto—just as the inclusion of escape clauses or opt-out provisions can induce countries to sign international treaties (Rosendorff and Milner 2001).

Granting the president this type of opt-out authority can weaken the impact of sanctions legislation by muddying the legislation’s signal to the target and failing to ensure that US policy actually changes (Drezner 1999, 315–16). Indeed, presidents have often issued a waiver or certification to avoid imposing legislated sanctions (Martin 1992, 101–19, Hufbauer et al. 2009, 135–36).

But opt-out provisions do not necessarily prevent sanctions legislation from having significant consequences. When a target country’s behavior generates substantial domestic concern, the president sometimes decides that applying the sanctions is preferable to experiencing the political costs that could result from issuing an unpopular waiver or implausible certification. Just as leaders can pay audience costs for backing down in international crises (Fearon 1994, Weeks 2008), a decision to opt out of implementing sanctions legislation can appear to represent a retreat from a commitment. In addition to opening the president up to domestic criticism (Miller 2014, 921), such a step could make the president seem weak to the target government or other foreign audiences.

Moreover, the president’s need to issue a waiver or certification in order to opt out of applying sanctions places a burden on the president to justify a decision not to impose sanctions. If the sanctions target is continuing to engage in the behavior that triggered the legislation, an opt-out can be hard to justify. At the same time, an opt-out can give domestic supporters of sanctions a concrete rallying point for mobilizing opposition to the president’s decision—making maintenance of the status quo more costly than it would be without the law. For all of these reasons, the president sometimes imposes legislated sanctions despite considering them undesirable and possessing opt-out authority.

In addition, sanctions legislation with or without opt-outs can influence presidential actions or international developments through a variety of indirect or second-order effects. Scholars have shown that presidential foreign policy decisions are often influenced by the president’s anticipation of potential congressional actions or reactions (Scott 1997; Auerswald 2000; Howell and Pevehouse 2007; Kriner 2010). With respect to sanctions, this logic of anticipatory action sometimes translates into the president taking steps designed to preempt the congressional approval of a sanctions bill by demonstrating that the president is already acting to address the issue of concern. Such actions can include imposing more limited sanctions through the president’s executive authority or applying diplomatic pressure on a foreign government to change its behavior.

Scholars have also shown that the prospect of sanctions being imposed on a government can influence its behavior even without sanctions ever being applied to it (Drezner 2003; Miller 2014). In this causal pathway, the possibility of the president implementing sanctions legislation induces the target or a firm that does business with the target to adjust its behavior in an effort to avoid being sanctioned under the legislation. In addition, the enactment of sanctions legislation can lead the target to retaliate against the United States through steps such as penalizing US businesses

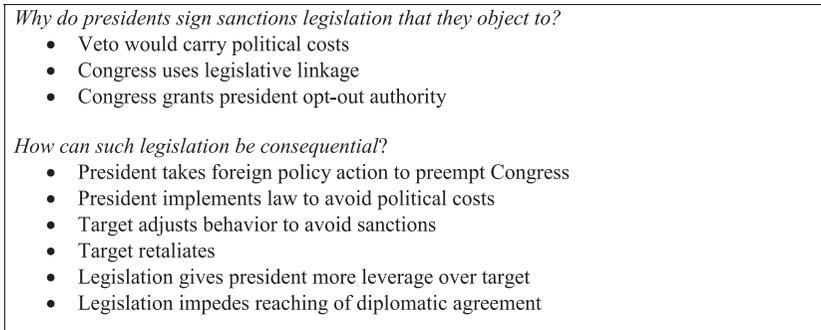


Figure 1. Summary of causal pathways.

that operate in the country or reducing cooperation with the United States on other issues.

In other causal pathways, sanctions legislation can affect negotiations between the president and a foreign government in a couple of ways. In his work on two-level games, Robert Putnam showed that domestic constraints on a leader are sometimes helpful and sometimes unhelpful to the leader in international negotiations (Putnam 1988). On the one hand, domestic constraints can strengthen the leader's international bargaining position by allowing the leader to convey credibly to foreign counterparts that it is not feasible politically for him or her to make certain concessions. On the other hand, such constraints can make it impossible for the leader and foreign counterparts to achieve an agreement by preventing their "winsets" from overlapping. Sanctions legislation can have either of these effects by precluding the president from offering the target government concessions that are inconsistent with the legislation. In the case of an enacted law, this will particularly be the case if there does not exist sufficient congressional support to repeal the law. But even sanctions legislation that is still being considered in Congress can constrain negotiations by making it more difficult for the president to assure the target that an agreement will not be undermined by a future US law.³

Proposed or enacted sanctions legislation can also help or hinder presidential efforts to persuade the target to alter its behavior in the absence of diplomatic negotiations. Helpfully, legislation can make Congress the "bad cop" in a "good cop, bad cop" dynamic where the president uses the threat of legislative sanctions to give a foreign government greater incentive to alter its behavior. Unhelpfully, such a threat can backfire by causing the target to dig in its heels. In indications that both of those outcomes sometimes occur, a US sanctions threat in 1997 concerning intellectual property rights extracted concessions from China, but China responded to US pressure on human rights between 1989 and 1995 by becoming less accommodating of US concerns (Drury and Li 2006; Whang, McLean, and Kuberski 2013, 66).

Figure 1 summarizes the causal pathways outlined in this section regarding how sanctions legislation can be consequential even when the president objects to it.

Plausible alternatives to my argument are that sanctions legislation is rarely consequential because partisan polarization or congressional deference to the president prevents Congress from challenging the president successfully. As noted above, previous studies have found that members of Congress are highly polarized or regularly act in a partisan manner on foreign policy. Additional studies have found that high levels of polarization reduce legislative productivity (Barber and McCarty 2015; Binder 2015). Accordingly, one might expect Congress to fracture along

³ On the influence of Congress on international negotiations, see also Kandel (2016).

partisan lines and be incapable of approving sanctions legislation when the president objects to it.

Alternatively, the research cited above suggesting that Congress is a weak actor on foreign policy in general or on sanctions issues specifically could generate an expectation that legislators typically back down in sanctions disagreements with the president. Relatedly, the scholarship referenced above on legislative opt-out provisions generates an alternative expectation that the willingness of Congress to grant opt-out authority to the president typically prevents sanctions legislation from having foreign policy effects.

Patterns in US Sanctions Legislation

In this section, I use an original data set of US sanctions legislation to identify patterns that shed light on the validity of some of the preceding argument and alternative expectations. I created this data set because the major existing data sets of bilateral sanctions do not code some variables of interest, given my research questions and argument, such as the strength of congressional support for sanctions legislation, the president's position on sanctions legislation, and whether legislation includes opt-outs.

I identified US sanctions legislation by searching the online archives of *CQ Weekly*—a periodical that covers Congress in-depth—for all articles that included the word “sanctions.” I examined each of these articles to determine if it mentioned a legislative proposal to impose new sanctions on one or more other countries. This method identified 103 legislative proposals from 1983–2014.⁴ (Supplementary Appendix A lists the data set's cases. Supplementary Appendix B describes the data set's construction and how the variables discussed below were coded.⁵)

I found that these proposals typically received strong support from legislators in both parties and were opposed by the president. Seventy-eight of the 103 proposals were brought forward for a vote at least once in a committee or on the floor of the US House of Representatives or Senate. Of these seventy-eight proposals, sixty-seven were approved by a majority of Democrats and a majority of Republicans in every instance that legislators voted on them.⁶ In addition, twenty of the twenty-five proposals that did not receive a vote had substantial cosponsorship from legislators of both parties.⁷ Conversely, the president opposed seventy-five of the 103 proposals during the legislative process.

The data further show that Congress regularly approves sanctions legislation without fully accommodating presidential concerns about it and that the president often signs it anyway. (See [Table 1](#).) Congress approved thirty-six of the seventy-five proposals that had been opposed by the president during the legislative process. The president vetoed seven of these thirty-six bills and signed the other twenty-nine. Notably, in thirteen of the latter subset of cases, the president expressed dissatisfaction with the sanctions provisions after they were approved by Congress but signed the legislation nevertheless.

Moreover, Congress regularly defied the president even when the president's party controlled one or both chambers of Congress.⁸ Under these conditions,

⁴The data set does not include all congressional sanctions proposals from 1983–2014, as some proposals were never covered by *CQ Weekly*. But limiting an analysis to salient legislation represents a standard approach of legislative studies (Binder 2003; Mayhew 2005).

⁵The full data set is available at the *Foreign Policy Analysis* Dataverse page.

⁶I follow an existing standard in treating instances in which legislation was approved by voice vote or unanimous consent as being approved by majorities of both parties since these procedures are typically employed only when a bill has broad bipartisan support (Harbridge 2015, 75).

⁷I follow an existing standard in considering a proposal to have substantial bipartisan cosponsorship if at least 20 percent of its cosponsors do not belong to the party of the legislator who introduced it (Harbridge 2015, 32).

⁸This condition held during 1983–86, 1993–94, 2001–6, and 2009–14.

Table 1. Legislative outcomes for sanctions proposals opposed by president

	Total	Approved by Congress	Signed by president	Signed despite presidential statement of dissatisfaction after approval by Congress
All proposals opposed by president	75	36	29	13
<i>Party control</i>				
Proposals considered when president's party controlled House and/or Senate	29	16	14	5
Proposals considered when opposition party controlled House and Senate	46	20	15	8
<i>Bipartisan support*</i>				
Proposals with bipartisan congressional support	64	33	29	13
Proposals without bipartisan congressional support	11	3	0	0
<i>Legislative linkage</i>				
Proposals linked to other legislation	26	15	13	4
Proposals not linked to other legislation	49	21	16	9

Note: Each row only tabulates proposals that were opposed by the president during the legislative process.

*A proposal is classified as having bipartisan support if it was approved by a majority of Republicans and a majority of Democrats each time it received a vote or, if it did not receive a vote, at least 20 percent of its cosponsors did not belong to the party of the legislator who introduced it.

Congress approved sixteen out of twenty-nine proposals that the president had opposed. In one of these sixteen cases, Congress also subsequently overrode a presidential veto of the legislation. In five of the other cases, the president signed the legislation while continuing to express dissatisfaction with the sanctions provisions.

The data are also consistent with my expectations that the strength of congressional support for bills and the use of legislative linkage can contribute to the president's decisions to sign sanctions legislation. All twenty-nine bills that the president signed after opposing them during the legislative process were approved by a majority of Republicans and majority of Democrats each time they received a congressional vote, and thirteen of these twenty-nine bills were approved by Congress as part of broader legislation. On the other hand, just four of the seven bills vetoed by the president met the previous sentence's threshold for strong congressional support, and just two of the seven vetoed bills were linked to other legislation.

Finally, the data indicate that the president frequently implements sanctions laws after opposing them during the legislative process, despite possessing the authority to opt out of applying all of their provisions through a waiver or certification. Twenty-five laws were enacted that had been opposed by the president and that included this kind of full opt-out authority. In nineteen of these cases, the executive branch subsequently took at least one action to impose sanctions pursuant to the law. The executive branch even took at least one action to impose sanctions pursuant to seven of the twelve laws providing full opt-out authority about which the president had expressed dissatisfaction after its approval by Congress.

Taken together, these findings support my argument that Congress regularly challenges the president on sanctions in a bipartisan manner and that the president regularly signs and implements sanctions legislation, even when the president

considers it unwise and possesses implementing discretion. At the same time, the data provide little support for the alternative expectations that partisanship drives congressional activity on sanctions or that Congress typically backs down in sanctions disagreements with the president.

Sanctions Legislation Targeting Iran

Although these descriptive statistics are consistent with my argument, process tracing of individual cases is necessary to evaluate the argument more fully. In particular, process tracing can generate more definitive evidence regarding whether legislation led a president to impose sanctions that he or she would not have otherwise imposed. For instance, it is possible that a president objected to a sanctions bill during the legislative process solely based on a desire to maintain control over policy making, even though the president favored imposing the sanctions mandated by the bill. Alternatively, it is possible that a president voiced opposition to a sanctions bill purely as a form of strategic posturing to an international audience, rather than as a reflection of a different policy preference. Process tracing can illuminate whether such circumstances existed or whether legislation was in fact responsible for moving presidential policy in new directions. In addition, process tracing can shed light on why members of Congress and the president took different positions on legislation and whether legislation had international effects beyond its direct implementation.

I selected for process tracing sanctions proposals in the data set that targeted Iran and were opposed by the president. I chose this set of proposals because Congress targeted Iran with an array of sanctions proposals under both Democratic and Republican presidents and during both unified and divided party control of government. To the extent that the legislation was consequential across these different political contexts, that would strongly suggest that the effects were not driven by partisanship or by attributes of individual presidents.

My analysis shows that during the two decades preceding the signing of the Joint Comprehensive Plan of Action (JCPOA)—the 2015 nuclear agreement among the United States, Iran, and other major powers—Congress enacted numerous Iran sanctions laws that were opposed by presidents because of their potential diplomatic or economic ramifications. I find that these laws were consequential in prompting presidents to impose various sanctions on Iran that they would not have otherwise imposed, influencing decisions by foreign governments and firms to restrict key transactions with Iran, heightening Iran's economic difficulties, placing greater pressure on Iranian leaders to end the country's isolation, and constraining US-Iran negotiations regarding Iran's nuclear program. In what follows, I briefly summarize early developments on the issue and then examine in greater detail developments between 2005 and the signing of the JCPOA—a period during which US concerns about Iran's nuclear program intensified and Congress became particularly active on the issue.

During Bill Clinton's presidency, the Republican-controlled Congress enacted a pair of laws mandating new sanctions on governments or firms that invested in Iran's energy sector or provided Iran with items that could contribute to Iran's acquisition of nuclear or other advanced weapons.⁹ Both of these bills were approved in the House and Senate in unanimous or nearly unanimous votes. However, the legislation provoked strong objections in European capitals because of its use of secondary sanctions, which penalize third parties for conducting business with a sanctions target (Falke 2000). Recognizing those objections, Clinton opposed the bills based on a concern that they would damage US relationships with important

⁹Iran and Libya Sanctions Act of 1996 (Public Law 104-72); and Iran Nonproliferation Act of 2000 (Public Law 106-78).

allies (Doherty 1996; Barron 2000). Nevertheless, Clinton signed them after Congress softened some provisions and granted him more implementation discretion.

Although Clinton never applied the laws, they had some international effects. Just before a congressional vote on one of the bills, Clinton imposed sanctions on nine Russian entities that had aided Iran's weapons programs—a step that was reported by the *New York Times* to be aimed at forestalling approval of the legislation (Erlanger 1998). After the laws were enacted, the possibility that Clinton might apply them contributed to foreign government decisions to adopt more stringent export controls toward Iran (Erlanger 1997; Early 2015, 91–92). These events illustrate the causal pathways highlighted by this paper involving actions by the president or overseas actors designed to preempt the enactment or implementation of sanctions legislation.

Similar US political dynamics characterized Iran sanctions debates during the George W. Bush presidency, including during different interbranch political configurations. When the Republican-controlled House and Democratic-controlled Senate considered reauthorizing one of the Clinton-era laws in 2001, Bush urged Congress to limit its extension to two, rather than five, years, based on a desire to limit irritation among foreign governments (Congressional Quarterly 2002). However, both chambers of Congress voted by overwhelming margins to extend the law for five years, and Bush signed the reauthorization.¹⁰

In 2005, Iran announced that it would restart uranium enrichment activities that it had suspended the previous year (Nephew 2018, 38–39). In response to this and other Iranian actions, a bipartisan group of legislators advanced new legislation that would remove the president's ability to waive the imposition of sanctions on foreign companies investing in Iran's energy sector.¹¹ Bush opposed this legislation based on concern that it would create a rift between the United States and other countries and undermine US efforts to build multilateral support for United Nations (UN) sanctions on Iran (Lake 2006; Jacobson 2008, 83).

After the Democratic Party took control of both chambers of Congress in January 2007, the House approved the bill by a vote of 397–16.¹² But the Democratic Senate leadership did not bring the legislation to the floor after Bush threatened to veto it based on concerns about its diplomatic effects (Guttman 2008). This outcome shows that the willingness of members of Congress to challenge the president on sanctions policy making is not unlimited, even under divided party control of government. Nevertheless, the legislation influenced US policy, as the Bush administration took steps in 2007, such as designating the Iranian Revolutionary Guard Corps as a terrorist group and intensifying diplomatic pressure on foreign governments to restrict investments in Iran's energy sector, that were aimed in part, according to reporting by highly regarded newspapers, at weakening the legislation's momentum (Weisman 2007; Wright 2007). These steps further illustrate this paper's causal pathway involving preemptive presidential actions.

During Barack Obama's first term as president—a period when Iran was reported to be making major strides in its nuclear program—Congress approved a number of bills resisted by Obama, despite the Democratic Party's control of one or both chambers of Congress. After taking office in January 2009, Obama sought to engage Iran, while laying the groundwork for UN sanctions on Iran if it did not demonstrate a willingness to negotiate. With this diplomacy yielding little apparent progress during 2009, members of Congress advanced legislation—commonly known by its acronym CISADA—that would impose sanctions on banks that conducted transactions with certain Iranian institutions and on governments or firms that sold Iran

¹⁰ ILSA Extension Act of 2001 (Public Law 107–24).

¹¹ H.R. 1400, Iran Counter-Proliferation Act of 2007.

¹² House Roll Call Vote 895, September 25, 2007.

gasoline or related products or services.¹³ As this legislation gained momentum, Deputy Secretary of State James Steinberg wrote to a key member of Congress that it “might weaken rather than strengthen international unity and support for our efforts [on the Iran nuclear issue]” (Bogardus 2009). In addition, the administration argued to legislators that the sanctions on gasoline sales to Iran would damage America’s standing among the Iranian public (LaFranchi 2010). Nevertheless, the Democratic-controlled House passed CISADA by a vote of 412–12 in December 2009, and the Democratic-controlled Senate passed a different version of it by unanimous consent in March 2010.

As Congress began reconciling the House and Senate bills, the administration became resigned to congressional approval of the legislation and sought to negotiate greater opt-out authority. Dennis Ross, who served at the time as Obama’s principal advisor on Iran policy in the White House, recalled, “We first tried to forestall the legislation and then tried to carve out waiver authorities to give us greater leeway regarding diplomacy.”¹⁴ In the end, legislators agreed to provide more implementation flexibility concerning some of the sanctions but kept in place the key substantive provisions that the administration opposed. The *Washington Post* noted that the legislation’s final version, which was approved by the House and Senate in June 2010 by votes of 408–8 and 99–0, represented “a more confrontational approach to Iran than that taken by the Obama administration” (Lynch and Erdbrink 2010).¹⁵

As these legislative politics played out during the first half of 2010, the administration treated Congress as a useful “bad cop” while seeking international support for new multilateral sanctions on Iran. Ilan Goldenberg, who served from 2009–12 as the Defense Department special advisor on the Middle East and Iran Team chief, recalled, “[US Ambassador to the United Nations] Susan Rice used the threat of congressional action on CISADA to get the Russians and Chinese to agree to better terms for UN Security Council Resolution 1929.”¹⁶ The Security Council approved this resolution, which imposed a set of sanctions that went beyond any prior UN sanctions on Iran but were more limited than the financial and energy sanctions mandated by CISADA, just two weeks before Congress approved the final version of the law.

Despite the administration’s initial resistance to the bill, Obama signed it. The executive branch subsequently applied numerous sanctions under CISADA—including the sanctions on gasoline sales to which the administration had objected—despite possessing the authority to waive their imposition (US Department of the Treasury 2010; US Department of State 2011; Obama 2011a). Even before these sanctions were applied, the State Department noted that the threat of their imposition had led many firms to stop selling gasoline to Iran, reducing Iran’s gasoline imports by 85 percent (US House of Representatives 2010, 19–20).

During 2011—with the House now under Republican control but the Senate still under Democratic control—legislators sought to impose further economic hardship on Iran by advancing proposals to penalize any government or other entity that conducted business with Iran’s central bank. The administration argued that this legislation risked “fracturing the international coalition that has been built up over the last several years to bring pressure to bear on Iran” and that the United States would be better served by coordinating voluntary action by countries on the issue (US Senate 2011, 16). Colin Kahl, who served at the time as the deputy assistant secretary of defense for the Middle East, recalled that the administration worried too that the proposed sanctions might drive up the price of oil and thereby

¹³ H.R. 2914 and S. 2799, Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009.

¹⁴ Author’s interview of Ross, August 26, 2014.

¹⁵ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195).

¹⁶ Author’s interview of Goldenberg, January 16, 2018.

hurt the US economy.¹⁷ As the legislation neared Senate approval, administration officials lobbied legislators not to approve it (Rogin 2011).

Nevertheless, the Senate passed the legislation unanimously as an amendment to a major bill authorizing defense programs, which was subsequently approved by both chambers of Congress.¹⁸ The strong congressional support for the sanctions and their linkage to the defense bill left the president, in the words of *CQ Weekly*, with “little choice but to sign” the legislation (Broder 2012). Although Obama signed the bill, he accompanied his signature with a statement that the sanctions provisions interfered with his “constitutional authority to conduct foreign relations,” demonstrating that he remained dissatisfied with them (Obama 2011b).

Despite resisting the idea and possessing waiver authority under the law, Obama subsequently applied the law’s key provision imposing sanctions on actors that did business with Iran’s central bank (Obama 2012; US Department of the Treasury 2012b). Former Obama administration officials noted that, were it not for the law, Obama would not have imposed these sanctions because Treasury Secretary Timothy Geithner opposed doing so out of concern for their potential effects on the global economy, and Geithner’s view would have continued to carry the day in the administration without the law.¹⁹ The threat of US sanctions under the law also led many countries to curtail sharply their purchases of Iranian oil, which would need to be conducted through Iran’s central bank (Han 2018, 439–41). As a result, Iranian oil exports plummeted by more than 50 percent from 2011 to 2013.²⁰

Collectively, these events regarding CISADA and the central bank sanctions support my arguments that sanctions legislation sometimes moves US policy in directions that presidents do not favor and that targets of sanctions legislation sometimes adjust their behavior to avoid being penalized. The comments by former Obama administration officials also make clear that the administration’s opposition to these sanctions provisions was based on real concerns about their potential effects, rather than simply being an effort to posture to international audiences.

In 2012, two additional Iran sanctions bills were enacted into law. The first bill mandated that Iranian oil sales revenues be placed in escrow accounts in countries that purchased the oil, with restrictions placed on Iran’s use of these funds. The administration argued that these proposed sanctions would upset countries that traded with Iran, and legislators partially accommodated the administration by expanding the number of goods on which escrow account funds could be spent.²¹ Obama signed the bill in August after it was approved by a vote of 421–6 in the Republican-controlled House and by unanimous consent in the Democratic-controlled Senate.²² The second bill mandated new restrictions on international transactions involving Iran’s energy and shipping sectors. In this case, the White House argued that the proposed sanctions would create an anti-American backlash among the Iranian people and reduce multilateral cooperation concerning the implementation of preexisting Iran sanctions (Rogin 2012). After legislators reduced the legislation’s scope, it was easily approved by Congress as an amendment to another major defense bill.²³ Obama subsequently applied the key provisions of these

¹⁷ Author’s interview of Kahl, April 22, 2014.

¹⁸ Senate Amendment 1414 to S. 1867, National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81).

¹⁹ Author’s interview of Dennis Ross; author’s interview of Richard Nephew, February 19, 2016; author’s interviews of former Treasury Department officials, December 2015–January 2016.

²⁰ Author’s interview of Dennis Ross; author’s interview of Richard Nephew; author’s interviews of former Treasury Department officials; FRED Economic Data, “Crude Oil Exports for Iran, Islamic Republic of,” available at <https://fred.stlouisfed.org/series/IRNXXGOCMBD>.

²¹ Author’s interview of Richard Nephew; author’s interview of former administration official, June 2014.

²² Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112–158).

²³ Senate Amendment 3232 to S. 3254, National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239).

laws even though he possessed opt-out authority concerning them (Obama 2013; US Department of the Treasury 2012a, 2013).

While the Obama administration would have imposed many sanctions on Iran between 2010 and 2013 in the absence of any legislation, in some cases the administration applied sanctions during these years at least in part because an opt-out would carry political costs. Richard Nephew, who served as director for Iran at the White House from 2011 to 2013 and as principal deputy coordinator for sanctions policy at the State Department from 2013 to 2015, said of the sanctions laws, “Not imposing the sanctions would create a sense of invulnerability for the Iranians and a perception of weakness on the part of the administration.”²⁴ Nephew added that senior congressional staff complained vociferously after the administration did exercise a waiver to facilitate implementation of the Joint Plan of Action (JPOA), an interim nuclear agreement reached between the United States, Iran, and other powers in November 2013.²⁵ These concerns illustrate this paper’s causal pathway highlighting how political pressures can lead presidents to implement sanctions legislation even when they see it as problematic and possess opt-out authority.

Moreover, presidential decisions to veto or avoid implementing some of this legislation could have carried domestic political costs because the legislation was supported by important interest groups and the American public. The Iran sanctions laws enacted under Obama were backed by the American Israel Public Affairs Committee and other pro-Israel groups (Parsi 2012, Bruck 2014). On the other hand, the legislation generated relatively little interest-group opposition.²⁶ At the same time, public opinion surveys administered prior to the nuclear agreements with Iran found that more than two-thirds of Americans favored imposing tougher sanctions on Iran.²⁷ Given this interest-group and public-opinion landscape, the domestic politics associated with the issue were tilted toward signing and implementing Iran sanctions legislation.

In addition to the effects noted above, the Iran sanctions laws enacted between 2010 and 2013 were consequential in other ways. Most directly, they greatly heightened Iran’s economic difficulties, and thereby placed increasing pressure on Iranian leaders to end Iran’s international isolation (Nephew 2018, 77–78, 102–13). Although Congress was certainly not responsible for the full array of US and multilateral sanctions on Iran, congressional actions repeatedly imposed additional costs on Iran. Iranian leaders even acknowledged that CISADA sanctions targeting the energy sector were particularly damaging to the Iranian economy (Erdbrink 2013). The severe effects of sanctions on Iran’s economy also contributed to the 2013 election of Iranian President Hassan Rouhani and to Iran’s decision to enter into high-level negotiations with the United States, which resulted in the JPOA and JCPOA (Mufson 2015).

Even some Obama administration officials give Congress substantial credit for developments concerning Iran. A former Obama administration official involved in the issue said, “Congress was the driving force for tough sanctions on the Iranian energy sector.”²⁸ Nephew noted more generally: “Congressional pressure knocked us out of our comfort zone, and made us make choices that we weren’t inclined to make. . . . The administration wouldn’t have gone as far without Congress, and there wouldn’t have been as much pressure on Iran without Congress.”²⁹ Daniel Fried, the State Department’s coordinator for sanctions policy from 2013–17, said in a similar vein: “Some of the administration’s arguments in retrospect simply didn’t pan out—like going after the Iranian Central Bank would . . . destabilize the world economy.

²⁴ Author’s interview of Nephew.

²⁵ Author’s interview of Nephew.

²⁶ Author’s interviews of congressional aides, July–October 2014.

²⁷ See the compilation of surveys at <http://www.pollingreport.com/iran.htm>.

²⁸ Author’s interview of former Obama administration official, July 2014.

²⁹ Author’s interview of Nephew.

. . . So score one for Congress. . . . Both sides can take some legitimate credit for the Iran sanctions regime, which pressured the Iranians into the negotiations.”³⁰

Once the United States and Iran entered into negotiations, Congress also affected those talks by constraining diplomatic options, which enhanced US leverage toward Iran but made it harder to achieve a more far-reaching agreement. On the one hand, the possibility that Congress might reject a deal involving the lifting of sanctions on Iran helped US negotiators push for concessions from Iran. A former Obama administration legislative affairs official recalled, “[The] legislative affairs [office] made it clear to the U.S. negotiators that if we allowed Iran to keep most of their centrifuges, that would create problems on the Hill. . . . Congress helped to make sure our negotiators stuck to our principles and threatened to walk away at times.”³¹ In a similar vein, Ilan Goldenberg noted that the prospect of Congress passing new legislation in 2015 that would impose further sanctions on Iran or make it easier for Congress to reject an agreement with Iran strengthened the administration’s bargaining position. “Being able to tell the Iranians that we need a deal now or else we won’t be able to overcome a congressional hurdle was essential to getting agreement. Without Congress, we might not have gotten past the JPOA.”³²

On the other hand, the likely difficulty of persuading Congress to repeal existing sanctions laws meant that the administration could not offer Iran what it most wanted. Nephew recalled, “Iran wanted us to lift the sanctions on Day 1, but we could only use waivers, not lift them permanently.”³³ Nephew added that Iran might have been willing to make even more concessions if the administration had been able to offer a complete repeal of sanctions. A pending congressional proposal to impose new sanctions on Iran also raised the possibility that Congress might drive Iran away from the negotiating table (Hersh and Grim 2013).³⁴ Although that possibility did not occur, the accounts cited here of knowledgeable former administration officials suggest that US-Iran diplomacy would probably not have unfolded in the same way in the absence of the sanctions laws and ongoing congressional activity. The accounts also illustrate this paper’s causal pathways, explaining how sanctions legislation can enhance the president’s diplomatic leverage and impede the attainment of international agreements.

Conclusion

This paper adds to knowledge of the politics of sanctions and the politics of US foreign policy by demonstrating that sanctions legislation opposed by the president is often consequential and by highlighting direct and indirect causal pathways through which it can generate policy effects. The new data presented in the paper indicate that the president frequently signs and implements sanctions legislation despite considering it ill-advised and possessing the ability to opt out of applying its provisions. The paper’s process tracing further suggests that the president sometimes makes these decisions at least in part to gain the enactment of a linked legislative priority or to avoid domestic or international political costs. The Iran case study also highlights a number of other effects of sanctions legislation, including prompting the president to impose more limited sanctions in an effort to preempt the legislation, influencing decisions by foreign actors to modify practices that could lead them to be sanctioned, exacerbating a sanctions target’s economic difficulties, and constraining diplomatic negotiations between the United States and the target. [Table 2](#) summarizes the causal pathways documented in the Iran case.

³⁰ Author’s interview of Fried, February 4, 2016.

³¹ Author’s interview of former Obama administration legislative affairs official, August 2017.

³² Author’s interview of Goldenberg.

³³ Author’s interview of Nephew.

³⁴ S. 1881, Nuclear Weapon Free Act of 2013.

Table 2. Evidence of Causal Pathways in Iran Sanctions Case

Causal pathway	Evidence in Iran case
<i>Why do presidents sign sanctions legislation that they object to?</i>	
Veto would carry political costs	Yes
Congress uses legislative linkage	Yes
Congress grants president opt-out authority	Yes
<i>How can such legislation be consequential?</i>	
President takes foreign policy action to preempt Congress	Yes
President implements law to avoid political costs	Yes
Target adjusts behavior to avoid sanctions	Yes
Target retaliates	No
Legislation gives president more leverage over target	Yes
Legislation impedes reaching of diplomatic agreement	Yes

Developments involving Russia during Donald Trump’s presidency further suggest that some of the main dynamics described in this paper continue to characterize sanctions policy making under a highly unconventional US president. In 2017, the House and Senate approved by votes of 419–3 and 98–2, respectively, a bill imposing penalties on Russian individuals and institutions responsible for interference in the 2016 US presidential election, as well as on certain sectors of the Russian economy.³⁵ The bill also went beyond prior sanctions laws in constraining presidential authority by granting to Congress the power to block any executive branch effort to lift sanctions on Russia. Congress took these steps even though Trump opposed the legislation and Trump’s Republican Party controlled the House and Senate (Sanger 2017).

Despite Trump’s opposition to the bill, he signed it.³⁶ Trump’s aides said that Trump had little choice but to accept the bill, given the veto-proof majorities backing it in Congress (Baker and Higgins 2017). Trump nevertheless vented about the legislation in a signing statement, calling it “seriously flawed” and suggesting it was unconstitutional (Trump 2017). The Russian government retaliated against the legislation by seizing two US facilities in Russia and ordering the United States to cut sharply the number of its diplomats in Russia (Osborn 2017).

Subsequently, members of Congress in both parties pressured the administration to carry out the law (Kriner and Schickler 2018, 449; US House of Representatives 2018). Eventually, the administration did implement some of its key provisions, imposing financial and travel sanctions on five Russian institutions and nineteen Russian individuals implicated in cyber attacks on the United States (US Department of the Treasury 2018a,b). Notably, the administration took these steps despite possessing waiver authority under the law. Russia’s government retaliated by expanding its own list of Americans prohibited from visiting or doing business in Russia (Smith-Spark and Gigova 2018).

Taken together, this paper’s findings suggest that legislative activity on sanctions is more important than some leading sanctions scholars have recognized. To be sure, when the US president wishes to impose stringent sanctions on a foreign government, the president’s expansive authority and ability to act quickly usually place him or her in the driver’s seat in sanctions policy making. But the president often wants to avoid instituting restrictions that could generate serious diplomatic or economic blowback. In these circumstances, legislators regularly force the president’s hand and, in so doing, sometimes alter international events. Counterintuitively,

³⁵ H.R. 3364, the Countering America’s Adversaries through Sanctions Act.

³⁶ Public Law 115–44.

legislators routinely achieve these effects despite giving the president discretion regarding whether to implement sanctions legislation.

At the same time, the paper's findings reinforce one side in the long-standing debate over whether Congress exercises meaningful influence over US foreign policy, while suggesting that the study of US foreign policy would benefit from greater attention to antipresidential bipartisanship. Even as overall congressional polarization has reached record levels in recent decades, Republican and Democratic legislators have cooperated to mandate an array of sanctions on other countries. Moreover, they have often done so despite presidential opposition to their efforts and the control of at least one chamber of Congress by the president's party. These patterns challenge, in particular, the long-standing idea that there exist "two presidencies" in American politics—one, on domestic matters, in which Congress often drives policy making, and a second, on foreign policy, in which the president is largely in control (Wildavsky 1966). More broadly, they add to a burgeoning body of literature finding that, across a number of democracies, legislators sometimes exercise substantial direct or indirect influence over foreign policy (Auerswald 2017; Raunio and Wagner 2017; Wagner et al. 2017; Mello and Peters 2018).

Future research could build on this paper's findings by investigating the conditions in which sanctions legislation is more or less likely to generate various effects, evaluating whether legislators in other countries trigger the same or different effects through sanctions initiatives, considering whether the net result of legislative activism via sanctions is to enhance or detract from the effectiveness of a country's foreign policy or the enforcement of international norms, and examining the extent to which the causal pathways identified here apply in other areas of foreign policy.

Supplemental Information

Supplemental information is available at the *Foreign Policy Analysis* data archive.

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