Mr. Cheney’s Minority Report

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TWENTY years ago this week, Lt. Col. Oliver North testified for six days before a special joint House and Senate investigating committee. Permitted by the Democratic majority to appear in his bemedaled Marine uniform, and disastrously granted immunity, Colonel North freely admitted that he had shredded documents, lied to Congress and falsified official records.

Colonel North justified these crimes as necessary to protect two of the Reagan administration’s covert policies: defying a Congressional ban on aiding the anti-Sandinista contra insurgents in Nicaragua; and selling arms to Iran — officially classified as a terrorist state — in order to free American hostages in the Middle East.

Mixing bathos with belligerence, Colonel North played the incorruptible action hero facing down Washington politicians and lawyers. He also suggested that, under the Constitution, the president and not Congress held ultimate authority to direct foreign policy.

Most of the Congressional committee members, Republicans and Democrats alike, expressed shock at Colonel North’s testimony. And despite the surge in Colonel North’s personal popularity, he failed to sway other Americans on the underlying issues. Clear majorities in opinion polls said that Colonel North had gone too far in his covert operations, especially in helping the contras. Roughly half of those polled believed that he had acted as if he was above the law. Sixty percent said that Congress was more trustworthy than the Reagan White House on foreign relations.

And Mr. North was eventually convicted of three federal felonies — receiving an illegal payment, obstruction of a Congressional inquiry and
destroying official documents, although an appellate court held that his testimony delivered under Congressional immunity may have affected jurors and reversed one conviction. (Prosecutors gave up on the other two.)

But there were dissenters. A number of House Republicans on the committee cheered Colonel North on. One who led the way was Dick Cheney of Wyoming, who praised Colonel North as “the most effective and impressive witness certainly this committee has heard.”

Mr. Cheney the congressman believed that Congress had usurped executive prerogatives. He saw the Iran-contra investigation not as an effort to get to the bottom of possible abuses of power but as a power play by Congressional Democrats to seize duties and responsibilities that constitutionally belonged to the president.

At the conclusion of the hearings, a dissenting minority report codified these views. The report’s chief author was a former resident fellow at the American Enterprise Institute, Michael J. Malbin, who was chosen by Mr. Cheney as a member of the committee’s minority staff. Another member of the minority’s legal staff, David S. Addington, is now the vice president’s chief of staff.

The minority report stressed the charge that the inquiry was a sham, calling the majority report’s allegations of serious White House abuses of power “hysterical.” The minority admitted that mistakes were made in the Iran-contra affair but laid the blame for them chiefly on a Congress that failed to give consistent aid to the Nicaraguan contras and then overstepped its bounds by trying to restrain the White House.

The Reagan administration, according to the report, had erred by failing to offer a stronger, principled defense of what Mr. Cheney and others considered its full constitutional powers. Not only did the report defend lawbreaking by White House officials; it condemned Congress for having passed the laws in the first place.
The report made a point of invoking the framers. It cited snippets from the Federalist Papers — like Alexander Hamilton’s remarks endorsing “energy in the executive” — in order to argue that the president’s long-acknowledged prerogatives had only recently been usurped by a reckless Democratic Congress.

Above all, the report made the case for presidential primacy over foreign relations. It cited as precedent the Supreme Court’s 1936 ruling in United States v. Curtiss-Wright Export Corporation, which referred to the “exclusive power of the president as the sole organ of the federal government in the field of international relations.”

History, the report claimed, “leaves little, if any doubt that the president was expected to have the primary role of conducting the foreign policy of the United States.” It went on: “Congressional actions to limit the president in this area therefore should be reviewed with a considerable degree of skepticism. If they interfere with the core presidential foreign policy functions, they should be struck down.”

These conclusions went beyond what had long been considered the outermost limits of presidential power — and they put a special twist on history. Hamilton certainly desired a strong executive, but warned that it would be “utterly unsafe and improper” to give a president complete control over foreign policy.

The Curtiss-Wright decision actually concerned a presidential claim of constitutional power to act in the absence of an act passed by Congress, not in violation of such an act.

One of the foremost constitutional scholars of the 20th century, Edward S. Corwin, stated in 1957 that the Constitution was “an invitation to struggle for the privilege of directing American foreign policy,” and that in many cases “the lion’s share” of that privilege belonged to the president. But Corwin finally insisted that “the power to determine the substantive content of American foreign policy is a divided power.”
The Iran-contra joint committee majority in 1987, including some Senate Republican members, charged that the minority report, with tortuous illogic, reduced Congress’s foreign policy role to nearly nothing. Senator Warren Rudman, a New Hampshire Republican and vice chairman of the Senate side of the investigating committee, paraphrased Adlai Stevenson and quipped that the minority report had separated the wheat from the chaff and left in the chaff.

His comments did not lead Mr. Cheney to alter course, as Mr. Cheney’s actions as vice president demonstrate. Asked by a reporter in 2005 to explain his expansive views about presidential power, Mr. Cheney replied, “If you want reference to an obscure text, go look at the minority views that were filed with the Iran-contra committee.”

“Nobody has ever read them,” he said, but they “are very good in laying out a robust view of the president’s prerogatives with respect to the conduct of especially foreign policy and national security matters.”

In truth, as Mr. Cheney has also remarked, the struggle for him began much earlier, during the Nixon administration. A business partner says that Mr. Cheney told him that Watergate was merely “a political ploy by the president’s enemies.” For Mr. Cheney, the scandal was not Richard Nixon’s design for an imperial presidency but the Democrats’ drive for an imperial Congress.

Still, Mr. Cheney’s quest to accumulate unaccountable executive power — a quest that has received much attention of late — took a major turn 20 years ago. And part of Iran-contra’s legacy has now become a legacy of the Bush-Cheney administration.

Minority Report is a 2002 American neo-noir science fiction mystery-thriller film directed by Steven Spielberg and loosely based on the short story of the same name by Philip K. Dick. It is set primarily in Washington D.C., and Northern Virginia in the year 2054, where “PreCrime”, an experimental, specialized police department, apprehends criminals based on foreknowledge provided by three psychics called “Precogs”. The cast includes Tom Cruise as PreCrime Captain John Anderton, Colin Farrell as