Spring 5-8-2020

Constitutional War Powers of the United States: The Founding Prescription and Historical Adherence

Blake Annexstad
University of Mississippi

CONSTITUTIONAL WAR POWERS OF THE UNITED STATES: THE FOUNDING PRESCRIPTION AND HISTORICAL ADHERENCE

by
Blake Michael Annexstad

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College.

Oxford
May 2020

Approved by

_____
Advisor: Dr. Miles T. Armaly

_____
Reader: Dr. Jonathan T. Klingler

_____
Reader: Dr. John M. Bruce

DEDICATION

To my parents, Thomas and Karen Annexstad, whose charitable actions, unwavering love, and enormous support have equipped me with the tools necessary for life. To my mother, who taught me the importance of faith in God and compassion in all things. To my father, who taught me the value of hard work, attention to detail, and how to always do things "right."

To the memory of the Founding Fathers of the United States of America, who risked their lives against tyranny, through musket and quill, to forge this great Constitutional Republic. Founded upon life, liberty, and the pursuit of happiness, may the Republic live long in their memory. God Bless America.

ACKNOWLEDGEMENTS

I would like to acknowledge my advisor, Dr. Miles T. Armaly, for his passion for constitutional law and the history of American politics. Through several constitutional law courses with Dr. Armaly at the University of Mississippi, I, too, discovered a similar passion for the Constitution and American law. Without Dr. Armaly, I would have never considered writing my thesis on constitutional law or possibly pursuing a future in law after graduating from Ole Miss. As for the work you presently hold in your hands, it could not have been accomplished without Dr. Armaly's support. Despite completing a majority of my work during the COVID-19 global pandemic, Dr. Armaly has instilled within me the confidence and fire necessary to pursue my best work.

ABSTRACT

Constitutional War Powers of the United States: The Founding Prescription and Historical Adherence

(Written by Blake Michael Annexstad under the direction of Dr. Miles Armaly)

When crafting the United States Constitution, America's Founders carefully prescribed an institutional balance of the Nation's war powers between the legislative and executive branches of the federal government. To examine the intentions of the Founders regarding the Nation's war powers as well as how American leadership has adhered to this intent post-ratification, this study carefully analyzes the circumstances which compelled this balance as well as its application throughout the history of the American experiment. Following an examination of these circumstances and the history of the United States, it is clear that American leadership, despite adhering to the Founders' intentions for nearly 160 years, has deviated tremendously from this constitutional balance in the modern era. Beginning in 1942, this study demonstrates that the balance of the Nation's war powers began a dramatic shift away from its founding intention in favor of a subservient Congress and an emboldened presidency. Throughout the Cold War, this study finds that American presidents almost always ignored the traditional constitutional role of Congress in authorizing hostilities by unilaterally ordering military action across the globe. In doing so, modern presidents have asserted the right to do so under an expansive interpretation of the president's Article II authorities or the auspice of authority from international organizations such as the United Nations (U.N.) or the North Atlantic Treaty Organization (NATO). As these expansive assertions have gradually swelled the presidency's powers over war for nearly the past eighty years, Congress has largely enabled the expropriation of its war powers through appeasement and a failure to mount any meaningful political or legal challenge in response.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF ABBREVIATIONS AND SYMBOLS

AQAQ	al-Qaeda in the Arabian Peninsula
AUMF	Authorization for the Use of Military Force
CIA	Central Intelligence Agency
CSA	Confederate States of America
H.Res.	House of Representatives simple resolution
H.Con.Res.	Concurrent resolution originating in the House of Representatives
H.J.Res.	Joint Resolution originating in the House of Representatives
IS	Islamic State
NATO	North Atlantic Treaty Organization
P.L.	Public Law
PPG	Presidential Policy Guidance
PPS	Principles, Standards, and Procedures
S.J.Res.	Joint Resolution originating in the Senate
SS	Steam-powered ship
U.N.	United Nations
U.S.	United States
U.S.C.	United States Code
USS	United States Ship
WPR	War Powers Resolution
§	Section

Introduction

In the early hours of January 3rd, 2020, a United States military drone strike targeted and killed Iranian major general Qassem Soleimani at the direction of President Donald J. Trump near Baghdad International Airport in Iraq (Helsel et al.). In a following statement, the U.S. Department of Defense announced the death of the infamous Iranian leader, stating that the President had "taken decisive action to protect U.S. personnel abroad" from an imminent threat and to deter future Iranian attack plans (Helsel et al.). Hours later, the President himself echoed the defensive rationale for the order, claiming, "We took action last night to stop a war. We did not take action to start a war." (White House).

In Washington, D.C., Republican and Democratic congressional leaders were unified in labeling Soleimani as an enemy of the United States and a terrorist whose death should not be mourned by any American (Santucci). While united in calling Soleimani an enemy of the United States, many Democrats and some Republicans in Congress criticized the President for acting unilaterally without the prior congressional authorization (Carney). Days later, on January 7th, Iran retaliated against the U.S. for the killing of its prized commander by launching more than a dozen ballistic missiles from Iran at an Iraqi air base housing U.S. forces and materiel (Macias). Following Iran's retaliation, the House of Representatives issued a sharp rebuke of Trump's use of the

military by approving a measure directing the President "to terminate the use of United States Armed Forces to engage in hostilities in or against Iran or any part of its government or military" unless "Congress has declared war or enacted specific statutory authorization for such use of the Armed Forces" (Segers and Congress H.Con.Res.83). Being a concurrent resolution, the legislation only requires the approval of both chambers of Congress and not that of the President to enter into effect. If the concurrent resolution were to pass, some legal scholars believe such a resolution would not even have a legal effect on the President's powers over the military.

As United States-Iran relations continue to remain in a state of flux, the situation in Congress illustrates an interesting constitutional question which has been the subject of debate since the inception of the American experiment: When authoring the Constitution, what did the Founding Fathers intend the legislative and executive branches to do in the context of war, and how have these branches adhered to the Founders' original intent concerning war powers throughout American history?

Through this study, it is evident that the Founders crafted an evident institutional balance of the Nation's war powers between the legislative and executive branches of the federal government in the Constitution. According to the Founders' intentions, the legislature was to control the initiation of hostilities through statutory authorization, while the executive branch was limited to operational control of the Nation's military forces in pursuit of such authorizations—except cases of foreign attack against the United States which necessitated swift and decisive action from the president. From ratification until 1942, American leadership—Congress and the president— largely adhered to the

institutional intent of the Founders regarding war powers. During this era, presidents most always only ordered military action in pursuance of prior congressional authorizations or in defense following foreign aggressions and attacks against the United States. Beginning in 1942, this institutional balance prescribed by the Founders was largely ignored by American leadership as the United States shifted from isolation to neutrality. In modern practice post-1942, presidents often ignored the role of Congress in authorizing the use of military force and unilaterally thrust American forces into action abroad. While presidents have asserted expanded authority in the realms of war, Congress has largely appeased the expropriation of its powers through a lack of meaningful legal or political opposition to the practice. As such, modern presidents have wielded seemingly unopposed authority in ordering military action, in spite of the Founders' intentions and the Constitution itself.

Chapter I: The Founding Prescription

> *The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.*
>
> —James Madison (1788.)

In order to answer how Congress and Presidents have adhered to the intentions of the Founders throughout the history of the American experiment, this first chapter will provide the framework necessary to examine the history of the war powers post-ratification in the following chapters. As such, this opening chapter is divided into five sections that collectively tell the story of the Founders' intentions.

The first section will detail the various clauses and provisions within the Constitution itself. As with many constitutional ambiguities, it is necessary to include many different clauses, not just those which are readily apparent to the war powers debate but may have been used in the debate over American war powers throughout American history (A. *The Constitution*).

Following an examination of the Constitution, the second section of this chapter will then examine the circumstances and experiences of the British experience, noting what conceptions of war the Founders cultivated from life with the king and parliament. With this in mind, the section will also investigate the ideas of several prominent political philosophers of the time: Blackstone, Montesquieu, and Locke, whose writings heavily

influenced the Founders' ideals when eventually structuring the American Constitution (B. *The British Experience and the Philosophical Roots of the Constitution*).

The third section of this chapter will then examine the dawn of the American experiment by investigating the experiences of the individual states under their respective state constitutions following independence. Additionally, this section will also examine the pitfalls of the original central government of the United States, which existed under the Articles of Confederation. (C. *The Experience of Individual States and the Central Government under the Articles of Confederation*).

Following an examination of the various circumstances under the Articles of Confederation, the fourth section of this chapter will review the Constitutional Convention of 1787, as the Founders met in Philadelphia to craft the Constitution itself. While exact transcripts of the various debates regarding war powers and executive authority are scarce, several members of the convention took extensive notes of many of the proceedings. Through these notes, we are offered an additional lens into the Founders' original intent when crafting the Nation's distribution of war powers (D. *The Constitutional Convention of 1787)*

Following an examination into the Constitution itself, the ideas and norms of the philosophical and legal British traditions, the experience of the states and central government under the Articles of Confederation, and the notes of the Constitutional Convention, the fifth section examines the Federalist Papers. An examination into the Federalist Papers affords a glimpse into the minds and rationale of three of the most influential Constitutional framers and Founders— Alexander Hamilton, John Jay, and

James Madison— when seeking to ratify the Constitution's alternative government to that of the Articles of Confederation (E. *The Federalist Papers)*.

A. The Constitution

The Constitution categorically grants both the legislative and executive branches powers associated with the use of the military and war-making. Aside from establishing the legislative branch, Article I of the Constitution provides the scope of Congress' constitutional powers concerning the use and control over the military. Central to the debate regarding legislative authority are the provisions found within Section 8 of this Article, which lists the enumerated powers of the legislature. Clause 11 of Section 8, appropriately referred to as the War Powers Clause, grants Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water" (Article 1,§ 8, Clause 11). While the War Powers Clause lays the foundation of legislative authority in the realm of the military and military actions, Section 8 also introduces a plethora of additional clauses that have been used to reinforce legislative authority, including:

- "To define and punish Piracies and Felonies committed on the high seas, and Offences against the Law of Nations." (Article 1,§ 8, Clause 10)
- "To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years." (Article 1,§ 8, Clause 12)
- "To provide and maintain a Navy." (Article 1,§ 8, Clause 13)

- “To make Rules for the Government and Regulation of the land and naval Forces.” (Article 1,§ 8, Clause 14)
- “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions” (Article 1,§ 8, Clause 15)
- “To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.” (Article 1, § 8, Clause 16)
- Necessary and Proper Clause: “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” (Article 1,§ 8, Clause 18)

Though not necessarily as apparent to the overall debate, the Constitution also explicitly prohibits the states from engaging in war without the consent of Congress:

- Compact Clause: “No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.” (Article 1,§ 10, Clause 3)

Across the constitutional framework provided for the federal government, Article II establishes the executive branch and intricacies pertaining to presidential powers over the

military. As Article I does with the legislature, the enumerated powers granted to the president over the military are not limited to a single clause. Instead, the executive's war powers are fundamentally sourced from three constitutional provisions:

- The Vesting Clause: "The executive Power shall be vested in a President of the United States of America." (Article 2,§ 1, Clause 1)
- The Commander in Chief Clause: "President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several states, when called into the actual Service of the United States…." (Article 2,§ 2, Clause 1)
- The Take Care Clause: The President "shall take Care that the Laws be faithfully executed…." (Article 2,§ 3, Clause 5)

Also within Section 2, the Constitution enumerates the president's power to make treaties and appointments, by and with the consent of the Senate.

While the focus of this essay is to examine the distribution and scope of war powers between the legislative and executive branches, it would not be an appropriate assessment without also examining the judicial branch's role within the debate. Within Article III, the Constitution outlines the scope of judicial power, by extending such power to "all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority…." (Article III,§ 2, Clause 1). Under the authority granted within this aforementioned Clause, the judicial branch has jurisdiction over the federal law of the United States, which includes dealing with any legal issues which may arise in times of military conflict (Lawfare). Examples of instances in which the courts have dealt with matters pertaining to war and military

conflict are plentiful throughout the history of the American experiment and shall be highlighted within the following chapters of this assessment.

B. *The British Experience and the Philosophical Roots of the Constitution*

While the Founding Fathers would eventually reject British control, they would not reject many of its legal traditions. Before the Revolutionary War and independence from the British Empire, there was no such thing as an American identity. To this point, the Founders still identified as British through their ancestral lineage, and thus held fast to many of their customs and traditions. Many of the Founders were lawyers themselves, educated in the practice of British common law and the British Constitution (Sevi 77). During this period, it was not uncommon for a government to have a constitution not codified within a single physical document as we think of with the U.S. Constitution. Rather, the British Constitution was—and still is today— an unwritten constitution, built upon a "host of diverse laws, practices and conventions that have evolved over a long period of time" (Blackburn).

While the British Constitution may be an abstract sense of the modern interpretation of the phrase, codified documents within it such as the Magna Carta (1215) and the Bill of Rights (1689), detail political ideals and pitfalls which would eventually shape much of the Founders' desire for good government. The Magna Carta established the Parliament of England, which would later become the Parliament of Great Britain in 1707, which ruled over the American colonies (Blackburn). Following the establishment of the Parliament of England through the Magna Carta, the power of the British monarch

would forever be in a state of a gradual decline, as the legislature usurped many of the Crown's traditionally-held powers. Among these traditionally-held contested powers were control over the British military forces and the power to conduct foreign affairs (Blackburn). Traditionally, the British monarch held broad powers over foreign affairs, including the power to unilaterally initiate hostilities (Blackburn).

Following the Glorious Revolution in 1689, the passage of the British Bill of Rights finally tipped the balance of power towards the legislature (Blackburn) by limiting the power of the monarch, securing parliamentary freedom of speech and parliamentary elections, and establishing concrete rights of Parliament (Blackburn). By the eighteenth century, any of the king's long-term policy prerogatives which involved the use of the military relied on parliamentary support for approval. In order to secure funding for the use of the military, the king and his ministers would need to make their case before Parliament, and thus be subjected to their scrutiny and debate. Even if the Parliament sought to eliminate funding however, the British monarch could still initiate hostilities and draw the people into war (Blackburn).

Aside from demonstrating a long power struggle between the British legislature and the executive, the British Constitution also promotes includes a myriad of phrases that would later be found within the American Constitution (Legal Information Institute). For instance, "Commander in Chief," "declare war," "granting Letters of Marque and Reprisal," "raise and support Armies," and "executive Power" all can be traced to their roots within the British Constitution (Blackburn). These phrases, coupled together with the historical pretext of British power struggles between the legislature and the executive

would be familiar to well-educated American colonists. Thus the Founders, many of whom being well-versed in British legal tradition and law, would begin their understanding of executive power and right as it is introduced through the British Constitution.

While the Founders certainly understood executive powers as they were used throughout the British experience, it is important to note that the Founders sought to attain political knowledge and thought elsewhere. Rather than be singularly influenced by British history, well-educated American colonists in the eighteenth century were heavily influenced by the political thought of Blackstone, Locke, and Montesquieu. These three philosophers wrote their own understandings of good government extensively, particularly focusing on the balance of power between the branches and the intricacies of executive power.

William Blackstone was one of England's leading law scholars and politicians of the eighteenth century, most famous for his *Commentaries on the Laws of England* (William and Mary). He argued that the king had a royal "prerogative," which allowed him to unilaterally make treaties or appointments. Blackstone wrote that this power also extended to declaring war, raising armies and navies, and issuing letters of marque and reprisal (Sevi 78). Blackstone believed the king was to be properly considered "generalissimo, or the first in military command, within the kingdom," so that the king would have the "sole power of raising and regulating fleets and armies" (Blackstone). Realistically, however, the days of English generalissimo kings were long gone by the

eighteenth century. As mentioned prior, the king could not freely wield the military without the support of Parliament through their power over appropriations.

It is important to note that Blackstone's *Commentaries on the Laws of England* were used extensively by St. George Tucker, one of the most cited legal scholars in the early United States (William and Mary). While Blackstone succeeded in discussing various areas of common law, it failed to properly address the attitudes of American society or to adequately address the new American government (William and Mary). Tucker believed Blackstone to be too sympathetic towards the Crown versus that of the legislature to accepted by Americans. In order to make Blackstone's words more palatable for early Americans, Tucker used Blackstone's *Commentaries on the Laws of England* as a baseline for his own work, *Blackstone's Commentaries,* which he began to write as a more suitable alternative to the American reader in 1795 (William and Mary). In 1803, Tucker published his work, now organized into five volumes, to better serve the people of the young American nation through a better understanding of its legal system and government. Until 1827, Tucker's *Commentaries* served as the most-cited major treatise on American law in the United States (William and Mary). Lawyers and judges would frequently use Tucker's works as a basis for their understanding of American law, with the Supreme Court referencing it in forty early-American cases (William and Mary). Even today, Tucker's *Commentaries* continue to be referred to by modern lawyers, legal scholars, and judges as a basis of the early American interpretation of British and American law (William and Mary).

Aside from Blackstone, John Locke was very influential in shaping the Founders' understandings of the intricacies of government. For instance, Thomas Jefferson borrowed several of his most famous philosophical thoughts from Locke when composing the Declaration of Independence, which he modeled after the English Declaration of Rights, as written following England's Glorious Revolution (Constitutional Rights Foundation). Locke's influence is apparent through many of the notions within the Declaration of Independence, such as through the incorporation of "Life, Liberty, and pursuit of happiness," an idea first contemplated by Locke in his *Two Treatises of Government*, penned during the Glorious Revolution of 1689 (Constitutional Rights Foundation).

Just as Blackstone, Locke believed that it was necessary to have a robust executive prerogative, which he considered federative power (Tuckness). Locke's prerogative sought to enable the executive with the ability to freely wield the military unilaterally to protect the interests of the nation. He believed that while the laws enabled the executive to carry out the laws where it was clear and easily understood, chiefly within internal affairs, the executive must have the power to maintain public good outside of the confines of the law (Tuckness). Locke emphasized this point in his *Two Treatises*, where he wrote:

> Many things there are, which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require …it is fit that the laws themselves should in some cases give way to the executive power… (Locke, Two Treatises, § 159)

According to Locke, executive prerogative gave the executive the necessary power to act in accordance with an executive's own discretion, even if that action violated the law, in order to more faithfully fulfill the laws which seek the preservation of the public life and liberty (Tuckness).

While Locke advocated for a strong executive, he championed the idea that a separation of powers was necessary to a legitimately functioning government that operates according to the public good. Based on his experiences under British rule, Locke believed that a strong legislative authority, representative of the people, was necessary to counteract the selfish ambitions which may arise through a strong executive prerogative, such as instances of unjust taxation or other attempts at impeding liberty (Tuckness). While this legislative counterbalance was necessary in the eyes of Locke, he believed the legislature was "usually too numerous, and too slow" in their decision making to best protect the public good, versus the independent authority awarded through a strong executive prerogative (Locke, Two Treatises, § 160).

Much like Locke's conceptual "federative power," Montesquieu also advocated for a strong executive prerogative through his version, which he called "executive power" (Tuckness). Like Locke, Montesquieu believed that the executive needed the power to act outside of the law when the law falls short of protecting the public good. Montesquieu builds on Locke's conception, by expanding his prerogative to encompass greater authority in war-making and foreign affairs, as he believed the establishment of public security was not limited to an internal connotation (Tuckness). In defining the executive, Montesquieu wrote, "by the executive power, the prince or magistrate makes peace or

war, sends or receives embassies, establishes the public security, and provides against invasions" (Fordham). While Montesquieu believed the executive power should extend to foreign affairs and war powers, he also believed that when too much power was held in the hands of a single person, "there can be no liberty" (Fordham). As such, he conceived a system of checks and balances built on the separation of powers between the branches, which would later become the foundation of the U.S. Constitution (Constitutional Rights Foundation). Montesquieu argued that while the executive would have considerable powers in foreign affairs and war, the legislatures would be able to check such powers through their control over appropriations. Montesquieu praised the British Parliament's ability to appropriate annual military funding, which allowed the Parliament to dissolve the military, if necessary, to sustain liberty (Fordham). Once permitted by the legislative body, however, Montesquieu argued that the executive should have complete control over the army, stating:

> …once an army is established, it ought not to depend immediately on the legislative, but on the executive power, and this from the very nature of the thing; its business consisting more in action than in deliberation. (Fordham)

While the Founders certainly understood executive powers as they were used throughout the British experience, it is important to note that the Founders sought to eliminate the tyrannical tendencies of the monarch, such as those exhibited during King George III's reign over the American colonies. With an understanding of these tendencies through their hereditary ties to Britain, the Founders would eventually draw on the commentaries of Blackstone, Locke, and Montesquieu to create a far more balanced national government, complete with a strong executive.

C. *The Experience of Individual States and the Federal Government under the Articles of Confederation*

Besides the knowledge gained through their British roots, the experiences of the states under their individual constitutions and the Articles of Confederation proved significant to the Founders' understanding of good governance. This notion is reinforced by historian Willi Paul Adams, who wrote:

> The state constitutions' profound influence on the drafting of the federal Constitution and the ratification debates . . . took various shapes and forms, ranging from explicit institutional precedent and reasoning by structural analogy to negative examples of what to avoid . . . . [T]he state constitutions were a natural point of reference in the constitutional debates of 1787–88 because they were the constitutions Americans knew best. (Adams 290)

Following independence from the British Empire, the American states were ripe with an anti-monarchical sentiment. Just as the Founders, the first state constitutions were direct descendants from the British colonial system which preceded them, being "modified to the extent necessary to bring them into harmony with the republican spirit of the people" (Morey 19). Every state, whether through a preamble or a declaration of rights to their constitution, prefaced in general terms that the democratic principles of good government were partly learned through their experience and reason under previous governments and rule (Morey 19). As demonstrated through the tensions between the legislatures and executives in the states during this post-independence period, the implementation of a weak executive proved unworkable. When crafting the Constitution, the Founders used the experiences of the individual states to implement a strong executive. As a necessary counterbalance to the implementation of a strong executive, the

Founders would institute a system of checks to offset such authority. In the context of war powers, an executive hampered by numerous legislative checks is inconsistent with future claims of unilateral presidential assertions over the Nation's war powers.

Just having fought a brutal war against what they considered a tyrannical executive in King George III, the framers of the individual state constitutions sought to endow the legislative branch with a vast majority of the power. From 1776 to 1787, seven of the eight newly adopted state constitutions "included almost every conceivable provision for reducing the executive to a position of complete subordination" (Sevi 80, Chandler 441). Among these provisions, the executive would be subject to the destruction of the executive prerogative in favor of a legislative executive council, entrusting the legislature to elect the executive and control the state's military forces state, and extensive-term limits (Morey 28). For example, after being elected by the legislature, Virginia's governor would only be able to exercise executive power with the advice of the state legislative council while being explicitly barred from exercising "any power or prerogative by virtue of any law, statute or custom of England" under the state's 1776 constitution (Morey 29).

While serving in the Virginia House of Delegates in 1784, James Madison emphasized the pitfalls of such a system, remarking that the tyranny of Great Britain had been replaced by the unchecked rule of Virginia's tyrannic legislature (Sevi 81). Thomas Jefferson, who served as Virginia's second governor from 1779-1781, agreed with Madison that Virginia's legislative power had long outgrown appropriate bounds (Monticello). In 1784 Jefferson, stated, "An elective despotism [in Virginia] was not the

government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced" (Jefferson). He complained that all governmental powers "result to the legislative body," and that the legislature's control of the executive was "habitual and familiar" to that of British rule (Jefferson). Unfortunately, Madison and Jefferson's mutual distaste for an overarching legislative body was not limited to Virginia. Throughout the young American republic, nearly every state also struggled with an appropriate balance of power between the executive and the legislative branches, with the notable exception of New York and New Jersey (Morey 28).

New York's 1777 constitution was particularly favorable of the executive, as it granted the state's governor with expansive executive powers and independence from legislative supremacy. This is demonstrated through George Clinton, who served as the state's Governor from 1777 through 1795 (Britannica). Clinton was "immensely popular" among New Yorkers, who considered him to be a "forceful leader and able administrator" of the state (Britannica). Unlike other executives in early state governments who were elected by the legislature, Clinton was popularly elected and did not have to seek approval from a legislative executive council (Morey 25). New York's constitution entrusted the governor "be general and commander-in-chief of all the militia, and admiral of the navy of this State," while enumerating no war or military powers to the legislature (Yale).

While it was initially unpopular among the newly independent states, New York's constitutional model of executive power would eventually gain particular fervor among

the other states as they grew tired of legislative mismanagement. In a letter to Governor Clinton in 1779, John Jay commended New York's strong executive and urged the Governor to preserve its "vigor and reputation" so that it may serve as a model for the other states (Sevi 83). In the Federalist 26, Alexander Hamilton proclaimed New York's constitution to be "justly celebrated, both in Europe and North America, as one of the best forms of government established in this country" (Yale).

At the national level, Americans were just as frustrated with the structure of government. Following independence from the British Empire, the thirteen colonies were unified under the Articles of Confederation, the nation's first constitution. Approved in 1781, the Articles created a national government which vested a majority of the power within the individual states and a central unicameral legislative body (House). With no executive branch, the unicameral Congress of the Confederation was at once the nation's sole legislative and executive authority (House). Under the Articles, Congress possessed exclusive rights over the powers of war and foreign policy. Much to the dismay of Alexander Hamilton and others, Congress frequently would conduct foreign policy by committee, often leading to disastrous results with the European powers. Addressing these drawbacks, Hamilton wrote:

> Congress have kept the power too much into their own hands and have meddled too much with details of every sort. Congress is properly a deliberative corps and it forgets itself when it tries to play executive. It is impossible such a body, numerous as it is, constantly fluctuating, can ever act with sufficient decision… (Villegas 66-67)

Additionally, Congress controlled the regulation, funding, and overall command of the Continental Army, but lacked the authority to compel the individual states to aid in the war effort (Britannica). With these omissions, Congress struggled to react to unforeseen emergencies, which required the independent authority of a strong executive to protect the public good. Such was the experience of Shay's Rebellion (1786-1787), where an armed group of disgruntled citizens sought to overthrow the Massachusetts government through insurrection (Britannica). When Massachusetts Governor James Bowdoin appealed to Congress for military assistance, Congress was unable to secure the provisions necessary from the individual states— including Massachusetts— to quell the rebellion (Britannica). As a result, Bowdoin was forced to turn to private donors, rather than the federal government, to raise the necessary funds to protect its people (Yazawa 15). While Shay's Rebellion would eventually be subdued through Bowdoin's privately raised military force, it demonstrated the pitfalls of a weak central government and the executive branch, particularly in the matters of war.

While the initial reaction of the Founders and American statesmen following independence was to cede executive power— particularly that of the powers of war, to the legislative branch, the trials and tribulations sustained during the first decade of the American experiment necessitated a strong executive with the ability to control military operations. Many early-American politicians who favored legislative dominance came to rue frail executives and overarching legislatures. As such, mitigating the power imbalances present within the young American republic became an essential goal when the Founders convened to frame a new Constitution.

D. *The Constitutional Convention of 1787*

When the Founders met in Philadelphia for the Constitutional Convention in May of 1787, the Founders quickly rejected models of government that mirrored the legislative dominance of the Articles of Confederation (Center for the Study of the American Constitution). While transcripts of the entire Convention do not exist, several members took substantial notes on the proceedings (Yale). These notes, when coupled with the first draft of the Constitution, give great insight into the Founders' original desire and understanding regarding the proper balance of powers between the executive and legislative branches— including the powers of war.

After months of debate, the first draft of the Constitution was presented to the Convention on August 6th, 1787 (Library of Congress). Referencing the successes of empowered executives in states such as New York, the Convention's Committee on Detail designed an executive officer that wielded considerable military powers in the areas of operational and procedural control. Using similar syntax to that of New York's Constitution, the initial draft of the Constitution vested "The Executive Power of the United States in a single person… the President" (Library of Congress). Additionally, the Committee's draft also advanced that the President "shall be the commander in chief of the Army and Navy of the United States, and of the Militia of the Several States" (USA-Project).

To negate fears that such powers over the military would lead to a tyrannical executive similar to that of Great Britain, several provisions were included within the initial draft, which enabled the legislature to counteract the executive in the areas of war

appropriately. For instance, under Article VII of the initial draft, the Founders vested the power "To make war, To raise armies, To build and equip fleets," and "To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions" to the Legislature (USA-Project). Furthermore, in areas of foreign affairs, the draft also vested the power to make treaties and appoint ambassadors to the Senate under Article IX (USA-Project). While being the preliminary draft, the inclusions of these aforementioned clauses reinforce the early desires of the Founders and the proper allotment of the Nation's war powers in the final draft of the Constitution to come.

Following the Committee on Detail's initial draft of the Constitution, the Convention scrupulously proceeded to debate each clause within the document, granting further insight into the Founders' original understanding regarding the powers of war. By August 17th, the Convention centered on the clause enabling Congress to "make war" (Yale). Just as other debates within the Convention, exact transcripts of the August 17th deliberations do not exist, and notes on the matter are sparse. Fortunately, however, the notes of James Madison provide a key understanding of the Founders' original understanding of the balancing of war powers. According to Madison's notes, Charles Pickney of South Carolina opposed granting such power to the legislature as a whole, for it was too numerous in size and thus incapable of moving with the necessary speed which matters of war necessitated. Rather than the legislature as a whole, Pickney instead advocated that the Senate would best be entrusted to control matters of making war, as the Senate was more acquainted with foreign affairs and smaller in member size (Yale).

Additionally, Pickney argued that since the Senate equally represented all states and that all states had an equal stake in matters of the nation entering into war, the power would best be vested in the Senate (Yale).

Pierce Butler of South Carolina also held reservations for Congress' ability to "make war," albeit for different reasons (Yale). Butler, clearly favoring a stronger executive prerogative, held that the president alone would be best entrusted with such power, only to make war when "the Nation will support it" (Yale). Madison, on the other hand, held that the clause's syntax would grant Congress too many powers in the areas of war. Joined with Elbridge Gerry of Massachusetts, Madison urged the convention to strike out "make" for "declare" war (Yale). In offering this amendment to the wording of the clauses, Madison and Gerry make clear that the clause was solely intended to vest the power of commencing formal hostilities with Congress. By striking the ability of Congress to "make" war, Madison and Gerry also preserved the president's ability to "repel sudden attacks," without the prior authorization of Congress as necessary to defend the Nation. Additionally, the striking out of the phrase also ensured that once Congress had declared war, it would be the president alone as commander in chief, who would control the military operations. As such, while the power to declare war is vested with the legislature, the power to make war—as understood by the Founders— is solely a function of the president under his powers as commander in chief.

Following nearly five weeks of intense debate over the initial draft of the Constitution, the Constitutional Convention voted in favor of the proposed document on September 17th, 1787 (Library of Congress). Illustrating the Founders' dominating

sentiments garnered through their own experiences under British rule, the final Constitution sought to prevent a single branch from unilaterally controlling the Nation's war powers. While some areas were designed to limit legislative influence, such as in the process of electing the president, the Founders prescribed an institutional balance of the Nation's war powers between the legislative and executive branches. To the Founders, the institutional powers prescribed under the Constitution would appropriately serve to counteract one another, particularly in areas of war. While the Constitution granted the president with a strong executive prerogative in times of war, particularly through operational control of the military, the Constitution enabled Congress to appropriately check such power under Article I. Under Article I, the legislative branch was vested the power to declare war; the power to raise and support the military forces of the Nation through appropriation; the power to make rules for the governing and regulation of the Nation's land and naval forces; the power to call forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions; and the ability to provide for the organization, arming, and disciplining of the Militia, as well as the authority to train the Militia, according to such discipline as prescribed by Congress (Cornell). Additionally, the Constitution sought to prevent a tyrannical executive by limiting the term of the president to four years (Article II, § 1, Clause 1), and through legislative powers over impeachment. In cases of impeachment, the House of Representatives would be able to "choose their Speaker and other Officers; and shall have the sole Power of Impeachment" (Article I, § 2, Clause 5). If impeached by the House, the Senate, would then "have the sole Power to try" the impeachment charges against the president, under the supervision

of the Chief Justice of the Supreme Court who would preside over such a trial (Article I, § 3, Clauses 6-7). According to the Constitution, a president may only be found guilty and thus removed from office "for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors" (Article II, § 4).

E. *The Federalist Papers*

Following the Constitutional Convention, the newly-proposed Constitution would now be sent to the various states for ratification, a process that James Madison felt would forever decide "the fate of republican government" throughout the world (Library of Congress). While the proposed Constitution sought to eliminate the various pitfalls of the Articles of Confederation, not everyone was ready for such a change. With memories of British oppression fresh within their minds, opponents of the proposed Constitution, chiefly known as the Anti-Federalists, feared that the document gave far too much power to the executive branch. In order to dispel such fears and encourage a well-functioning federal government, Alexander Hamilton, James Madison, and John Jay authored *The Federalist Papers*. Throughout *The Federalist Papers*, various essays provide a direct assessment of war powers under the Constitution, offering a unique view of several of the most influential Founders.

In *Federalist* 8, Hamilton argues the Constitution is more likely to create a state of peace, even without expressly prohibiting standing armies within its text. Many within the young American Republic feared the possibility of standing armies due to their own experiences under British rule and knowledge of European history. Without the unity

provided by the Constitution's ratification, Hamilton contends perpetual warfare could run rampant among the individual states, much like that of Europe. Specifically, Hamilton believes less-populous states would likely be threatened by the populous larger states in such a situation, which would turn to drastic measures to maintain their defense:

> They would, at the same time, be necessitated to strengthen the executive arm of government, in doing which their constitutions would acquire a progressive direction toward monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority. (Yale)

In other words, without the provisions of the constitution, extreme defenses would likely catalyze oppressive government practices. According to Hamilton's explanation, war is expressly an activity for the executive branch. He explains that the nature of war requires the powers of government to largely be concentrated under the executive in times of war in order to protect the Nation. He warns, however, that as executive power increases the executive branch will continuously usurp powers from the legislature under the notion of defense. Through an understanding of historical precedent, Hamilton argues that it is the duty of the legislature to ensure that a war does not run in perpetuity, as the government would be effectively run by a single executive in such in times of war. Such should be avoided by the legislature in order to ensure that the will of the Nation is not discarded for that of a single ruler. In war especially, a single executive—armed with additional authority— would have a greater chance to oppress the liberties of the people through unilateral and tyrannic actions.

In *Federalist* 24, Hamilton argues that a standing military force would be necessary to defend the young Nation, even while not seemingly engaged in conflict. He

necessitates that proper defense of the Nation requires a peacetime professional military force to defend attacks from the established European powers adequately and to guard the Western frontier. While, to some, this may be understood as the president having unlimited powers over this standing force, Hamilton argues the opposite. According to Hamilton, control over such forces lies with the legislature and, thus, the people, as the legislative branch has the power to raise and support such forces as regarded fit. Hamilton knew that such power was just as dangerous to liberty in the hands of many versus a single executive. This is why, according to Hamilton, that Congress shall not appropriate funding to support the military for a period longer than two years so that a unitary executive is not enabled to subject the Nation to tyrannic practices that may arise in war (Yale).

In *Federalist* 26, Hamilton yet again revisits the debate over standing armies. In this case, Hamilton addresses fears that once in possession of such a standing force, the executive would circumvent the legislature's appropriation power by using "resources in that very force sufficient to enable him to dispense with supplies from the acts of the legislature" (Yale). Hamilton argues that such would not be the case, as any long-standing force would only be the product of necessity through the legislature and therefore, the people. The Constitution only allows the president to mobilize forces in the event of insurrection or when it is necessary to defend the public interest. According to Hamilton, such would rarely be the case, however, as the provided Constitution is designed to promote unity among the Nation (Yale). In attempting to describe the appropriate balances of power between the legislative and the executive branches concerning war, it

is important to note that Hamilton never questions the executive branch's role in conducting the operations and tactical decisions of war. However, he does assert that such operative power should not be exercised in the absence of legislative approval.

In *Federalist* 69, Hamilton explains the "real characters of the proposed Executive" as devised through the Convention, to dispel fears that an empowered executive would turn tyrannous under the proposed Constitution (Yale). To do so, Hamilton frequently compares and contrasts the executive authority granted under New York and Great Britain's constitutional models, giving additional evidence that the Founders considered the individual experiences of the states Constitutional Convention deliberations. As explained in the prior section of this chapter, New York's Governor was among the strongest executives in the young United States. While Hamilton believed that New York's government should be "justly celebrated, both in Europe and North America, as one of the best forms of government established in this country" (Federalist 26), he understood that such executive authority continued to be perceived by many as a threat to liberty. Hamilton takes careful consideration to negate such fears in *Federalist 69*, specifically in the area of war powers, where the power of the president "would be inferior to that of either the monarch or the governor" (Yale).

Further, in *Federalist* 69, Hamilton explains that the president's authority as commander in chief of the army and navy "would be nominally the same with that of the king of Great Britain, but in substance much inferior to it" (Yale). As for the substance of the president's war powers, Hamilton explains:

> It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature. (Yale)

Hamilton makes an important clarification on presidential war powers. Through the Commander in Chief clause, the president wields king-like control over military operations. Such is different from that of Great Britain, however, in that the president is only able to exercise such powers following authorization from the legislature. While these powers may appear similar to that of the king of Great Britain, they are indeed different. First, although the president may make take operational advice from those within his appointed Cabinet, the final decisions ultimately fall to the president as the Commander in Chief. This contrasts with the king, who is free to make expansive unilateral decisions on the military as a whole, including the raising and regulation of fleets and armies, without regard to an executive council or legislative body. Additionally, while the king may unilaterally declare war, the president would be prohibited from doing so under the Constitution, as the president would be prohibited from unilaterally declaring war and raising or regulating armed forces. Through equal representation in the Senate, Hamilton emphasizes that a declaration of war would only be authorized when the will of the nation as a whole, and not that of a single executive, supported it.

In *Federalist* 70, Hamilton reinforces the necessity for a unitary executive. To Hamilton, a unitary executive best ensures governmental accountability, and independence from legislative encroachments on executive power, and enables energy

within the executive (Yale). Of these factors, Hamilton placed considerable attention towards discussing the necessity for energy within the executive, writing:

> Energy in the executive is the leading character in the definition of good government. It is essential to the protection of the community against foreign attacks…to the steady administration of the laws, to the protection of property… to justice; [and] to the security of liberty…. (Yale)

Hamilton believes that through *Federalist* 70, the pitfalls of the plural executive scheme will be readily apparent to his reader. According to Hamilton, a plural executive would lead to internal quarreling among the branch between the various executive officers. Unlike the deliberative nature which benefits the legislative branch, Hamilton asserts that no "favorable circumstances palliate or atone for the disadvantages of dissension in the executive department" (Yale). Hamilton believes such quarrels only serve to "embarrass or weaken the execution of the plan or measure to which they relate," therefor negating the most necessary qualities of the executive—vigor, and expedition, without anything positive in return (Yale). According to Hamilton, energy within the executive was most necessary in instances of foreign attacks against the United States, where it served as the ultimate "bulwark of the national security" (Yale). He contends that defensive military action in response to attacks on the United States is the sole instance in which the executive may order military action without congressional authorization. As illustrated in the subsequent chapters, modern presidents have selectively interpreted Hamilton's argument regarding energy in the executive to be so important that it precedes that of legislative authority over war powers. Modern presidential practice forgets, however, that

such swiftness is meant to be pursued solely in response to attacks against the United States when the situation necessitates immediate defensive counteraction.

These aforementioned essays allow for greater clarity regarding the intentions of the Founders when framing the constitutional government. To the Founders, complicating the executive branch's design through excessive checks and inherent weaknesses would be a recipe ripe of idiocy. After a decade of legislative oppression under the Articles of Confederation, the Founders well understood the necessity of an empowered executive branch, who could operate decisively and independently to carry out the office. Many of the executive powers— particularly those in regards to the operations of war, were best in the hands of one rather than in many. Of course, such empowerment of the executive branch would not be without appropriate checks. The Founders considered the power of impeachment, frequent turnover of offices, and due dependence on the people for reelection as appropriate checks to prevent the rise of a tyrannical executive like that of King George III. Additionally, the executive was to be prohibited from commencing hostilities like that of the British monarch. In accordance with the execution of the law, the president would only be able to direct military operations following legislative authorization to do so. Once a war or conflict was commenced, however, the Founders sought it necessary to eliminate many of the possibilities in which a legislature could interfere with the operational command of the military. The legislature could limit the president's war powers in other ways, however, through their power over appropriations and over the raising of the military (except in cases of insurrection).

Chapter II: The Founders' Intentions at Work (1789-1942)

> *The constitution vests the power of declaring war in Congress; therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure.*
>
> —President George Washington (1793.)

As discussed in the previous chapter, it was understood by the Founders that war should only be conducted when the will of the Nation as a whole supported it. This understanding of good governance stood in stark contrast to that of the British monarch, who held the unilateral power to declare war without regard from the legislature and thus the people. In order to ensure that such unilateral decision-making would not be enabled under the government of the United States, the power to declare war was vested to the deliberative body directly accountable to the people— Congress. If the actions of Congress regarding war were not popular with the Nation, the Founders knew that the people could effectively make their voice heard through the electoral process and eliminate unpopular and unjust wars. Supporting such intent, James Madison, who would later enact the Nation's first declaration of war as president, wrote to Thomas Jefferson in 1798, stating:

> The constitution supposes, what the History of all governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has, accordingly, with studied care, vested the question of war in the Legislature. (James Madison, 1798.)

Even as British-born leaders of the America's founding generation were gradually replaced by subsequent generations of native-born Americans, American leadership largely adhered to the Founders' intentions concerning war powers through the United States' introduction into the Second World War. Consequently, following the ratification of the Constitution in 1789 until 1942, the institutional relationship designed by the Founders concerning the balance of the Nation's war powers largely remained unchanged. While there are exceptions during this period, the vast majority of military operations were carried out in adherence to the Founders' intentions.

A. *Congressional Declarations of War*

From the days of the Washington Administration to the present, there have been eleven separate formal declarations of war by Congress, collectively encompassing a total of five separate wars— the War of 1812, the Mexican-American War, the Spanish-American War, World War I, and World War II.

As demonstrated through **Table 1**, which outlines each formal congressional declaration of war throughout United States history, each declaration was enacted during the period in which this chapter is scoped, with the first instance authorizing hostilities against Great Britain in the War of 1812 (Senate). Throughout the nineteenth century, each declaration of war was passed as a bill, while declarations of war during the twentieth century were passed as joint resolutions by Congress (Elsea and Weed 1). Even though the power to declare war is explicitly a legislative function per the Constitution, Congress has never exercised the power on its own. Instead, each American

Table 1: Congressional Declarations of War			
War	**Opponent(s)**	**Date of Declaration**	**President**
War of 1812	Great Britain	June 18, 1812	James Madison
Mexican-American War	Mexico	May 12, 1846	James K. Polk
Spanish-American War	Spain	April 25, 1898	William McKinley
World War I	Germany	April 6, 1917	Woodrow Wilson
	Austria-Hungary	December 7, 1917	
World War II	Japan	December 8, 1941	Franklin D. Roosevelt
	Germany	December 11, 1941	
	Italy	December 11, 1941	
	Bulgaria	June 4, 1942	
	Hungary	June 4, 1942	
	Rumania	June 4, 1942	

Source(s): "Official Declarations of War by Congress." *United States Senate*, United States Senate Office, 10 Apr. 2019.

declaration of war has been preceded by a presidential appeal for Congress to act. By way of either a written statement or a speech before a joint session of Congress, presidents have appealed to Congress for action by outlining their specific rationale, which they believed warranted a declaration of war (Elsea and Weed 1-2). Within these appeals, presidents have cited the necessity for defensive action following direct armed attacks on American citizens, territory, or the rights and interests of the United States as a sovereign nation (Elsea and Weed 1). Following an appeal from the president to declare war, each declaration was then passed by a majority vote within the House of Representatives and the Senate before being sent back to the president for final approval and signage (Elsea and Weed 1). The most recent declaration of war by the United States was against Rumania (modern-day Romania) on June 5th, 1942, during World War II (Senate).

Table 2: Date of Request, Passage, and Signage					
War	**President**	**Date of Presidential Request**	**Date of House Passage and Vote**	**Date of Senate Passage and Vote**	**Date of Presidential Signage**
War of 1812	James Madison	June 1, 1812 (Great Britain)	June 4, 1812 (79-49)	June 17, 1812 (19-13)	June 18, 1812
Mexican-American War	James K. Polk	May 11, 1846	May 11, 1846 (174-14)	May 12, 1846 (40-2)	May 13, 1846
Spanish-American War	William McKinley	April 25, 1898	April 25, 1898 (310-6)	April 25, 1898 (42-35)	April 25, 1898
World War I	Woodrow Wilson	April 2, 1917 (Germany)	April 6, 1917 (373-50)	April 4, 1917 (82-6)	April 6, 1917
		December 4, 1917 (Austria-Hungary)	December 7, 1917 (365-1)	December 7, 1917 (74-0)	December 7, 1917
World War II	Franklin D. Roosevelt	December 8, 1941 (Japan)	December 8, 1941 (388-1)	December 8, 1941 (82-0)	December 8, 1941
		December 11, 1941 (Germany)	December 11, 1941 (393-0)	December 11, 1941 (88-0)	December 11, 1941
		December 11, 1941 (Italy)	December 11, 1941 (399-0)	December 11, 1941 (90-0)	December 11, 1941
		June 2, 1942 (Bulgaria)	June 3, 1942 (357-0)	June 4, 1942 (73-0)	June 5, 1942
		June 2, 1942 (Hungary)	June 3, 1942 (360-0)	June 4, 1942 (73-0)	June 5, 1942
		June 2, 1942 (Rumania)	June 3, 1942 (361-0)	June 4, 1942 (73-0)	June 5, 1942

Source(s): Elsea, Jennifer K., and Matthew C. Weed. "Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications." *Congressional Research Service*, the Library of Congress, 2014.

Table 2 details the respective timeline for each formal declaration of war throughout United States history, from the president's initial appeal to Congress to its enactment. With the exception of President Woodrow Wilson's request for a congressional declaration of war against Germany in World War I, which was first passed by the Senate, each declaration of war was first passed in the House of Representatives before being approved by Senate (Elsea and Weed 4). In several instances, the process of

formally declaring war has been accomplished in a single day following the request of the president. For example, in the case of the declaration of war against Spain authorizing the Spanish-American War, and the three separate declarations of war against Japan, Germany, and Italy which authorized the involvement of American military forces in World War II, Congress acted expediently on the request of the president by sending such a declaration to his desk for approval within the same day. In the following pages of this study, several of these formal declarations will be briefly examined to illustrate how they comport with the Founders' intentions regarding war powers.

Over two decades following the ratification of the Constitution, the constitutional process for formally declaring war would be tested for the first time against Great Britain in the War of 1812. On June 1st, 1812, President James Madison sent a message to Congress outlining the hostile acts of Great Britain towards the United States (Elsea and Weed 4). In his message, Madison chiefly denounced the British for their impressment of American seamen, their violation of American waters, and their implementation of a "sweeping system of illegal blockades" within his message to Congress (Hickey 40). While Madison's message is considered the first instance in which an American president recommended a congressional declaration of war, Madison never actually explicitly recommended such action, fearing accusations of executive influence in the legislative duty to declare war (Hickey 41). The crux of his message to Congress, however, was clear: "We behold . . . on the side of Great Britain… a state of war against the United States; and on the side of the United States, a state of peace towards Britain" (Hickey 41). While not explicitly calling for a declaration of war, Madison argued that to the British, a

state of war already existed, and it was time for the Nation to defend itself against these repeated aggressions. In response, the House of Representatives and the Senate voted to declare against Great Britain (Yale). Perhaps due to Congress being comprised of the founding generation being most familiar with the perils of war, the vote to formally declare war against Great Britain in 1812 remains the closest such vote in United States history. When the institutional balance concerning formal declarations of war was first tested in 1812, the founding generation set an important precedent for declarations to follow, by properly adhering to the constitutional prescription. While Madison could very well have used force in response to British attacks on American commerce and argue that it was in defense, he did not. By choosing to appeal to Congress before ordering military force in 1812, Madison's actions further solidify that the founding generation did not believe that the president should wield such power unilaterally.

While each declaration of war adhered to the appropriate institutional prescription of the Founders by being approved by Congress and enacted by the president, there are certain anomalies pertaining to the preceding events which catalyzed certain declarations. An example of such an instance is the events that led President James K. Polk to request a congressional declaration of war with Mexico in 1846. Previously a territory of Mexico, Texas won its independence in 1836 through an armed rebellion against the Mexican government known as the Texas Revolution (Wallenfeldt). In 1845, Congress annexed and subsequently granted Texas statehood, an act which inevitably placed the United States and Mexico on a path towards war (Waxman). When Congress annexed Texas, it

also inherited an unresolved border dispute concerning the rightful border between Mexico and Texas (Waxman).

Rather than seeing the disputed area which comprised the territory between the Nueces and the Rio Grande as a potential issue, President James K. Polk saw the territory as an opportunity to further American territorial expansion (Waxman). Shortly after Texas was admitted as a state, Polk deliberately worsened the border crisis by sending U.S. Army units into the disputed territory to serve as bait for Mexican forces present in the area (Waxman). In what is likely the greatest instance of a president aiming to unilaterally start a formal war, Polk still acted with respect to the institutional balance of war powers as prescribed within the Constitution. Polk knew that in the absence of a formal declaration of war from Congress, he would not be authorized to take the actions necessary to fulfill his ultimate goal of securing territorial expansion of the United States. Knowing that he would need the approval of Congress to constitutionally conduct war as commander in chief, Polk had already drafted a declaration of war to present to Congress prior to sending U.S. forces into the region (Waxman). Polk knew that if American blood was drawn by what appeared to be an act of Mexican aggression, public pressure would force Congress to declare war against Mexico (Waxman). Soon after, when Mexican forces attacked U.S. forces in the territory, Polk's gamble paid off. On May 11th, 1846, Polk gave his presidential appeal to Congress to declare war on Mexico, stating that Mexico had "invaded our territory and shed the blood of our fellow-citizens on our own soil" (Elsea and Weed 4, Fisher 1). Responding to a "glow of patriotic fervor" (Lindsey), Congress authorized the declaration against Mexico, which was signed by Polk on May

13th, 1846 (Elsea and Weed 4). While Congress declared war against Mexico, it did not do so without reservations. On January 3rd, 1848, the House of Representatives passed an amendment censuring Polk for "unnecessarily and unconstitutionally" beginning the Mexican-American War (Fisher 5). In doing so, Congress asserted its authority, making clear that they believed Polk's use of troops without prior authorization was a violation of the Constitution. The amendment passed by a vote of 85-81 (Fisher 5). Curiously, among those who voted in favor of the measure, was then-freshman lawmaker Abraham Lincoln (Fisher 5). While Polk's provocative actions seemingly forced Congress towards declaring war, the institutional balance of the Nation's war powers were still properly executed in the authorization of the Mexican-American War. It was Congress, after all, which declared war with Mexico, and the president who executed such authorization by controlling military operations as commander in chief.

The circumstances which preceded President McKinley's request to Congress for a declaration against Spain also present abnormalities that are worth investigating. In the months prior to McKinley's appeal for authorization, an explosion on board the USS *Maine* claimed the lives of 268 American servicemen in Havana Harbor, in the Spanish colony of Cuba, on February 5th, 1898 (pbs). Over a month later, on March 28th, the United States Naval Court of Inquiry ruled that the explosion was likely caused by a submerged mine in the Harbor (pbs). While formal blame was never officially placed on the Spanish for the explosion, public pressure for American military retaliation against Spain in Cuba began to skyrocket following the ruling (pbs). In response to mounting pressure for action, the U.S. presented an ultimatum to Spain, which demanded it

withdraw its military forces from Cuba and recognize Cuban independence (Elsea and Weed 2). The ultimatum, which was supported by a joint resolution of Congress, authorized the President to use the Nation's military forces to achieve these demands, if necessary (Elsea and Weed 2). When presented, the ultimatum for Cuban independence was swiftly rejected by the Spanish government. Only after Spain rejected the ultimatum did McKinley, who already had congressional authorization to use the Nation's military forces against Spain, appeal to Congress for a declaration of war. In essence, the decision to authorize the use of the Nation's military forces in the Spanish-American War was made to remove the Spanish from Cuba— in order to defend the interests of the United States. Unlike other declarations, it was not enacted in retaliation for an evident attack on American territory, sovereignty, military forces, or its citizens (Elsea and Weed 2). While it stands alone in its reasoning for doing so, the declaration of war against Spain was still made with respect to the constitutional process for doing so. While McKinley had the authorization to use military force prior, he nonetheless sought a declaration of war from Congress. McKinley's actions reinforce the notion of the time, that in order for a president to conduct meaningful war-making operations against another nation, he could not do so in the absence of a formal declaration of war.

In stark contrast to the declaration of war with Spain, congressional formal declarations of war during the twentieth century stemmed directly from evident attacks against American territory, military forces, citizens, or sovereignty. While the United States had worked to remain neutral throughout much of the First World War, Germany's decision to reengage in unrestricted submarine warfare against neutral American vessels

(which it had previously agreed to halt) was viewed as an egregious attack on American sovereignty and its citizens (Elsea and Weed 2). In his request to Congress on April 2nd, 1917, Wilson argued that the war had been "thrust upon the United States" through Germany's repeated assault on American lives and the Nation's sovereign right to neutrality (Elsea and Weed 2). Although Wilson signed the declaration of war against Germany following its passage through Congress on April 6th, he negated to do the same with Austria-Hungary, Germany's most prominent ally in the war, until they became an active threat against the United States (Elsea and Weed 2).

While each presidential request to Congress to declare war was grounded in defense, perhaps none is more appropriate than the declaration which catapulted American involvement into the Second World War. While the United States once again aimed to remain neutral, it would again be thrust into war by defensive means. When the Japanese military attacked Pearl Harbor and other American Pacific-based military instillations on December 7th, 1941, it directly attacked American territory, military forces, civilians, as well as the rights and interests of the United States as a sovereign nation (Elsea and Weed 2-3). Consequently, when President Franklin D. Roosevelt requested a congressional declaration against Japan the following day, Congress obliged the request by swiftly passing the declaration through both chambers and returning it to the Roosevelt for signage the same day (Senate). Except for the declaration of war against Spain in 1898, never before had a formal United States declaration of war been enacted with such expediency. Unlike the circumstances prior to the declaration of war with Spain, which presumed war, the egregious Japanese attacks on December 7th, 1941

were an unprecedented surprise to the Nation and its leadership. Necessitated by the will of the Nation, America's leadership rose to the challenge as the Founders intended—even in the case of extreme uncertainty. In the days to follow, when both Germany and Italy each declared war against the United States, America's leadership once again acted swiftly to defend the Nation and fulfill its constitutional obligation. On December 11th, 1941, following a presidential request Congress passed two joint resolutions declaring a state of war against Germany and Italy, which were also signed into force by President Roosevelt that same day (Senate).

B. *Congressional Informal Declarations of War*

Aside from the instances in which the United States has formally declared war, there have been many instances in which Congress has statutorily authorized the President to use military force since the ratification of the Constitution. While these congressional authorizations for the use of military force, also known as informal declarations of war, are not explicitly included within the Constitution itself, the practice was invented by the Founders themselves as they steered the Nation in the post-ratification era. Through an investigation into these early instances of informal congressional authorizations to use military force, while not expressly mentioned within the Constitution, it is clear that the Founders intended these authorizations to closely-mirror the constitutional practice of formally declaring war. In most cases, like formal declarations of war, congressional statutory authorizations for the president to use military force have been preceded by a presidential request to Congress for action.

Following an appeal from the president, congressional authorizations follow the exact same process as formal declarations of war— they must be voted on and passed in both the House of Representatives and the Senate, and then sent back to the president for his ultimate approval. The chief distinction between a formal declaration of war and a congressional authorization for the use of military force is how such power is delegated to the president. When Congress has formally *declared* war, as demonstrated through a majority of such declarations, the Nation is thereby thrust into a state of war with that nation. Following a declaration of war, the president is then able to use the all available military resources at his disposal as deemed necessary as commander in chief to execute such a declaration. When Congress *authorizes* the presidential use of force via informal declarations, the president may then use his commander in chief powers solely pursuant to a specific scope defined by Congress. Throughout the nineteenth century through the Second World War, American leadership largely adhered to the proper exercise of these congressional authorizations by limiting the power of the president to exercise his commander in chief powers solely in pursuit of the scope and provisions of the authorization.

In what would later be known as the *Quasi-War* (1798-1800), an undeclared war with France, President John Adams would be the first president to receive congressional authorization for military action against a foreign state. Despite officially being neutral in the European conflict between Great Britain and France in the decade following ratification, American commercial vessels were frequently caught in the crossfire and seized by French naval forces. In response to such a blatant disregard for the United

States' sovereign right of neutrality by the French government, President Adams appealed to Congress on multiple occasions to enact legislation that would enable an appropriate response. Specifically, Adams sought the authorization for the U.S. Navy to defend against attacks on American citizens and commerce abroad (Elsea and Weed 5-6). Heeding the call of President Adams, Congress subsequently passed legislation which aimed to "more effectually to protect the Commerce and Coasts of the United States" by authorizing the President to instruct the American naval commanders to act against any armed vessel attempting to commit such "depredations" on any vessel belonging to the United States or its citizens (Elsea and Weed 6). In the event of the capture of a vessel belonging to the United States or its citizens, the legislation also authorized the President to direct American naval forces to retake such vessels by force, if necessary (Elsea and Weed 6). President Adams signed this legislation into effect on May 28th, 1798. Months later, Congress passed additional legislation that furthered the President's authority and specifically addressed the French attacks on American sovereignty and its citizens. Signed into law by Adams on July 9th, 1798, this secondary legislation authorized the President to instruct U.S. Naval forces and commanders to attack and capture any French naval vessel found to be within the "jurisdictional limits of the United States, or elsewhere, on the high seas" (Elsea and Weed 6). Further, the congressional authorization of July 9th, 1798, enabled the President to grant the owners of privately-owned armed American vessels to recapture any vessel, goods, and property belonging to the United States and its citizens, while also granting them the authority to attack any French armed vessel (Elsea and Weed 6). While these various authorizations which enabled the

president to take action against France in the Quasi-War were unprecedented in American history, President Adams chose to act solely in pursuit of the scope outlined by Congress. By doing so, President Adams established valuable precedent concerning the exercise of presidential war powers pursuant to an informal declaration.

The events of the Quasi-War led to several significant Supreme Court rulings regarding the institutional balance of war powers. While they preceded *Marbury v. Madison* (1803), which established judicial review, the Supreme Court rulings in *Bas v. Tingy* (1800) and *Talbot v. Seeman* (1801) provide significant insight into the judicial branch's view that only Congress could authorize hostilities (Justia). According to the rulings, Congress could authorize hostilities by a formal declaration of war, or as it had done against France through legislation which permitted an undeclared war. These points are underscored by Justice Samuel Chase, whose opinion in *Bas* read:

> Congress is empowered to declare a general war, or Congress may wage a limited war, limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli,* forming a part of the law of nations, but if a partial war is waged, its extent and operation depend on our municipal laws.… [in the case against France] Congress has not declared war in general terms, but Congress has authorized hostilities on the high seas by certain persons in certain cases. (Justia)

Through Justice Chase's opinion in *Bas*, it is evident that Congress has authority in war-making, regardless of how that war originates. Chase agues that Congress may either refuse to authorize the war or to write narrow laws to curtail the executive's power in response.

Soon after the conflict with France, foreign attacks on U.S. commerce and shipping would yet again prompt American Presidents to seek congressional approval for the use of military force. Following attacks on U.S. vessels by Tripoli, Alexander Hamilton, being a staunch advocate of executive power, argued that the president could act without the consent of Congress in such an instance because Tripoli had already declared war on the United States (Ramsey 5). Once war existed by means of another party, Hamilton argued that the president, through his constitutional requirement towards defense, had unilateral and unlimited authority towards the use of the Nation's military forces (Ramsey 5). Even following Hamilton's arguments concerning executive power, President Thomas Jefferson acknowledged that any military measure beyond those in the line of defense would require congressional approval (Ramsey 5). In his appeal to Congress in December of 1801, Jefferson argued that it would be prudent for Congress to respond to Tripoli's repeated attacks on U.S. vessels by authorizing the U.S. Navy to take defensive and offensive responsive measures. On February 6th, 1802, Congress authorized the President to direct all available naval forces and even privately-owned armed vessels "for protecting effectually the commerce and seamen thereof on the Atlantic ocean, the Mediterranean and adjoining seas" (Elsea and Weed 6). In 1815, recognizing repeated Algerian acts of "overt and direct warfare against the citizens of the United States," President James Madison recommended that Congress declare the "existence of a state of war between the United States and the Dey and Regency of Algiers" (Elsea and Weed 7). In this instance, Madison was denied a declaration of war. Instead, Congress passed an authorization for the President to use the Navy at his

discretion in pursuance of the protection of American seaman and commerce "Atlantic Ocean, the Mediterranean and adjoining seas" against Algeria (Elsea and Weed 7). While the early nineteenth century authorizations against the North African states of Tripoli and Algeria were against relatively minor adversaries and mainly pertained to naval operations, they nonetheless demonstrate that no "material use" of the Nation's military forces were undertaken during the founding generation by the Founders themselves without prior congressional approval (Ramsey 5).

Finally, Congress' actions to suppress acts of piracy against American vessels from 1819 to 1823 warrant investigation of the historical evaluation of war powers. In this instance, congressional authorization directly responded to a growing number of petitions from American shippers to Congress pleading for the protection of their property and personnel from acts of piracy across Caribbean and Latin American waters (Elsea and Weed 7). Congress authorized the President to direct the commanders of public armed vessels of the United States to protect "the merchant vessels of the United States and their crews from piratical aggressions and depredations" (Elsea and Weed 7). The congressional authorization against piracy is significant as it illustrates an instance in which the Founding generation authorized the president to use military force in the absence of a prior presidential request to do so.

C. *The Civil War*

No historical evaluation of the Nation's adherence to the Founders' constitutional prescription regarding powers of war would be complete without an examination of the

American Civil War (1861-1865). Perhaps the most defining event in the history of the United States, the American Civil War divided the Nation against itself, turned family against family, and resulted in an unprecedented loss of American life. Prior to the Vietnam War, the total number of American forces killed in the Civil War— over 624,000 Union and Confederate soldiers— exceeded that of every American war combined (Ohio State University). Even through the present day, the American Civil War remains the deadliest conflict in American history. Aside from the tremendous loss of American life, the Civil War also impacted the historical exercise of the Nation's war powers, albeit not through a substantial change to the institutional balance of such powers as prescribed by the Founders. Rather, the circumstances of the Civil War provided vital insight into the commander in chief powers of the president in instances of insurrection.

While the Civil War was the deadliest conflict in American history, the American Civil War was not a "war" in the constitutional sense, but rather an insurrection against the United States government. Following the secession of numerous southern states to form the Confederate States of America (CSA), the American Civil War officially began following the Confederate bombardment of Union forces at Ft. Sumter, South Carolina, on April 12th, 1861 (American Battlefield Trust). Following the attack on Ft. Sumter, President Abraham Lincoln was not able to receive congressional authorization to wield the Nation's military forces, as Congress was not in session and thus unable to do so. Nonetheless, President Lincoln was determined to uphold his presidential oath of affirmation to "preserve, protect, and defend the Constitution of the United States," as

outlined in Article II, Section 1, Clause 8 of the Constitution, by ordering appropriate counteractive measures (Cornell).

Because President Lincoln was operating under a case of insurrection rather than war, his actions during the Civil War established crucial precedent regarding the president's wartime authorities. Lincoln, a man of deep principle and constitutional understanding, aimed to fulfill this presidential oath of affirmation to defend the Constitution and federal government by using all executive powers at his disposal, even without prior authorization from Congress. On April 15th, 1861, President Lincoln issued a public proclamation that an insurrection against the United States government existed and called forth the various militia's of the states to raise 75,000 troops in order to subdue the rebellion (Senate). Lincoln's proclamation also summoned Congress to convene in a special session beginning on July 4th, 1861, "to consider, and determine, such measures as, in their wisdom, the public safety, and interest, may seem to demand" (Senate). Entrenched in his position that the Confederacy was in open rebellion against the United States, Lincoln did not appeal to Congress to declare war. Lincoln believed that such a declaration would be equivalent to recognizing the Confederate States as an independent nation, which could subsequently rally international support to the Southern cause (Center for Civic Education).

On April 19th, Lincoln ordered the enactment of a naval blockade of major southern ports to cut off the Confederacy's ability to receive supplies and materiel critical to their war effort (Department of State). While Lincoln understood that his order had important legal ramifications, as a nation would just close its ports rather than blockade

them, he believed his actions were just (Center for Civic Education). In the months following Lincoln's order to establish an official blockade of southern ports, foreign governments began to recognize the Confederacy as a belligerent in the Civil War (Department of State).

On April 27th, 1861, following notice of a plot to destroy vital railroad tracks between Annapolis and Philadelphia by a group of Maryland-based Confederate sympathizers, Lincoln again tested his executive war power by unilaterally suspending the writ of habeas corpus in Maryland— a state which had remained within the Union (Dueholm). According to Article I, Section 9, Clause 2, known as the Suspension Clause, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it" (Cornell). Nearly a month later, Union troops arrested John Merryman in Cockeysville, Maryland, for "recruiting, training, and leading a drill company for Confederate service" (Dueholm). Immediately following his arrest, Merryman's lawyer petitioned Supreme Court Chief Justice Roger B. Taney, who was sitting as a federal circuit court judge, for a writ of habeas corpus (Britannica). Following deliberations on the matter, Taney subsequently issued a writ on the grounds that Merryman was illegally detained at Fort McHenry (Britannca). Following Taney's grant, General George Cadwalader, Fort McHenry's presiding officer, refused to obey the writ claiming that the President's orders superseded Taney's (Britannica). Following Cadwalader's refusal, Taney cited him for contempt of court on May 28th, ruling that the President did not have the power to suspend the writ (Dueholm). In what would be known as *Ex Parte Merryman* (1861), Chief Justice Taney

issued an opinion days later stating that because the limitation on suspension appears solely within Article I, which deals with legislative powers, only Congress had the ability to suspend the writ of habeas corpus (Dueholm). In spite of the Court's ruling in *Merryman*, Lincoln continued to oder the suspension.

In his address to the special session of Congress on July 4th, 1861, Lincoln sought the endorsement of Congress for his unprecedented exercise of war powers, claiming that none of his actions were "done beyond the constitutional competency of Congress" as "no choice was left but to call out the war power of the Government; and so to resist force employed for its destruction by force for its preservation" (Center for Civic Education). On the suspension of writ, Lincoln justified his actions on the basis that "we have a case of rebellion, and the public safety does require" such a suspension per the Constitution, which does not expressly specify who must exercise such power (Dueholm). Even without prior approval for his exercise of war powers, following Lincoln's appeal, Congress subsequently passed legislation authorizing his presidential use of war powers against the insurrection (Center for Civic Education).

In 1863, Lincoln's actions would continue to expand executive power in cases of insurrection, through Congress and the Supreme Court. Congress yet again authorized the expansion of executive war power through its passing of the Habeas Corpus Suspension Act. The Act officially authorized the president to suspend the writ of habeas corpus, and simultaneously released Lincoln and those who acted upon his order from any liability for having done so without prior approval from Congress (Dueholm). Under the authority granted to him by Congress, Lincoln yet again suspended the writ of habeas corpus six

months later by expanding his order to the entire Union (Dueholm). That same year, the Supreme Court ruled on the legality of Lincoln's previous order to blockade southern ports in the *Prize Cases* (1863). In the *Prize Cases*, the Supreme Court ruled 5-4 that the President's decision to impose a blockade was indeed constitutional (Justia). The majority opinion of the Court in the *Prize Cases* concluded that for the conflict to be a war, it was not unnecessary for the Confederacy to be acknowledged as an independent nation. Additionally, while Congress had retroactively approved of Lincoln's actions through subsequent authorization, according to the Constitution, "…The President was bound to meet it [the war] in the shape it presented itself, without waiting for Congress to baptize it with a name," according to the majority (Justia). In siding with Lincoln's expanse of executive power, the Supreme Court cemented the executive power to act decisively and expediently in times of war in the absence of prior congressional approval, regardless if the opponent of the United States was recognized as an independent nation or sovereign state (Oyez).

Chapter III: The Imperial Presidency (1942-Present)

> *In my generation, this was not the first occasion when the strong had attacked the weak… Communism was acting in Korea just as Hitler, Mussolini, and the Japanese had acted ten, fifteen, and twenty years earlier. I felt certain that if South Korea was allowed to fall, communist leaders would be emboldened to override nations closer to our own shores.*
>
> —President Harry Truman (1956.)

For nearly 160 years following the ratification of the Constitution, the Nation's leaders largely adhered to the institutional relationship of war powers devised by the Founders. During this span, presidents would most always request authorization in a prior appeal to Congress prior to using military force. In most cases, Congress would heed the call of the president and subsequently grant military authorization through a formal declaration of war or appropriate legislative statutes. Following World War II, the institutional balance of the Nation's war powers began to shift towards the presidency dramatically. Though largely gained through unilateral action, the expanse of presidential war powers throughout the last seven decades is also largely the product of Congress abdicating its constitutional role in the process through inaction and appeasement. Since the final declaration of war against Rumania in 1942, the use of the Nation's military forces has seldom followed the Founders' prescription regarding the commencement of hostilities through prior statutory authorization from Congress. Modern practice indicates that the president most often commences military action by introducing U.S. military

forces into hostilities rather than allowing Congress to exercise its constitutional role of authorization. In seeking to justify the unilateral deployment of U.S. forces abroad, presidents in the modern era have usually done so under the auspices of international "authorization" via United Nations (U.N.) Security Council Resolutions or the support of North Atlantic Treaty Organization (NATO) allies. It is worth noting, however, that while presidents have argued legal authority from the U.N. or NATO agreements, such is unconstitutional, or at least extra-constitutional, according to the Constitution's provisions on self-government (Fisher, Pres. Wars). According to the Constitution, the Senate may not transfer the powers vested to Congress through Article I to any regional or international organization via the treaty process (Fisher, Pres. Wars). In *Medellin v. Texas* (2008), the Supreme Court has held that, in the absence of authority from the Constitution or Congress, the president is unable to enforce international treaties (Oyez).

Presidential requests to Congress for the authority to use military force since 1942, when granted, usually have authorized broad military authority to use the Nation's military forces throughout entire regions, to defend U.S. interests in accordance with the president's own discretion. This contrasts with traditional congressional authorizations as practiced by the Founders themselves, which granted the president narrow authority to use the Nation's military forces solely in pursuance of the scope of Congress. The authority granted to the president through modern congressional authorizations closely resembles that of formal declarations of war, where the president is granted enormous latitude to conduct military operations across the globe according to his discretion.

As presidents have gained such powers in the realm of war, clear trends demonstrate the differences in how these powers were exercised. From 1942 to 2001, as presidential war power increased, the Nation was repeatedly thrust into unconstitutional military conflicts to defend United States interests and foreign states against the spread of communism and anti-American ideals. In doing so, presidents have tried to hide the true nature of their actions to Congress and the American people. Following the terrorist attacks of September 11th, 2001, twenty-first century presidents have largely ignored Congress and instead acted unilaterally to introduce U.S. forces into various conflicts across the globe. In both periods of the expansion of presidential war powers, presidents have either claimed authorization to do so on the basis of executive constitutional authority, prior broad congressional authorizations, United Nations Security Council Resolutions, or in support of NATO allies.

A. *1942-2001*

Since 1942, presidents have sought to expand the war powers of the presidency at the expense of the Founders' intentions. The inauguration of the present presidential campaign to increase the office's war powers follows the Nation's final formal declaration of war against Rumania in mid-1942.

As President Franklin D. Roosevelt was the last president to receive a declaration of war from Congress, his actions did not result in the expanded presidential power over the *initiation* of hostilities. Rather, as demonstrated through the Supreme Court's rulings in *Ex Parte Quirin* (1942) and *Korematsu v. United States* (1944), Roosevelt expanded

presidential war powers through his unprecedented *execution* of such congressional authorizations. In *Quirin*, despite Congress' role in determining who gets access to what courts per the Constitution, the Supreme Court unanimously upheld Roosevelt's order to establish a trial by military commission for eight German conspirators captured following a failed attempt to sabotage various targets within the United States (Justia). The Court ruled the as the German conspirators were captured as spies without uniform with the intent to sabotage, they had violated the laws of war and thus were unlawful enemy combatants (Justia). As Congress had authorized such military commissions to try unlawful enemy combatants through the Articles of War, the Court ruled that the president had the power to order such commissions through the execution of these Articles as commander in chief (Justia). Following the Supreme Court's cementing of executive power in *Quirin*, the proper limit of presidential authority following a declaration of war was increasingly unclear. Two years later, the Supreme Court set the limits of presidential authority through its decision in *Korematsu*. Following the Japanese attack on Pearl Harbor, President Roosevelt signed Executive Order 9066 on February 19th, 1942 (George Mason University). Citing the authority vested in him as President of the United States and Commander in Chief of the Army and Navy, Roosevelt's order authorized the exclusion of Americans from certain areas of the United States as deemed appropriate by the War Department (Oyez). Soon after, the Army's Western Defense Command, charged with overseeing the defense of the West Coast of the United States, used Roosevelt's order to force the relocation of tens of thousands of Americans, chiefly those of Japanese descent, to internment camps (George Mason University). In

Korematsu, the Supreme Court upheld Roosevelt's controversial Order in a 6-3 decision and confirmed the executive authority to relocate American citizens in a state of war (Oyez). Through *Quirin* and *Korematsu*, the Supreme Court affirmed Roosevelt's broad execution of executive authority during wartime, which consequently enabled successive expansion of presidential war powers throughout the twentieth century.

While Roosevelt set the stage for the expansion of presidential war powers, it would ultimately be his successor, Harry Truman, who would catalyze it. Upon Roosevelt's death in office in 1945, then-Vice President Truman was handed the reigns to an emboldened presidency. In the months to follow, President Truman led United States military forces to victory in Europe and ultimately forced a defiant Imperial Japan into submission through the atomic bombings of Hiroshima and Nagasaki. The resulting power vacuum which followed the collapse of Nazi Germany in Europe and Imperial Japan in Asia, ushered in a new enemy for the United States— the Soviet Union and communism. Newly strengthened both militarily and politically, the Soviet Union and the United States saw the economic and political policies of one another as a threat to their own interests. By 1946, as communism began to spread throughout Europe and Asia rapidly, President Truman believed that war with the Soviet Union was inevitable and began to formulate policies for the containment of the "communist threat" (Nelson 120). The next year, Truman ushered in a new American foreign policy of containing the geopolitical spread of communism and the Soviet threat in what would later be known as the Truman Doctrine. The Truman Doctrine pledged that the United States would provide "political, military and economic assistance to all democratic nations under threat from

external or internal authoritarian forces," and thus ushered in the Cold War with the Soviet Union (Department of State). Truman's pledge marked a stark departure from the American norm of neutrality and isolation from foreign conflicts not directly affecting the United States, to one of interventionism in the world's affairs (Department of State).

In 1950, Truman implemented his policy of American military interventionism by unilaterally taking the Nation to war against North Korea in the Korean War (1950-1953). Following the invasion of South Korea by North Korean communist forces, Truman abandoned the presidential practice of seeking statutory authorization from Congress established by the Founders prior to taking military action. On June 26th, 1950, Truman announced that the United Nations Security Council had ordered North Korea to withdraw its military forces from South Korea. The next day, stating that North Korea had failed to comply with the withdrawal order, Truman announced that he had ordered U.S. naval and air forces to provide South Korea with support (Fisher, Pres. Wars). In his June 27th announcement, Truman implied that the Soviet Union was behind the North Korean invasion and that his behavior was commensurate under the authority granted to him by the United Nations (Nelson 123). In actuality, however, Truman's actions were in direct violation of the U.N. Participation Act, which he signed into law with no objections in December of 1945 (Fisher, Pres. Wars). According to the Act, any U.N. agreements for the use of military force "shall be subject to the approval of the Congress by appropriate Act or joint resolution" (Fisher, Pres. Wars).

Not only did Truman progress presidential war powers regarding the initiation of hostilities, he deliberately went to great lengths to deceive Congress and the American

public as to the true nature of his actions. When asked if the Nation was at war during a press conference on June 29th, 1950, Truman remarked "We are not at war," but equated the use of U.S. forces to "a police action under the United Nations" (Fisher, Libya and War 2). In a Senate hearing over the Korean conflict the following June, Secretary of State Dean Acheson admitted that in the usual sense of the word there is a war" in Korea (Fisher, Libya and War 2). Subsequently, in 1953, a federal district court remarked that in the eyes of a majority of the American public, there was little doubt that "the conflict now raging in Korea can be anything but war" (Fisher, Libya and War 2). Truman's practice of playing games with his words to hide the true nature of his military actions from Congress and the public subsequently became a tradition of the office itself.

It is important to note that while President Truman sought to push presidential war power to indefinite bounds in the absence of meaningful congressional opposition, the federal judiciary did not allow all of Truman's abuses to go unchecked. In the midst of the Korean War in April of 1952, American steelworkers threatened to go on strike for higher wages against the steel companies of the United States (Justia). As steel was believed to be an essential part of the American war effort in Korea, President Truman issued an executive order commanding Secretary of Commerce Charles Sawyer to seize control of the Nation's steel mills (Justia). Sawyer subsequently directed the steel companies to comply with Truman's order in accordance with governmental regulations. Just as in the case of initiating American military action within the Korean conflict, Truman failed to request prior approval from Congress. Rather, upon the issuance of his order, he informed Congress of his unilateral move to seize a major sect of American

industry (Law Library). Congress, however, did nothing to impair Truman's order (Law Library). When several steel companies led by Youngstown Sheet and Tube Company were granted a preliminary injunction by the U.S. District Court of Columbia barring Truman's executive authority to seize and control the steel mills, the Supreme Court took up the case in *Youngstown Sheet and Tube Company v. Sawyer* (1952). In his defense, Truman cited prior presidential precedent and the executive authority vested to him as commander in chief and by Article II of the Constitution as appropriate grounds for his actions (C-Span). The Supreme Court, however, did not concur with Truman's argument. In a landmark 6-3 decision, the Supreme Court upheld the institutional balance of power between the branches, ruling that nothing within the Constitution allowed the president to seize property during wartime without prior congressional statutory authorization (Justia). While prior rulings such as *Milligan*, *Prize*, *Quirin*, and *Korematsu* enabled expansive presidential powers in wartime, the Supreme Court's decision in *Youngstown* serves as a reminder that such powers are not without limitation. That limitation is Congress.

Nonetheless, successive presidents continued to follow Roosevelt and Truman's seemingly unopposed example by pushing the limits of executive war power authority in the decades to follow. In response to a series of "provocative political and military actions" by the Chinese Communist government towards Formosa (Taiwan), President Dwight D. Eisenhower delivered a message to Congress on January 24th, 1955 (Elsea and Weed 8). In his message, Eisenhower argued that the "danger" posed by communist aggression "to the security of our country," the Pacific, could not wait for United Nations approval (Elsea and Weed 8). Rather, Eisenhower contended that the circumstances

necessitated military action to protect the interests of the United States by assuring the "security of Formosa and the Pescadores" (Elsea and Weed 8). While Eisenhower appealed to Congress to authorize the use of military force to "make clear the unified and serious intentions of our Government, our Congress and our people," he contended that through his constitutional powers as commander in chief, he would not hesitate "to take whatever emergency action might be forced upon us to protect the rights and security of the United States" in the absence of such approval (Elsea and Weed 8). Five days later, Congress passed legislation that authorized Eisenhower's ambitions to use military force with no objections to his assertive right to initiate military operations through executive authority (Elsea and Weed 8).

Following in with the line with the tradition of his predecessors, when President Lyndon B. Johnson assumed power in 1963, he brought his own presumptions of the presidential prerogative regarding the powers of war. According to Johnson, the president was to be the ultimate "decider" of the national government and the public, who were predisposed through the electoral process to grant the office full deference in matters of war (Nelson 127). Following a repulsed torpedo attack against the USS *Maddox*, a U.S. Navy destroyer, in the Gulf of Tonkin on August 2nd, 1964, Johnson would quickly begin to personify that role (Elsea and Weed 9). Two days later, in the wake of spotty reports of additional attacks on U.S. destroyers in the Gulf of Tonkin, Johnson unilaterally ordered U.S. military aircraft to bomb North Vietnamese "gunboats and certain supporting facilities" which were believed to be in connection with the attacks on U.S. forces (Elsea and Weed 9). The next day, with no meaningful evidence regarding the supposed

"attacks" on U.S. forces by North Vietnamese forces, an enraged Johnson turned to Congress for their "opinion" on the matter (Nelson 128). In his appeal to Congress on August 5th, 1961, Johnson deliberately used stealth and deception to push Congress towards authorizing military action through what would eventually be known as the Gulf of Tonkin Resolution (1964) (Elsea and Weed 10). According to the Gulf of Tonkin, a joint resolution enacted on August 10th, 1964, Congress approved and supported "the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression" to "promote the maintenance of international peace and security in southeast Asia" (Elsea and Weed 10). By falling prey to Johnson's emotional appeal, Congress fell into his trap by authorizing broad presidential war powers in the Vietnam War. Afforded with unprecedented broad authority to do so, in the two years following the enactment of the Gulf of Tonkin Resolution, Johnson dispatched 200,000 U.S. troops to Vietnam in the absence of a formal declaration of war (Spector). Despite major efforts by the Johnson Administration to persuade the public and Congress that the war was being won, by 1968 American forces were bogged down in their efforts to subdue the North Vietnamese communist threat (Spector). As more Americans were called into service and the casualties rose, the American public became increasingly disillusioned with the war effort in Vietnam (Spector). In the face of enormous public opposition to the Vietnam War, Johnson did not seek reelection in 1968 (Spector).

President Johnson's successor, Richard Nixon, was elected largely on a campaign promise to end the war and bring American forces home (Nelson 130-131). By May of

1969, President Nixon began announcing his plans to begin the withdraw of nearly half a million U.S. military personnel stationed in Vietnam and his ongoing success for peace in the region (Zeisberg 181). Nonetheless, such promises of withdrawal and peace to Congress and the public were marred with lies and deception, for Nixon had already succumbed to the tradition of his predecessors (Zeisberg 146). Two months prior, Nixon had unilaterally expanded America's role in the conflict by beginning unauthorized military operations in Vietnam's western neighbor, Cambodia. Despite being officially neutral in the conflict, Nixon believed the Cambodian government had been covertly operating as a conduit for the communist war effort against the United States and began a secret bombing campaign throughout Cambodia in March of 1969 (Zeisberg 146-147).

As America's role in the Vietnam War continued to swell under Nixon, Congress finally began to fight back against its own passivity towards the presidential expansion of war powers and the expansion of the conflict. Upon a reexamination of the circumstances pertaining to the Gulf of Tonkin Resolution, the Senate Foreign Relations Committee argued that Congress had not meant to accommodate such a war through its authorization, but had only granted such broad presidential authorization as a means of preventing the war itself (Nelson 131). According to the report, Congress had made an erroneous *personal* judgment as to how the President would execute the Resolution when it should have been making an *institutional* judgment "as to what any President would do with so great an acknowledgment of power, and, (…) as to whether, under the Constitution, Congress had a right to grant or concede the authority in question" (Rotter 77).

In light of the report and increased public pressure, Congress began to take action to inhibit the presidency from expanding the Nation's military involvement in the region through its constitutional power over appropriations. In December of 1969, Congress moved to reassert their constitutional powers over war by amending a defense bill to deny the necessary funding to prohibit the use of U.S. ground forces in neighboring Laos and Thailand (Zelizer). Despite Congress' move to restrict further U.S. involvement in the region, Nixon continued his campaign against neutral Cambodia. Relying on the broad presidential authorities established through the precedent of his predecessors, Nixon announced the American public on April 30th, 1970, that U.S. ground forces had crossed the Cambodian border to destroy North Vietnamese communist refuges and forces in the country (Zelizer). In response to Nixon's blatant disregard of public and congressional sentiments, Congress extended their previous amendment in June to prohibit funding necessary for U.S. ground force operations in Cambodia (Zelizer).

Despite repeated objections from the Nixon administration that such actions would inhibit his "lawful responsibilities as commander in chief of the armed forces," Congress continued reasserting its constitutional powers over war (Zelizer). In 1971, Congress passed the Defense Procurement Authorization Act, which declared that the United States intended "to terminate at the earliest practicable date all military operations of the United States in Indochina" (Nelson 132). While Nixon would eventually sign these congressional actions into law, he continued to warn that such were dangerous encroachments on his "lawful responsibilities as commander in chief of the armed forces" (Zelizer). Through signing statements, Nixon stated that these encroachments were

without “binding force or effect” and would have no effect on the pursuance of the policies he had enacted as commander in chief (Nelson 132).

While Nixon’s predecessors were able to wield the Nation’s military forces with no meaningful opposition to their assertive right, as demonstrated by the acts of Congress to limit the expansion of U.S. forces in the surrounding regions of Vietnam through 1969-1971, it took a vastly unpopular war to finally push Congress to reassert their war power tradition. After much debate and deliberations on the matter, in 1973, Congress passed the War Powers Resolution (WPR) to limit presidential war powers (Fisher, Pres. Wars). Nixon promptly vetoed the Resolution as “an encroachment upon his constitutional responsibilities as Commander in Chief” (Fisher, Uncons. Pres. Wars 21). Nixon’s veto was nonetheless immediately overridden in both the House of Representatives and the Senate (Nelson 132). According to the War Powers Resolution of 1973, the president is obligated to notify Congress within forty-eight hours of ordering the Nation’s armed forces into action. In the absence of a formal declaration of war or other statutory authorization from Congress, the bill prohibits the Nation’s armed forces from remaining deployed for more than sixty days (Yale). On top of the sixty-day deployment window, the bill also permits an additional thirty days for withdrawing American forces (Yale). In total, the Resolution allows for the deployment of the Nation’s military forces for a ninety-day duration. According to Section 2 of the WPR, the purpose of the Resolution is to:

fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgement of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances. (Yale)

Table 3: Post-WPR Noted Use of Military Force through 2000

President	Year	Location
Ford	1975	Cambodia
Ronald Reagan	1983-84	Lebanon
	1983	Grenada
	1986	Libya
George H.W. Bush	1989	Panama
	1990	Saudi Arabia
	1991	Kuwait/Iraq
Bill Clinton	1993-98	Iraq
	1993	Somalia
	1994-95	Bosnia
	1998	Afghanistan
	1998	Sudan
	1999	Yugoslavia

While the War Powers Resolution seeks to fulfill the intent of the Framers according to its stated purpose, a historical investigation into its usage demonstrates that it has failed to do so **(Table 3)**. Since its enactment, the assertive nature in which presidents have committed the Nation's military forces into action has steadily increased rather than decrease (Schonberg 134). In comparison with the Constitution, the WPR grants the president far greater unilateral authority over war powers, specifically through the president's ability to deploy American forces for up to ninety days without

congressional authorization. The president is thus essentially enabled to wage war unilaterally, in a fashion more reflective of the British monarch than the Founders' intentions. Initially, according to Section 5(c) of the Resolution, Congress could negate unilateral expansionism by permitting Congress to end military action at any point by majority-vote through a concurrent resolution of Congress (Yale). Following the Supreme Court's ruling in *Immigration and Naturalization Service v. Chadha*, however, the president could veto any such resolution from Congress, which thus required a veto-proof congressional majority to end military action (Kosar).

In addition, the "collective judgement" sought by the Resolution has been repeatedly impeded by questions regarding its constitutionality. Since its enactment in 1973, no president has ever formally acknowledged the War Powers Resolution's constitutionality (Carter 101). Instead, each president has taken the position of President Nixon, that the Resolution is in direct violation of Article V of the Constitution, as the only way to appropriately alter the constitutional powers of the executive and legislative branches are through amendments to the Constitution itself (Cornell). In accordance with the belief that the WPR is not legally binding, almost every president has ignored citing the Resolution's Section 4(a)(1) provision to Congress when introducing American military forces into action, which effectively begins the ninety-day clock for deployment (Nelson 132). In reality, only one president has reported military action to Congress under Section 4(a)(1) provision, President Gerald Ford. In 1975, President Ford reported to Congress that he had ordered military operations against the Khmer Rouge, in retaliation for their illegal seizure of the SS *Mayaguez*, a United States merchant vessel

(Nelson 133). By the time Ford had reported the military action, however, the operation was already completed (Nelson 133).

While Ford had complied with the WPR, President Ronald Reagan's term in office would reignite presidential war powers expansionism. In July of 1982, President Reagan announced that he would be sending U.S. forces to Lebanon as part of a multinational peacekeeping operation permitted by the Lebanese government (Elsea and Weed 10). When Reagan introduced U.S. Marines to Lebanon on August 25th, 1982, he reported to Congress military action but did not cite Section 4(a)(1) of the WPR, but the prior agreement with the Lebanese government which did not stipulate combat operations (Elsea and Weed 10). Following the departure of the fist dispatch of U.S. Marines from Lebanon on September 10th, Reagan sent an additional dispatch of Marines to the country ten days later. In a message to Congress on September 29th, Reagan announced the second dispatch of U.S. Marines, but yet again did not cite Section 4(a)(1) of the WPR, stating that their presence was not due to a combat role (Elsea and Weed 10). As U.S. Marines began to be killed or wounded as a result of the deployment order in Lebanon, Reagan continuously failed to cite Section 4(a)(1) of the WPR to Congress. Believing that such hostilities were not directed at American forces, Reagan insisted to Congress that his actions were "consistent with" the provisions of the WPR (Rubner 637). As tensions began to rise over the deployment, Reagan agreed to compromise with Congress through the enactment of the Multinational Force in Lebanon Resolution on October 12th, 1983 (Elsea and Weed 11). The Lebanon Resolution invoked Section 4(a)(1) of the WPR and authorized U.S. Marines to remain in the country for 18 additional

months (Elsea and Weed 11). In a signing statement on the bill, however, Reagan iterated "that I do not and cannot cede any of the authority vested in me under the Constitution as President and as Commander in Chief of United States Armed Forces," and that his signature did not acknowledge that his "constitutional authority can be impermissibly infringed by statute" (Elsea and Weed 11).

Two weeks later, under the support of a multinational coalition of Caribbean states, Reagan ordered 1,900 U.S. Army and Marine personnel to invade Grenada on October 25th, 1983 (Rubner 637). In a letter to Congress that afternoon, Reagan reported the action as "consistent with the War Powers Resolution" (Rubner 637). While he reported the action to Congress, just as in the case of Lebanon, Reagan deliberately chose to play word games with Congress over the true nature of his actions. In his report to Congress, he did not acknowledge that his reporting of the action was in *pursuance* of the WPR, nor did he explicitly convey that U.S. forces in Grenada were being introduced to hostilities (Rubner 637-638). Reagan knew that in the absence of congressional authorization, had Congress been notified of the prior, he would have automatically triggered the Resolution's Section 4(a)(1) sixty-day requirement for the termination of military action in Grenada. While Congress subsequently scrambled to enact legislation which statutorily proclaimed Reagan's message to initiate the sixty-day timeline, all attempts were in vain (Rubner 638-640). Nonetheless, Reagan's military initiative in Grenada was completed in less than sixty days (Fisher, Pres. Wars from Truman 21). Reagan would again play games with Congress through his bombing of Libya in 1986. In his message reporting to Congress, Reagan yet again maintained that his actions were

"consistent with War Powers Resolution" (Fisher, Pres. Wars from Truman 21), and further stated that:

> These strikes were conducted in the exercise of our right of self-defense under Article 51 of the United Nations Charter… These self-defense measures were undertaken pursuant to my authority under the Constitution, including my authority as Commander in Chief… (Burgin 222)

It is important to note that while Reagan was able to openly avoid the requirements of the War Powers Resolution, as touched on earlier, there was indeed pushback from Congress. In every instance, members of Congress took action to voice their disdain for the unilateral expanse of presidential war powers under undertaken in spite of the intentions of the WPR. These congressional actions included: introducing reactive legislation concentrated on the executive interpretation and execution of the Resolution, introducing preemptive legislation aimed at disabling the executive's ability to bypass the Resolution's requirements, floor hearings and statements responding to presidential action, and letters to Reagan himself (Burgin 225-230). Although far less common than the previous congressional actions, in several instances groups of legislators tried to force Reagan into complying with the WPR through direct lawsuits: *Crockett v. Reagan* (1982), *Sanchez-Espinoza v. Reagan* (1983), *Conyers v. Reagan* (1984) and *Lowry v. Reagan* (1987). While these cases dealt mostly with procedural questions and congressional prerogatives, each case was dismissed by the courts on the grounds of the political question doctrine or the doctrine of equitable discretion (Burgin 231). While examples of congressional action against Reagan's post-WPR usage of the

Nation's armed forces exist, none were able to meaningfully oppose the President's ability to unilaterally wield the Nation's military.

Under President George H.W. Bush, the Nation's military would yet again be thrust into conflict following unilateral action. In what was the largest deployment of U.S. forces since the enactment of the War Powers Resolution in 1973, under the direction of President H.W. Bush, U.S. forces invaded Panama and attacked Panamanian defense forces on December 20, 1989 (Burgin 232). While H.W. Bush decided to order the attack days prior, no effort had been made to consult congressional opinions on the matter (Burgin 232-233). Rather, in the hours before the invasion commenced, the executive informed leaders in Congress of the incursion to come (Burgin 233). While he would eventually send a report to Congress, H.W. Bush did so in the traditional fashion of his predecessors, by stating that his report was "consistent with the War Powers Resolution" (Burgin 233). Additionally, H.W. Bush disregarded the Resolution's requirement to inform Congress of military action within forty-eight hours by filing the report days after the invasion began (Burgin 233). Unlike Reagan's previous use of military action, which failed to abide by the War Powers Resolution, H.W. Bush's invasion of Panama was met with seemingly no public opposition from Congress (Burgin 233-234). Nonetheless, H.W. Bush's military initiative in Panama was subsequently completed within sixty days (Fisher, Uncons. Pres. Wars 21).

A year later, in 1990, following the Iraqi invasion of Kuwait under the direction of Iraqi President Saddam Hussein, President H.W. Bush yet again took unilateral action. A week after the Iraqi invasion, H.W. Bush unilaterally deployed U.S. forces to Saudi

Arabia to prevent further acts of Iraqi aggression in the region (Elsea and Weed 12). Noting that he did not believe the possibility of hostilities were imminent in his report to Congress, he repeated that such action was "consistent with the War Powers Resolution" (Elsea and Weed 12). By the end of 1990, there was over 350,000 U.S. military personnel deployed to the Persian Gulf region (Elsea and Weed 12). With the probability of war in the absence of congressional authorization growing, fifty-three members of Congress brought suit against the President for his failure to seek the prior consultation of Congress in *Dellums v. Bush* (1990) (Shonberg 137). Before the U.S. District Court of Columbia, the U.S. Justice Department argued in *Dellums* that the president had the authority to take offensive actions against Iraq without the prior consent of Congress (Fisher). In its decision, however, the court found no credit to the Justice Department's argument, stating that if the president:

> had the sole power to determine that any particular offensive military operation, no matter how vast, does not constitute war-making but only an offensive military attack, the congressional power to declare war will be at the mercy of a semantic decision by the Executive. Such an "interpretation" would evade the plain meaning of the Constitution, and it cannot stand. (Fisher)

In a similar fashion to the congressional lawsuits examined during the Reagan-era, the case was nonetheless dismissed by the court. Specifically, the case was dismissed on the grounds that the "Court would not be a surrogate for Congress, or a fallback for legislators whose views were not shared by a majority of both houses" (Shonberg 137).

On November 29th, 1990, the United Nations authorized member states to implement various U.N. Resolutions seeking to end the Iraqi occupation of Kuwait by all means necessary (Elsea and Weed 12). Using the United Nation's authorization to gain

support, by January 1991, President H.W. Bush had secured the support of an international coalition to rid Kuwait of its Iraqi problem (Elsea and Weed 12). Armed with international support, H.W. Bush sent a letter to Congress requesting a supporting resolution to authorize the deployment of U.S. forces "to protect America's security" in pursuance of the United Nations Resolutions (Elsea and Weed 13). Within his message, H.W. Bush notably did not ask for the *authorization* of Congress, but its *support*. Days later, in a televised interview, H.W. Bush reasserted his claim that in the absence of congressional authorization, he had the constitutional "authority to fully implement the United Nations resolutions" (Elsea and Weed 13).

In the wake of this assertion of unilateral presidential authority, Congress nonetheless passed the "Authorization for Use of Military Force Against Iraq Resolution," to pursue the U.N. Resolutions on January 12, 1991 (Elsea and Weed 13). Within the joint resolution, however, Congress listed several stipulations towards H.W. Bush's potential use of military force. According to Section 2(b) of the Resolution, the president was to inform Congress of all diplomatic efforts, past and present, undertaken by the United States to ensure Iraqi compliance as a precondition to the use of the Nation's military forces. If it was clear to Congress that the United States had exhausted all diplomatic means to ensure compliance, the president would then be enabled to execute the "specific statutory authority" of the Resolution according to "the meaning of Section 5(b) of the War Powers Resolution" (Elsea and Weed 13). Following the initiation of military action, the president would then be required to report to Congress every 60 days on ongoing efforts to ensure Iraqi compliance (Elsea and Weed 13). While

H.W. Bush would sign the Resolution into law and commence operations against Iraq, he would yet advance the presidential tradition of disregarding the role of Congress in the process, as demonstrated through his signing statement:

> my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution. (Elsea and Weed 13)

Following George H.W. Bush, President Bill Clinton yet again underscored the erosion of the Founders' war powers intent. With the fall of the Soviet Union in 1991, Clinton would be the first president since Roosevelt to serve the Nation while not being directly threatened by the Cold War and the geopolitical spread of communism. With the Soviet threat in the rear-view mirror, an emboldened United States was now ready to assume the role of the world's sole hegemonic power under Clinton. Although Clinton had campaigned against H.W. Bush's war policies, he would soon find himself emulating and expanding on the practice as a harbinger of what was to come (Yarhi-Milo 227-228).

When Clinton was inaugurated in 1993, he inherited H.W. Bush's military initiatives in Iraq and Somalia. In both countries, Clinton would unilaterally escalate U.S. diplomatic tensions through the use of force without congressional authorization. In June of 1993, President Clinton unilaterally ordered the launching of twenty-three tomahawk cruise-missiles against Iraq's intelligence command center in Baghdad in retaliation for a failed assassination attempt against H.W. Bush in Kuwait (Adler 159). As for the authority to ignore Congress and unilaterally order the strike, Clinton cited his

commander in chief power and his "constitutional authority" to conduct U.S. foreign policy (Adler 160).

In Somalia, Clinton would yet again escalate tensions and put American forces at risk without the consent of Congress. Following his defeat in the presidential election in 1992, in a final act as commander in chief, H.W. Bush sent U.S. forces abroad to pursue a U.N. humanitarian effort in Somalia known as "Operation Restore Hope" in December of 1992 (Klarevas 523). Following the deaths of twenty-three Pakistani peacekeepers in Somalia, Clinton shifted from the nature of the U.S. mission from peaceful means to military action against the self-proclaimed president of Somalia, Mohamed Farrah Aidid (Yarhi-Milo 230). On October 3rd, Clinton ordered a raid to capture several of Aidid's top aids in what would be known as the Battle of Mogadishu, or "Black Hawk Down" (Yarhi-Milo 231). In ordering the retaliatory attack on Aidid's forces, Clinton nonetheless offered no legal or constitutional justification (Adler 160). The raid ultimately resulted in the deaths of eighteen U.S. servicemen in a disaster for the Nation and the Clinton Administration (Yarhi-Milo 231). Enraged, following the incident, members of Congress began calling for the immediate withdrawal of U.S. forces from Somalia (Yarhi-Milo 231). Despite opposition from Congress, Clinton nonetheless continued to build up U.S. forces in Somalia in the following months (Yarhi-Milo 231).

Following the disaster in Somalia, Clinton became an indicator of presidential practice to come through his adaptation to the changing nature of warfare. Rather than directly place U.S. lives at risk through boots on the ground and face the potential political costs of doing so, Clinton began extensively using long-range bombing and

tomahawk cruise-missile strikes to further the office's grasp over the Nation's war powers throughout his presidency. Here are four such examples:

1. 1994 and 1995: Clinton implemented this strategy of indirect warfare through his bombing campaign of targets throughout Bosnia. All the while, Clinton ordered the bombings, he never once sought the prior authorization of Congress to do so. Rather, Clinton yet again cited his "constitutional authority" as commander in chief and prior "authorization" from U.N. resolutions and NATO allies as the means to do so (Adler 160-161).
2. September 3rd, 1996: Following an Iraqi military offensive against the Kurdish city of Irbil in northern Iraq, Clinton unilaterally ordered a tomahawk cruise-missile strike on various Iraqi military targets in southern Iraq (Fisher, Against Iraq). According to Clinton, the missile strike— which coincided with his 1996 reelection campaign— was authorized by prior U.N. resolutions on Iraq (Fisher, Against Iraq).
3. On August 20th, 1998: Clinton yet again took unilateral action by ordering tomahawk cruise-missile strikes on suspected al-Qaeda terrorist sanctuaries within Afghanistan and Sudan. Following these missile strikes, Clinton chose yet again to offer no constitutional justification for his unilateral acts of war-making abroad (Adler 161-162).
4. December 16-19th, 1998: Following the failure of Iraqi President Saddam Hussein to comply with a prior agreement to grant U.N. inspectors broad authority to investigate various Iraqi installations suspected to house weapons of mass destruction, Clinton unilaterally ordered an extensive bombing campaign throughout the country— amidst

his impeachment trial. In defense of his unilateral order, Clinton asserted that Iraq had failed to comply with U.N. weapons inspectors and that the missile strikes were coordinated to "attack Iraq's nuclear, chemical, and biological weapons programs" (Adler 162).

While President Clinton's actions in Iraq, Somalia, Bosnia, Afghanistan, and Sudan all point to his disregard for the Founders' intentions and congressional authority, the bombing campaign of Yugoslavia serves as Clinton's defining assertion of unilateral power. On March 24th, 1999, in conjunction with eighteen NATO allies, the United States began a bombing campaign throughout Yugoslavia during the Kosovo war (Adler 163). Unlike the 1994 and 1995 bombing campaigns of Bosnia which were also carried out by the U.S. and NATO allies, the United Nations Security Council explicitly failed to endorse military action in Yugoslavia prior to the operation and thus failed to deliver perceived additional "authority" to Clinton (Fisher, Basic Principles 334). In ordering the attack, which constituted the largest deployment of U.S. airpower since the Vietnam War, Clinton yet again deferred to his "constitutional authority as Commander-in-Chief" and did not seek prior congressional authorization to use the Nation's military forces (Adler, 163). When Clinton first informed Congress of his order to bomb Yugoslavia on March 26th, 1999, he unsurprisingly reported to Congress that the unilateral action was "consistent with the War Powers Resolution" (Damrosch 137). Unlike prior instances in which presidents unilaterally engaged in acts of warfare, however, Clinton's campaign in Yugoslavia was the first instance in American history in which a president waged war in the face of direct congressional *refusal* to authorize a war (Adler 156). A month following

Clinton's order in April, the House of Representatives defeated a joint resolution declaring a state of war between the United States and the Federal Republic of Yugoslavia (Adler 163). Most notably, however, is the fate of a congressional measure to authorize the president to U.S. air forces and missile strikes against Yugoslavia. While it was passed by the Senate, it failed to pass through the House of Representatives by a tie vote of 213-213 (Adler 163). According to the Constitution and historical practice, congressional authorizations required the approval of both chambers of the legislature for the president to be authorized to use military force. Through its failure to pass the House of Representatives, Congress had refused to authorize Clinton's military air campaign in Yugoslavia. Nonetheless, Clinton continued to wage his war.

In an effort to reassert the role of Congress in authorizing the use of military force, in *Campbell v. Clinton* (1999), numerous members of Congress filed suit against the President on claims that his military actions in Yugoslavia violated the Constitution and the War Powers Resolution (Damrosch 138). Falling in line with the precedent of presidential practice, the Clinton Administration argued that the members of Congress lacked standing to sue on constitutional or statutory claims, the issues lacked ripeness and that the cased should be dismissed under the political question doctrine (Damrosch 138). Additionally, the Clinton Administration argued that congressional funding was implicit authorization for the use of military force, despite the War Powers Resolution *explicitly* stating otherwise (Damrosch 138). In reaching its decision, the U.S. District Court of Columbia held in *Campbell* that this was a political question on which lacked justiciability, thus offering no judicial remedy to Clinton's extraconstitutional actions.

As demonstrated through this section, beginning with Roosevelt and Truman, the institutional balance of the Nation's war powers deviated far from the Founders' intentions throughout the twentieth century. Following the enactment of the Truman Doctrine in 1947, the American tradition of isolation was renounced for a new path of global interventionism to negate the spread of the Soviet threat and communism. In Vietnam, Presidents Johnson and Nixon infamously seized on the broad authority granted by Congress through the Gulf of Tonkin Resolution, and vastly expanded America's role in the unpopular conflict according to their "constitutional authority" as commander in chief. In 1973, Congress tried to vindicate itself from the Vietnam debacle and prevent further expansion of presidential war powers through the War Powers Resolution. In spite of congressional ambitions, however, presidents increasingly asserted broad independent authority to deploy U.S. forces under the auspice of prior U.N., NATO "authority," or their inherent constitutional authority. Following the collapse of the Soviet threat and the end of the Cold War in 1991, presidential use of the Nation's military forces remained essential in maintaining the global hegemonic role of the United States. As the nature of warfare changed through technological and political developments, by the mid-1990s, America's mandate was increasingly cemented through foreign bombing campaigns and cruise-missile strikes under the unilateral order of President Bill Clinton. When faced with these increasingly broad assertions of presidential war power throughout the twentieth century, Congress commonly appeased the president or failed to mount a meaningful legal or political challenge (i.e., impeachment) in response.

B. *2001-Present*

Shortly after assuming the presidency in January of 2001, newly-inaugurated President George W. Bush would soon be required to exercise the role of commander in chief and lead the Nation's military forces. On September 11th, 2001, a series of coordinated terrorist attacks on the United States destroyed the World Trade Center, significantly damaged the Pentagon, and claimed nearly three-thousand lives (Schonberg 116). In response to the most deadly attack on U.S. soil since the Japanese bombing of Pearl Harbor in 1941, President George W. Bush proclaimed that the United States would use "all resources to conquer" the enemy responsible for these "acts of war" against "freedom and democracy" (Elsea and Weed 14). Within days following the attack, Congress was ready to grant George W. Bush the resources he desired by joint resolution. On the morning of September 14th, the Senate passed S.J. Res. 23, entitled the "Authorization for Use of Military Force" against terror (AUMF), by unanimous 98-0 vote (Elsea and Weed 14). That afternoon, the House of Representatives also passed S.J. Res. 23 by a vote of 420-1, after rejecting a motion that would require the President to report his actions to Congress every sixty days pursuant to the authorization (Elsea and Weed 14). The only dissenting vote within the House on S.J. Res. 23 came from Representative Barbara Lee (D-CA), who believed that the resolution would serve as a blank check for the further expansion of presidential war powers (Shonberg 118). Section 2 of S.J. Res. 23 outlines the scope of the authorization within two brief subsections. According to Section 2(a) of S.J. Res. 23, the President is authorized to:

> use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons. (Shonberg 116)

The following subsection of S.J. Res. 23 Section 2(b) outlines the authorization's War Powers Resolution requirements. According to Section 2(b)(1), Congress declares that the resolution "is intended to constitute specific statutory authorization within the meaning of Section 5(b) of the War Powers Resolution." Additionally, Section 2(b)(2) declares that "Nothing in this resolution supersedes any requirement of the War Powers Resolution" (Elsea and Weed 15). On September 18th, 2001, President George W. Bush signed S.J. Res. 23 into law (P.L. 107-40; 50 U.S.C. §1541 note). When signing the 2001 AUMF into law, in line with presidential tradition W. Bush stated that "in signing this resolution, I maintain the longstanding position of the executive branch regarding the President's constitutional authority to use force, including the Armed Forces of the United States, and regarding the constitutionality of the War Powers Resolution" (Elsea and Weed 15).

Following his signature, President George W. Bush was quick to implement the broad authority granted to him and began deploying U.S. forces. By September 24th, W. Bush notified Congress regarding the first deployment of U.S. forces into "a number of foreign nations" throughout the "Central and Pacific Command areas of operations" (Weed, Pres. References 4). On October 9th, 2001, W. Bush notified Congress that "Operation Enduring Freedom" had commenced in Afghanistan and that major U.S. combat operations had begun against al-Qaeda and the Taliban (Weed, Pres.

References 4). Shortly after the United States' commencement of Operation Enduring Freedom in Afghanistan, U.S. and coalition forces effectively defeated Taliban rule and established an interim Afghan government by December of 2001 (Stanley 104). Although the Taliban government was removed from power, al-Qaeda and Taliban forces remained through large sects of the country (Stanley 105). Throughout 2002, U.S. and coalition forces engaged in a series of major combat operations, which ultimately shattered the military abilities of al-Qaeda and Taliban forces in Afghanistan (Stanley 105). On May 1st, 2003, Secretary of Defense Donald Rumsfeld announced an effective end to U.S. major combat operations in Afghanistan (Stanley 105). U.S. forces remained in Afghanistan following Rumsfeld's announcement to "prevent a political and military resurgence of the Taliban" and al-Qaeda, oversee the implementation of the new government and to "train Afghan security forces" (Stanley 105). The security mission, however, would prove disastrous as the remaining Taliban and al-Qaeda forces were able to reorganize along the Afghanistan-Pakistan border and begin insurgency operations against U.S. and coalition forces within months (Stanley 105). Despite numerous military offensives since the Taliban's resurgence in 2003, U.S. forces continue to remain in a state of perpetual warfare against the Taliban and other Islamic insurgent groups in Afghanistan under the authority of the 2001 AUMF (as of May 2020).

The year following the invasion of Afghanistan, President George W. Bush began to reinforce the claims of his predecessor that despite being defeated by the United States in 1991, Iraq and its government continued to pose a serious threat to the interests and security of the United States (Elsea and Weed 16). Specifically, W. Bush maintained that

despite U.N. resolutions following the 1991 Gulf War, Iraq had failed to cease its chemical, biological, and nuclear weapons programs (Elsea and Weed 16). On September 12th, 2002, W. Bush addressed the U.N. General Assembly and asserted that if Iraq continued to ignore its obligations, the United States would not hesitate to take action to enforce the U.N. resolutions (Elsea and Weed 16). Following W. Bush's U.N. speech, Congress began crafting legislation that would allow the president to take action against the supposed threat towards the United States. Meanwhile, the W. Bush Administration continued to further claims of an Iraqi threat, by connecting al-Qaeda terrorist operations with Saddam Hussein's Iraqi Regime (Fisher, Dec. on War 397-401). On the eve of an important House vote regarding authorization against Iraq, Bush reported to the Nation that Iraq had actively engaged in training members of al-Qaeda in "bomb making and poisons and deadly gasses" on October 7th (Fisher, Dec. on War 400). By October 11th, 2002, both the House of Representatives and the Senate had passed the "Authorization for Use of Military Force Against Iraq Resolution" (H.J.Res. 114) and sent it to the White House for final approval (Elsea and Weed 17). According to Section 3 of the Use of Military Force Against Iraq Resolution of 2002, the President is authorized to use the Nation's military forces "as he determines to be necessary and appropriate" to "defend the national security of the United States against the continuing threat posed by Iraq" and to "enforce all relevant United Nations Security Council resolutions regarding Iraq" (Elsea and Weed 17). As a predicate to the president's use of force, the resolution stipulated periodic reports to Congress regarding ongoing operations and that the resolution was "intended to constitute specific statutory authorization within the meaning of Section 5(b)

of the War Powers Resolution" (Elsea and Weed 17). In signing the resolution into law on October 16th, 2002, W. Bush yet again provided that the signing of such an authorization does not affect the "President's constitutional authority to use force to deter, prevent, or respond to aggression or other threats to U.S. interests or on the constitutionality of the War Powers Resolution" (Elsea and Weed 17).

Beginning in March of 2003, U.S. and coalition forces invaded Iraq to topple Saddam Hussein's regime in Operation Iraqi Freedom (Council on Foreign Relations). In just over a month, by mid-April, U.S. and coalition forces had removed Saddam Hussein from power and instituted a new provisional Iraqi government (Council on Foreign Relations). On May 1st, 2003, before a crowd of U.S. Naval personnel aboard the USS Abraham Lincoln, President George W. Bush declared, "The battle of Iraq is one victory in a war on terror that began on September 11, 2001, and still goes on" (Bash). Nevertheless, the conflict in Iraq further escalated following initial claims of an American victory. Just as in the case of the American effort in Afghanistan, following an initial victory, U.S. military forces became bogged down in a perpetual fight against radical Islamic insurgency groups in Iraq (Council on Foreign Relations). After more than seven years of war and 4,400 U.S. casualties in Iraq, President Barack Obama announced a formal end to United States combat operations in Iraq on August 10th, 2010 (Council on Foreign Relations). In his address to the Nation, President Obama reinforced that despite the imminent withdraw of U.S. troops the following year, the U.S. would not abandon Iraq (Council on Foreign Relations). When the final U.S. forces left Iraq on December 18th, 2011, the Iraq War official came to a close (Council on Foreign Relations).

In passing the 2001 AUMF against terror, Congress essentially afforded the presidency a blank check to wage indefinite warfare abroad. While the 2001 AUMF is sparse on details, it affords an unprecedented amount of broad military authority to the president in comparison with previous congressional authorizations by not only authorizing the president to "use all necessary and appropriate" military force against nations but also against organizations and persons for an indefinite duration (Shonberg 116). According to the authorization, the president alone may determine the nations, organizations, and persons that "planned, authorized, committed, (…) aided" or "harbored" those responsible for the in the September 11th, 2001 attacks (Shonberg 116). Additionally, the authorization enables the president to use military force to prevent future terrorist attacks against the United States by those in association with those who perpetrated the September 11th, 2001 attacks (Shonberg 116). While President George W. Bush was quick to name al-Qaeda and its members as the organization and persons responsible, as well as the Taliban government in Afghanistan as the nation responsible for harboring al-Qaeda and its members, these actors are nonetheless omitted from the language of the 2001 AUMF (Weed, Pres. References 4).

Since its passage in 2001, Presidents George W. Bush, Barack Obama, and Donald J. Trump have used the 2001 AUMF on terror to entrench the United States within a massive global "war on terror" and further the expansion of presidential war powers despite Congress and the Founders' institutional balance. Shortly after the invasion of Afghanistan, on November 13th, 2001, George W. Bush issued a Military Order entitled the "Detention, Treatment, and Trial of Certain Non-Citizens in the War

Against Terrorism," which established that terrorist suspects would be detained and tried by military commissions (Weed, Pres. References 37). As a legal basis for his Order, W. Bush cited "the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States" and the 2001 AUMF (Weed, Pres. References 37). Beginning in September of 2002, the W. Bush Administration began to expand U.S. counterterrorism efforts outside of Afghanistan through the deployment of U.S. forces for military training, advising, and assisting (Philippines, Georgia, and Yemen), operations against al-Qaeda in the Horn of Africa (Djibouti), maritime interception operations on the high seas (Central and European Command Areas), and secure detention operations in Guantanamo Bay, Cuba (Weed, Pres. References 6). In each report to Congress from 2002 to 2003, George W. Bush informed Congress that his actions were in accordance with his Article II authority and consistent with the 2001 AUMF (Weed, Pres. References 5). Additionally, the President stated that such reports to Congress were consistent with the War Powers Resolution (Weed, Pres. References 5).

In George W. Bush's reports to Congress from March of 2004 to December of 2008, the President continued reporting additional deployments of U.S. forces throughout the globe. These notifications include additional deployments throughout Africa (including combat-equipped forces), launching both air and sea strikes against al-Qaeda targets in Somalia, deployments to enhance counterterrorism capabilities of "friends and allies," U.S. armed forces working with "friends and allies in areas around the globe," and the extension of maritime interception operations on the high seas throughout the globe (Weed, Pres. References 8-16) Throughout this span, W. Bush only briefly

mentioned the 2001 AUMF once in reference to his reporting being “consistent with the 2001 AUMF and the WPR” (Weed, Pres. References 8). Beginning with the March 2004 notification, W. Bush began to list the operations against terror under a Section entitled "The Global War on Terror," and that combat operations in Iraq “are a critical part of the war on terror…” but are nonetheless authorized under the 1991 and 2002 AUMF's against Iraq (Weed, Pres. References 8). In November of 2004, W. Bush began to characterize ongoing operations in Iraq within either the “Global War on Terrorism” or other anti-terror labeled sections (Weed, Pres. References 8).

As demonstrated throughout the previous paragraphs, the George W. Bush Administration broadly interpreted the 2001 AUMF by unilaterally ordering the deployment of U.S. forces and combat operations globally. In addition, the W. Bush Administration invoked the 2001 AUMF to authorize military detentions of enemy combatants and U.S. citizens and residents, trials by military commission, and warrantless surveillance of communications “into and out of the United States of persons linked to al-Qaeda or related terrorist organizations” despite domestic law (Bradley 630). Throughout W. Bush's duration in office, his Administration's broad interpretation of Article II powers and the 2001 AUMF was constantly the subject of debate within the American public and Congress (Bradley 630).

Throughout his initial presidential campaign, candidate Barack Obama took a hard-line against President George W. Bush's exercise of war powers. In 2007, when asked whether the president had the constitutional authority to take military action in the absence of an “imminent threat” without prior congressional authorization, Obama

replied, “The President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation” (Fisher, Libya Operations 177). Elaborating further, Obama stated that as commander in chief, the president:

> does have a duty to protect and defend the United States. In instances of self-defense, the President would be within his constitutional authority to act before advising Congress or seeking its consent. History has shown us time and again, however, that military action is most successful when it is authorized and supported by the Legislative branch. It is always preferable to have informed consent of Congress prior to any military action. (Fisher, Libya Operations 177)

Despite campaigning to do the opposite, upon assuming the presidency in 2009, President Barack Obama continued to expand on the practices of George W. Bush by increasing the U.S. military effort against terrorism. In March of 2009, The Obama Administration stated that its interpretation of the 2001 AUMF was “limited to the authority upon which the Government is relying to detain the persons now being held at Guantanamo Bay,” and that the 2001 AUMF was not “meant to define the authority for military operations generally, or detention in other contexts” (Bradley 635). Nevertheless, as his presidency progressed, Obama increasingly relied on 2001 AUMF authority. In his first two notifications to Congress in June and December of 2009, Obama maintained that anti-terror deployments and combat operations were in accordance with his Article II authorities, and only cited the 2001 AUMF as the authority to continue detention operations in Guantanamo Bay, Cuba (Weed, Pres. References 8). From June 2010 to December 2011, Obama cited that his increase in anti-terror operations was “consistent with” the 2001 AUMF and the WPR, while continuing to cite detention operations solely

under the authority of the 2001 AUMF (Weed, Pres. References 19). In addition to Guantanamo Bay, Obama expanded detention operations of "al-Qaeda, Taliban, and associated fighters" to Afghanistan beginning in June of 2011 under the 2001 AUMF (Weed, Pres. References 21). During his first few years in office, Obama also dramatically increased the U.S. troop presence in Afghanistan from just over 30,000 in 2008 to over 100,000 in 2011 under the 2001 AUMF (Kurtzleben).

While U.S. forces were in the process of withdrawing from Iraq in 2011, President Obama continued to escalate the U.S. war against terror in Afghanistan and across the globe. On March 19th, 2011, Obama ordered direct U.S. military action in the Libyan Civil War (2011) against the ground forces and air defenses of Libyan Prime Minister Muammar al-Qaddafi without "seeking or obtaining" prior congressional authorization (Fisher, Libya 176-178). Following in the line of presidential tradition of unconstitutional war-making, in his notice to Congress two days later on March 21st, Obama informed Congress that U.S. military forces had commenced operations in Libya as "authorized by the United Nations Security Council" (Fisher, Libya Operations 179). Less than a week later, Obama stated in a nationwide address that following the initial action of U.S. forces in Libya, he would "transfer responsibilities" to NATO allies and partners (Fisher, Libya Operations 179). The supposed "authorization" cited by Obama, U.N. Resolution 1973, called for U.N. member action "for the purposes of preparing a no-fly zone" over Libya (Fisher, Libya Operations 179). As the campaign progressed, however, it was clear that Obama was not acting in accordance with his own supposed auspices of authorization. On April 25th, Obama authorized the use of armed Predator

drones against al-Qaddafi forces (Fisher, Libya Operations 178). In a May 2011 letter to Congress, Obama appealed to Congress for congressional action supporting his Libya operations, stating that "even in limited actions such as this," congressional support would "demonstrate a unity of purpose among the political branches on this important national security matter" (Fisher, Libya Operations 178). According to an Obama Justice Department opinion in 2011, in order for a military conflict to be constituted as a "war" U.S. military forces must be exposed to "prolonged and substantial military engagements," under the threat of significant risk over a significant period" (Fisher, Libya Operations 180). Thus, according to the Obama Administration, so long as U.S. casualties remained low in Libya, the military campaign could not be defined as a war (Fisher, Libya Operations 180).

While the Obama Administration maintained risk as a component that necessitates congressional authorization, the War Powers Resolution states otherwise. As previously mentioned, Section 4(a) of the WPR requires the president to report to Congress within forty-eight hours whenever U.S. forces are introduced "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," or when U.S. forces enter "the territory, air space or waters of a foreign nation, while equipped for combat" (Yale). Additionally, according to Section 5(b) of the WPR, if the president has not submitted the required report or has not received congressional authorization within sixty days prior to the commencement of operations, the president must terminate "any use of United States Armed Forces" and withdrawal within thirty days (Yale). When the sixty-day deadline for congressional authorization passed on on

May 20th, U.S. forces nonetheless remained engaged in military operations (Fisher, Libya Operations 180). With the final withdrawal deadline of ninety days approaching, on June 3rd, 2011, the House of Representatives passed H.Res.292, which directed the President to submit a report within fourteen days providing his justification for not seeking congressional authorization, as well as the national security interests at risk interests in Libya (Fisher, Libya Operations 180). In a bipartisan effort on June 13th, the House of Representatives passed additional legislation voting to block funding to U.S. military operations in Libya (Kim).

In response to mounting congressional pressure, on June 15th, 2011, the Obama Administration submitted a report to Congress on its Libyan campaign (Fisher, Libya Operations 180). According to the report, "the President had the constitutional authority, as Commander in Chief and Chief Executive and pursuant to his foreign affairs powers, to direct such limited military operations abroad" in operations which did not constitute a war (Fisher, Libya Operations 180). Such operations, according to the Obama Administration were "consistent with the War Powers Resolution and did not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of 'hostilities' contemplated by the Resolution's sixty-day termination provision," as:

> U.S. operations [in Libya] do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors. (Fisher, Libya Operations 180)

Following Obama's report to Congress, the House of Representatives rejected a joint resolution on June 24th, 2011, which would have authorized military actions in Libya (Ghattas). Nonetheless, Obama continued to order U.S. forces to engage in illegal military operations in Libya. Despite claiming American victory in the conflict in August of 2011, Libya has continued to remain in a state of constant political and social disarray through a civil war (Thrall). Such is further demonstrated by the fact that five years following his initial order, the Obama Administration was still unilaterally dropping bombs within Libya in 2016 (Zenko and Wilson).

While the Iraq War came to a close in December of 2011, the 2002 AUMF against Iraq continued to remain in effect (Golan-Vilella 62). Just as the 2001 AUMF against terror, the Authorization for Use of Military Force Against Iraq Resolution of 2002 also affords unprecedented broad military authority to the president. In comparison with the previous 1991 AUMF against Iraq, the granted authority of the 2002 AUMF is not explicitly limited to previous U.N. resolutions (Elsea and Weed 17). Instead, the 2002 AUMF authority includes both prior U.N. resolutions on Iraq, and those passed until up until the mandated U.N. expiration date of December 31st, 2008 (Elsea and Weed 17). Additionally, just as the 2001 AUMF, the 2002 AUMF authorizes the president to use the Nation's military forces in pursuance of the resolution for an indefinite period. In early 2014, the Obama Administration reported that "the Administration supports the repeal of the Iraq AUMF since it is no longer used for any U.S. Government activities" (Brandon-Smith). Nonetheless, that the same year the Obama Administration used the 2002 AUMF against Iraq in secondary-conjunction with the 2001 AUMF to authorize a resurgence of

U.S. ground forces to Iraq in yet another instance of presidential expansionism of the war on terror (Brandon-Smith).

In the Summer of 2014, the Obama Administration began increasing deployments of U.S. forces to Iraq to fight against a new enemy, the Islamic State (IS), stating that such action was "consistent with" the War Powers Resolution and his constitutional authority (Weed, Pres. References 28). After the initial destruction of al-Qaeda in the latter stages of the Iraq War, the Islamic State descended from al-Qaeda's ashes as an "associated force" following the withdrawal of U.S. forces from Iraq in 2011 (Bradley 637). The Obama Administration concluded that the 2001 AUMF authorized hostilities against the Islamic State because the group had a "direct relationship" with al-Qaeda's leader, Osama Bin Laden, and while he was alive had waged conflict "in allegiance to him" against the United States (Bradley 637). By 2014 however, the Islamic State had disassociated itself from al-Qaeda and began competing with the group for power throughout the globe (Bradley 637).

In August of 2014, Obama informed Congress of the initiation of "limited airstrikes" against Islamic State targets, by again referencing the reporting requirements of the WPR but had yet to cite any supporting authorization through the 2001 AUMF or the 2002 AUMF. The following month, President Obama addressed the Nation on September 10th, 2014, discussing his intent to further engage the Islamic State through a "long-term series of airstrikes, new deployments, and other military actions" (Weed, Pres. References 28). On September 23rd, 2014, the Obama Administration reported to Congress regarding the ongoing campaign against the Islamic State in Iraq (Weed, Pres.

References 28). Within both of the President's September notifications to Congress, Obama again cited the WPR's reporting requirements and stated that such actions were pursuant to his constitutional authority and the 2001 AUMF (Weed, Pres. References 28). While not explicitly citing the 2002 AUMF against Iraq within these notifications, the Administration continued to rely on the 2002 AUMF as a source of secondary-authority for the President to conduct anti-Islamic State operations in Iraq, despite previously advocating for its repeal (Ramsey 17-18). Despite being formed well after the terrorist attacks of September 11th, 2001, Obama relied on the 2001 AUMF as the proper authority to engage the Islamic State as an "associated force" of al-Qaeda in Iraq throughout his presidency (Brandon-Smith).

An assessment into Barack Obama's expansion of presidential war powers would not be complete without detailing his extensive use of remote drone warfare during his presidency. In 2000, the United States drone program began to be developed and refined by the Central Intelligence Agency (CIA) in Afghanistan (Sifton). These early drone operations were conducted using unarmed drones for the purpose of intelligence gathering operations on Osama Bin Laden and al-Qaeda (Sifton). Shortly following the September 11th, 2001 terrorist attacks against the United States, the CIA began arming drones to seek and destroy Bin Laden and al-Qaeda associated targets through precision airstrikes (Sifton). Under the direction of Obama's predecessor George W. Bush, the United States expanded armed drone operations outside of Afghanistan and conducted fifty drone airstrikes against al-Qaeda "associated" persons and organizations in Pakistan,

Yemen, and Somalia, killing an estimated 296 terrorists and 195 civilians in the process (Zenko, Obama's Embrace).

Upon assuming the presidency in 2009, Obama began to vastly expand W. Bush's use of drones for counterterrorism operations under the 2001 AUMF by ordering his first two strikes just three days following his inauguration (Zenko, Obama's Drone Data). Throughout his two terms in office, President Obama ordered approximately five-hundred, and forty drone strikes principally in Pakistan, Yemen, and Somalia, killing an "estimated 3,797 people, including 324 civilians" (Zenko, Obama's Drone Data). Just as he had done in Iraq with the Islamic State, many of Obama's drone strikes in Yemen and Somalia were authorized against "associated" groups or persons of al-Qaeda formed well after the enactment of the 2001 AUMF (Ramsey 13-14). For instance, many of Obama's drone strikes in Yemen were directed at al-Qaeda in the Arabian Peninsula (AQAP), which formed in 2009 out of a union of prior al-Qaeda affiliates within the region (Ramsey 14). In Somalia, Obama namely targeted persons with ties to al-Qaeda within the militant group al-Shabab, which was formed in 2004 but pledged allegiance to al-Qaeda in 2012 (Ramsey 14).

Aside from the massive destruction President Obama left in his wake, perhaps the most notable impact of his presidency regarding war powers were the efforts undertaken by his Administration to institutionalize and normalize the use of drone warfare (Zenko, Obama's Embrace). Indeed, the Obama Administration did not believe these strikes took place in the context of "war" and were therefore out of the reach of Congress. Unlike his predecessor, Obama took unprecedented action by acknowledging the use of covert drone

strikes in non-battlefield settings in 2011 (Zenko, Obama's Embrace). Shortly after, the Obama Administration began carefully scripting language and scrupulously crafting policy framework regarding the presidential usage of drones and lethal counterterrorism operations in "conventional war zones" and "areas outside active hostilities" (Tankel et al.). In the 2013 Presidential Policy Guidance (PPG), Obama codified the legal "Procedures for Approving Direct Action Outside the United States and Areas of Active Hostilities" (Tankel et al.). According to Obama's 2013 PPG, before conducting lethal operations in areas outside of active hostilities, the president would need to provide an operational plan including a counterterrorism objective and a given duration for the use of force, a legal basis for doing so and approval from a high-ranking White House official (Tankel et al.). Obama's PPG required strict conditions to be met, including a suspected imminent threat towards U.S. persons posed by the target and the consent of the host nation (Tankel et al.). If the host nation did not consent to the operation, the president would still be enabled to conduct the operation in the absence of other alternatives through "near certainty" that the approved target would be present, provided that civilians would not be harmed (Tankel et al.). Once authorization was granted under the PPG, "signature strikes" against unidentified terrorist suspects could be conducted freely as well, so long as U.S. citizens were not involved (Tankel et al.).

In May of 2013, Obama announced to Congress and the American public that his Administration had formalized such reforms trough the PPG, but there is little evidence that supports this assertion (Zenko, Obama's Embrace). For instance, according to the Obama Administration, such reforms did not apply to drone operations in Pakistan post-

PPG, "where roughly 40 percent of all non-battlefield drone strikes (…) occurred" (Zenko, Obama's Embrace). Additionally, while Obama left his policies regarding drone warfare in ill-effect during the latter half of his presidency, he received no meaningful opposition from Congress, who overwhelmingly supported the President's expropriation of their war powers through his actions (Zenko, Obama's Drone Data). While Congress did not meaningfully oppose the President's covert usage of drone strikes, sects of the American public and the international community began to pressure the Obama Administration to publicly acknowledge the lethal consequences of his drone strikes (McKelvey). Amid mounting pressure to publicly adhere to his policies on the release of drone strike data, President Obama signed an executive order in July of 2016, which mandated the Director of the CIA to release annual reports regarding the usage of drones in lethal operations, including the total number of civilians killed (National Archives and Records Administration). As a result of Obama's tenure, extensive usage of unilaterally-ordered drone strikes are now normalized and cemented within the war powers of the presidency and in the eyes of the American public, despite international opposition to the practice (Zenko, Obama's Embrace).

In addition to the drone strikes used by the Obama Administration, Obama ordered vast amounts of remote tomahawk cruise-missile and airstrikes against not only the "associated forces" of al-Qaeda but other terrorist and rebel organizations in Yemen and Libya throughout his time in office. In October of 2016, President Obama authorized the U.S. Navy to target positions held by the Houthi rebel group in Yemen with tomahawk cruise-missile strikes without congressional authorization (Ramsey 13-14).

While the Houthi group had no connection to al-Qaeda or the Islamic State, the group had previously attacked U.S. Navy vessels in the region (Ramsey 13-14). In the absence of congressional approval, Obama was nonetheless justified to exercise his constitutional authority in this case, as he was responding to an attack on U.S. forces (Ramsey 13-14). While he was within his constitutional authority to order unilateral military action in Yemen, such was not the case in his Libya campaign. Despite considerable pushback from Congress following his intervention into the Libyan Civil War under supposed U.N. authority in 2011, Obama continued to order U.S. military action in Libya throughout his presidency— chiefly against anti-U.N. groups and the Islamic State (Bergen et al.). In the summer of 2016, Obama declared an area of Libya to be an area of active hostilities under the 2013 PPG to continue direct strikes against Islamic State militants in the country (Tankel et al.).

When Donald J. Trump was inaugurated in January of 2017, he inherited not only an empowered presidency but also a massive United States-led global campaign against terror. Like Obama, Trump campaigned on a platform to reduce U.S. intervention in "endless" foreign wars and vowed to bring American troops home from the Middle East and Afghanistan (Dreazen). While he claimed to want to reduce U.S. intervention in foreign wars, Trump also campaigned on decimating terrorist organizations such as al-Qaeda and the Islamic State in the global war on terror (Tankel et al.). As a candidate, Trump's strategy for destroying the Islamic State was to "bomb the shit out of 'em," and argued that the United States would also "have to take out their families" to wage successful counterterrorism operations (Tankel et al.). Since assuming the presidency,

Trump has expanded U.S. military operations against al-Qaeda and their "associated forces," as well as Islamic State (Tankel et al.). In doing so, Trump has relied on the Obama Administration's expansive interpretation of prior congressional authorizations to continue waging—and in some cases— expanding United States military operations in Afghanistan, Pakistan, Yemen, Somalia, Libya, and Iraq. Aside from ongoing efforts, the Trump Administration expanded U.S. combat operations to Syria against the Islamic State and al-Assad forces, while threatening to unilaterally order military action towards North Korea, Iran, and Venezuela.

The Trump Administration continues anti-Islamic State combat operations under the Obama Administration's interpretation of the 2001 AUMF. While Obama relied on the 2002 AUMF as mostly an "alternative statutory basis" to the 2001 AUMF for counterterrorism operations against the Islamic State in Iraq, Trump has taken this interpretation further by asserting that the 2002 AUMF also addresses "threats to, or stemming from, Iraq" in "Syria or elsewhere" from IS operations (Brandon-Smith). Perhaps more controversially, however, in 2017, Trump unilaterally extended U.S. direct-combat operations in Syria outside of the Islamic State threat and towards the regime of Syrian President Bashar al-Assad (Arkin et al.). In retaliation for a supposed chemical attack on Syrian civilians by al-Assad forces, President Trump ordered fifty-nine Tomahawk cruise-missile strikes against various Syrian air defense and infrastructure targets on April 6th, 2017 (Arkin et al.). Following the initial strike of al-Assad forces, in January of 2018, the Trump Administration announced that it would continue to fight against the Islamic State and al-Assad (which had received material support from the

Russian and Iranian governments) through an "open-ended military presence" in the Syrian Civil War (Borger et al.). In December 2018, however, Trump ordered the withdrawal of all U.S. forces from Syria and declared victory over IS forces in the country (Landler et al.). Nonetheless, on November 23rd, 2019, the head of the U.S. Central Command announced there would be no imminent "end date" of U.S. involvement in Syria (Seligman). According to the Trump Administration, a small U.S. military "contingency" force continues to remain in the country to prevent a resurgence of the Islamic State in Syria and to negate any advances by Iran or Russia in the region towards the interests of the United States (Seligman).

Using the broad interpretation of the 2001 AUMF catalyzed through previous administrations, the Trump Administration continues U.S. counterterrorism combat operations outside of Iraq and Syria in Afghanistan, Pakistan, Yemen, Somalia, and Libya to the present day. The War in Afghanistan, now the longest-running war in American history, continues to be raged under the authority of the 2001 AUMF. Trump has continued to build upon the air and drone strike campaigns of his predecessors against "associated forces" of al-Qaeda in Pakistan **(Table 4)**, Libya (Bergen et al.), Yemen, and Somalia **(Table 5)** under the authority supposedly granted by the 2001 AUMF. Additionally, the Trump Administration has been less transparent regarding the use of drones and the lethality of such. In March of 2019, President Trump revoked Obama's 2016 Executive Order, which required the CIA Director to release annual summaries of U.S. drone strikes and related-casualties, as the Trump Administration considered it "superfluous" and distracting (McKelvey). As a result, the presidency is essentially once

Table 4: Total U.S. Drone Strikes in Pakistan (June 19, 2004 through March 30, 2020)

Administration	Total Number of Drone Strikes in Pakistan
George W. Bush	48
Barack Obama	353
Donald J. Trump	13
Total	414

Source(s): Bergen, Peter, et al. "America's Counterterrorism Wars (Data on Pakistan, Yemen, Somalia and Libya)." *New America*, New America, 30 Mar. 2020.

Table 5: Total U.S. Air and Drone Strikes in Yemen and Somalia from George W. Bush through Donald J. Trump (as of March 30, 2020)

Administration	Total Number of Drone of Air Strikes in Yemen	Total Number of Drone or Air Strikes in Somalia
George W. Bush	1	7
Barack Obama	182	43
Donald J. Trump	101 (Insufficient Detail)	176
Total	284	226

Source(s): Bergen, Peter, et al. "America's Counterterrorism Wars (Data on Pakistan, Yemen, Somalia and Libya)." *New America*, New America, 30 Mar. 2020.

again enabled to conduct lethal drone operations covertly, thus leaving the actual number of drone strikes and their results classified under the Trump Administration.

In addition to Trump's revoke of Obama's 2016 Executive Order on drone strike transparency, the Trump Administration has also taken additional action, which has enabled an increase in drone strikes and troop deployments both inside and outside of traditional war zones. In late 2017, the Trump Administration replaced Obama's PPG guidelines for conducting direct operations outside of traditional war zones with his own framework, known as "Principles, Standards, and Procedures" (PPS) (Tankel et al.).

Under Trump's PPS, the U.S. may now target suspected terrorists outside of traditional war zones even if they do not pose a "continuing, imminent threat" towards U.S. persons (Tankel et al.). While it is clear that such action increases the number of persons the U.S. may target, the Trump Administration has not yet provided information as to the current standard for counterterrorism military actions in non-traditional war zones (Tankel et al.). Additionally, while the approval of higher-ranking White House officials is still required to begin operations in a new country, proposed drone strikes no longer have to be subjected to the same scrutiny as the 2013 PPG (Tankel et al.). Instead, the Trump Administration has delegated the approval process to those of "lower levels of seniority" under the current policy guidelines (Tankel et al.). As a result of President Trump's changes to the standards governing direct military action, the U.S. is now enabled to conduct more drone strikes and counterterrorism operations than under the previous administration. For instance, between 2016 and 2017, there was a notable increase in drone strikes against targets in Yemen and Somalia (Tankel et al.). While Trump has eased the standards for direct action outside of areas of active hostilities, he has also relaxed the rules of engagement within traditional war zones (Tankel et al.). Trump has also delegated the presidential authority of controlling the deployment of U.S. forces to the Pentagon (Tankel et al.). As a consequence of Trump's actions, deployments of U.S. special operations forces have increased globally, and operations have been conducted more aggressively as opposed to the previous (Tankel et al.).

While Trump has continued to expand military operations seemingly unopposed, there have seldom been instances of congressional pushback. In early 2019, Congress

passed S.J.Res.7 in an attempt to remove U.S. forces engaged in "hostilities" in Yemen (Anderson). The joint resolution, which was grounded in the requirements of the War Powers Resolution, directed "the President to remove [U.S. armed forces] from hostilities in or affecting the Republic of Yemen," except those targeting al-Qaeda, within 30 days, "unless and until a declaration of war or specific authorization for such use . . . has been enacted" (Anderson). Further, the joint resolution defined "hostilities" in which U.S. forces were engaged in as "in-flight refueling of non-[U.S.] aircraft conducting missions as part of the ongoing civil war in Yemen" (Anderson). Despite congressional efforts to remove U.S. forces from such "hostilities" in Yemen, President Trump informed Congress that he was vetoing the measure on April 16th, 2019 (Anderson). Within his veto statement to Congress, Trump stated that such U.S. military operations in Yemen were crucial to defending "the safety of the more than 80,000 Americans who reside in certain coalition countries" who have been subjected to attacks stemming from Yemen (Anderson). In accordance with presidential tradition, Trump also iterated that actions to "prohibit certain tactical operations, such as in-flight refueling, or require military engagements to adhere to arbitrary timelines" were "dangerous," as they would "interfere with the President's constitutional authority as Commander in Chief of the Armed Forces" (Anderson). Following Trump's veto of S.J.Res.7, the United States has continued to conduct military operations in Yemen (Bergen et al.).

As Trump has expanded U.S. forces and combat operations against terror and into foreign wars in a manner reflective of previous administrations, he has asserted an unprecedented amount of unilateral authority to order military action against numerous

foreign nations. Through both "tweets" on the social media platform Twitter and traditional venues of presidential address, Trump has threatened to order unilateral U.S. military action against Venezuela, North Korea, and Iran since assuming the presidency in 2017. Here are five such examples:

1. On August 11th, 2017, President Trump threatened to unilaterally commit U.S. forces into hostilities in Venezuela against the socialist regime of president Nicholás Maduro, stating that "We [the Trump Administration] have many options for Venezuela including a possible military option if necessary," as "Venezuela is not very far away and the people are suffering and dying" (Jacobs).
2. In a speech to the United Nations General Assembly on September 19th, 2017, President Trump announced that if forced to defend itself, the "United States would totally destroy North Korea" in response (Hamedy).
3. In January of 2018, amid reports of ongoing North Korean nuclear weapons testing and other intimidations towards the United States and U.S. allies in the region, the President tweeted:

   > North Korean Leader Kim Jong Un just stated that the "Nuclear Button is on his desk at all times." Will someone from his depleted and food starved regime please inform him that I too have a Nuclear Button, but it is a much bigger & more powerful one than his, and my Button works! (Beckwith)

4. Following the U.S. strike in Baghdad, Iraq which killed Iranian General Qassem Soleimani on January 3rd, 2020, President Trump issued a warning against any Iranian retaliatory action in response on January 5th, 2020. Within his warning,

Trump also asserted that his tweets serve as "notification" to Congress regarding the initiation of U.S. military action:

> These Media Posts will serve as notification to the United States Congress that should Iran strike any U.S. person or target, the United States will quickly & fully strike back, & perhaps in a disproportionate manner. Such legal notice is not required, but is given nevertheless! (Snow and Leo)

As an indicator of the changing nature of politics and the larger debate regarding constitutional war powers, the House Foreign Affairs Committee replied to the President's assertion of due "notification" to Congress the same day, by crafting a tweet of their own: "This Media Post will serve as a reminder that war powers reside in the Congress under the United States Constitution. And that you should read the War Powers Act [the War Powers Resolution]. And that you're not a dictator." (Snow and Leo).

5. While tensions continued to escalate with Iran following the U.S. killing of Iranian General Qassem Soleimani, Trump further threatened Iran with military action on April 1st, 2020, tweeting "Upon information and belief, Iran or its proxies are planning a sneak attack on U.S. troops and/or assets in Iraq. If this happens, Iran will pay a very heavy price, indeed!" (Jackson and Brook).

Since assuming the office, Trump's tweets regarding threats of military force are now treated as "official statements" from the White House and threats to unilaterally order U.S. military force abroad have been a reoccurring theme throughout Trump's tenure (Beckwith). While these threats to use force are seemingly unprecedented, they are not solely a product of President Trump. Rather, these statements illustrate how far

presidential actions and assertions of presidential war powers have deviated from the actual institutional balance prescribed by the Founders in the Constitution.

As demonstrated throughout this section, Presidents George W. Bush, Barack Obama, and Donald J. Trump continued to build upon the expansive assertions of presidential war powers as established and developed since 1942. During this period, Presidents either relied upon on broad interpretations of existing congressional authorizations, expansive assertions of constitutional authority, U.N. resolutions, or support from NATO allies to unilaterally force the Nation's military forces into hostilities and conflict. As was the case from 1942-2001, during the twenty-first century, Congress did not meaningfully challenge the presidential expropriation of their constitutionally-granted war powers. Rather, Congress catalyzed the practice and the global war on terror, by enabling the president to assert dominating authority over the Nation's war powers through previous precedent, the 2001 and 2002 AUMFs, and by failing to meaningfully oppose these actions through legal and political checks.

Conclusion

On January 3rd, 2020, President Trump unilaterally ordered a drone strike, which killed Iranian major general Qassem Soleimani near Baghdad International Airport in Iraq (Helsel et al.). To justify the unilateral order, the Trump Administration has relied on the President's inherent Article II powers as commander in chief, the 2002 AUMF against Iraq, and as a "matter of national self-defense" under the United Nations Charter (Goodman and Vladeck, Setzler). Despite claims from the executive branch that the President took "decisive action to protect U.S. personnel abroad" meant to "stop a war," Trump's actions were not met with the same enamor in Congress (Helsel et al. and White House). Following Soleimani's demise, a bipartisan coalition in Congress sharply rebuked President Trump's justification for his unilateral order against Iran grounded in the 2002 AUMF (Carney). These contrasting interpretations of Trump's drone strike spawned the scope of this study: When authoring the Constitution, what did the Founding Fathers intend the legislative and executive branches to do in the context of war, and how have these branches adhered to the Founders' original intent concerning war powers throughout American history? In this final development, we will consider President Trump's justification and congressional claims of unauthorized military action in light of the Founders' intentions and historical practice of the Nation's war powers.

Through their experiences under British rule, the Founders were well aware of how tyranny could extend from a unitary executive empowered with unilateral war-making capabilities. As such, when crafting the Constitution, the Founders instituted a system of checks and balances to ensure the Nation would not subject to war without congressional authorization. Within Article I, Section 8, the Founders vested numerous war powers to the legislative branch, including the power to declaring war, to raising and support armies, provide and maintain a navy and calling forth the militia to Congress. Once Congress did authorize military action, the Founders empowered the president with considerable latitude in executing such actions as commander in chief under his Article II authority. Except for repelling attacks against the United States, the Founders never intended the president to be enabled to act unilaterally by ordering military action in the absence of congressional authorization.

From 1789-1942, this institutional balance was—for the most part— adhered to by America's leadership. The presidential tradition of expropriating war powers from Congress was initiated by Franklin D. Roosevelt and catapulted by Harry Truman through his interventionist doctrine against the spread of communism in the Cold War. Following Truman's unilateral deployment of U.S. forces into the Korean War under the supposed auspice of international authority, presidents have since claimed similar wide-ranging assertions in war-making. Following decades of presidential expansionism, it took a vastly unpopular war in Vietnam, and in particular, Nixon's invasion of Cambodia in 1970, for Congress to attempt to reassert their constitutional war powers through the War Powers Resolution.

While the War Powers Resolution intends to reestablish the institutional balance of the Nation's war powers as prescribed by the Founders, it has failed to do so for a variety of reasons. In comparison with the Constitution, the WPR grants the president far greater unilateral authority in war-making by allowing the president to deploy American military forces abroad without congressional authorization for up to ninety days. To check this ability, under the WPR, Congress was initially permitted to end any U.S. military involvement abroad by a simple majority-vote by concurrent resolution. Following the Supreme Court's decision in *Chadha*, however, Congress now requires a veto-proof majority to end presidential military action. Additionally, since its enactment in 1973, presidents have treated the WPR as an unconstitutional and a non-binding encroachment on their own constitutional authorities. When presidents have cited the War Powers Resolution in their reports to Congress regarding military action, they have done so as consistent with, rather than in pursuance of the WPR. From Nixon forward, presidents have either ignored the WPR or used it as a blank check to introduce U.S. forces abroad for up to ninety days without congressional approval. Additionally, in the past, three presidents have narrowed the definition of military action, which requires congressional authorization. For instance, when Obama unilaterally committed U.S. forces into the Libyan Civil War in 2011, his administration argued that such actions did not constitute war or hostilities under the WPR and thus were permitted through the president's constitutional authorities without congressional authorization.

Simultaneously, Congress has permitted the expansion of presidential war-making by allowing presidents to interpret existing and outdated authorizations of military force

broadly. Unlike the Gulf of Tonkin Resolution, which thrust the United States into the Vietnam War, Congress has failed to repeal various authorizations to use military force, which has enabled the presidency to continuously entrench and expand U.S. forces abroad in endless foreign military contests. While the 2001 AUMF was intended to be tailored toward authorizing military force against al-Qaeda and the Taliban—the perpetrators of the September 11th, 2001 terror attacks against the United States— it has been used by the presidency as a broad justification to use force against actors which did not even exist at the time, such as IS and AQAP. Since its enactment in 2001, the AUMF against terror has been cited as a statutory basis for U.S. military operations in "at least 19 different countries, including seven of which that are ongoing" (Kosar). Perhaps the most notable ongoing operation under 2001 AUMF authority, the War in Afghanistan, is now the longest-running war in American history and continues to be raged with inconclusive results at the expense of American life and resources. Meanwhile, the 2002 AUMF against Iraq continues to be cited as a justification for the presidency to order further military action in Iraq and Syria, despite it being tailored to fight against Saddam Hussein's Iraqi regime in 2002. As U.S. and coalition forces toppled Hussein's government in 2003, just as the 2001 AUMF, the 2002 AUMF has long outlived its enacted purpose.

By using the 2002 AUMF to justify military action against Iran, the Trump Administration has underscored this notion. As the title of the AUMF makes clear, the authorization of military force is "against Iraq," not Iran (Goodman and Vladeck). Within its stated purpose, the 2002 AUMF authorizes the president to use military force in order

to "defend the national security of the United States against the continuing threat posed by Iraq," and to enforce relevant U.N. resolutions "regarding Iraq" (Goodman and Vladeck). As such, in ordering the attack that killed Soleimani, the Trump Administration is not relying on relevant statutory authority, national self-defense under the United Nations, or the Constitution. Instead, the Trump Administration is relying on the broad war powers assertions of the modern presidency, enabled through appeasement, and a lack of meaningful opposition from Congress. Trump, like his processors, knows that Congress is unlikely to mount a unified effort, which would hamper his ability to wield the Nation's military forces unilaterally.

As it stands, the modern American president asserts his dominance over war powers in a manner more reflective of the British monarch versus that of the Founders' intentions. Fortunately, there is a solution— the Constitution. In order for the Nation's war powers to be returned to its original balance, Congress must take a meaningful and unified stance to reassert its rightful powers over war using its constitutional checks on the executive branch. If not, the presidency is likely to continue its present tradition of asserting a unilateral dominance over the Nation's military and further thrust the United States into perpetual conflict abroad.

Introduction Works Cited

Carney, Jordain. “Rand Paul, Mike Lee Rip Administration over 'Insulting and Demeaning' Iran Briefing.” *TheHill*, The Hill, 8 Jan. 2020, thehill.com/homenews/senate/477424-rand-paul-mike-lee-rip-administration-over-insulting-and-demeaning-iran.

Helsel, Phil, et al. “U.S. Airstrike Kills Top Iran General, Qassem Soleimani, at Baghdad Airport.” *NBC News*, NBC Universal News Group, 4 Jan. 2020, www.nbcnews.com/news/world/airstrike-kills-top-iran-general-qassim-suleimani-baghdad-airport-iraqi-n1109821.

Macias, Amanda, et al. “Iran Fires Missiles at Multiple Bases Housing US Troops in Iraq.” *CNBC*, CNBC, 8 Jan. 2020, www.cnbc.com/2020/01/07/iran-state-tv-says-tehran-has-launched-missiles-at-iraqs-air-base-housing-us-troops.html.

“Remarks by President Trump on the Killing of Qasem Soleimani.” *The White House*, The United States Government, 3 Jan. 2020, www.whitehouse.gov/briefings-statements/remarks-president-trump-killing-qasem-soleimani/.

Santucci, Jeanine. “Republicans Stand with Trump after Iran Remarks While Democrats Blame Tensions on Soleimani Killing.” USA Today, Gannett Satellite Information Network, 9 Jan. 2020, www.usatoday.com/story/news/politics/2020/01/08/iran-democrats-republicans-react-trump-address-missile-attack/2844647001/.

Segers, Grace. “House Approves War Powers Resolution to Restrict Trump on Iran.” *CBS News*, CBS Interactive, 10 Jan. 2020, www.cbsnews.com/news/war-powers-resolution-house-votes-to-limit-trumps-ability-act-against-iran/.

"Text - H.Con.Res.83 - 116th Congress (2019-2020): Directing the President Pursuant to Section 5(c) of the War Powers Resolution to Terminate the Use of United States Armed Forces to Engage in Hostilities in or against Iran." *Congress.gov*, 13 Jan. 2020, www.congress.gov/bill/116th-congress/house-concurrent-resolution/83/text.

Chapter I Works Cited

"Alexander Hamilton: Documents Decoded." *Alexander Hamilton: Documents Decoded*, by Christina G. Villegas, ABC-CLIO, LLC, 2018, pp. 66–67.

"The Articles of Confederation." *History, Art & Archives*, US House of Representatives: , history.house.gov/Historical-Highlights/1700s/The-Articles-of-Confederation/.

Blackburn, Robert. "Britain's Unwritten Constitution." *The British Library*, The British Library, 9 Feb. 2015, www.bl.uk/magna-carta/articles/britains-unwritten-constitution.

"Blackstone's Commentaries: with Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia." *Wythepedia: The George Wythe Encyclopedia*, William and Mary, lawlibrary.wm.edu/wythepedia/index.php/Blackstone%27s_Commentaries.

Chandler, Ralph Clark. "PUBLIC ADMINISTRATION UNDER THE ARTICLE OF CONFEDERATION." *Public Administration Quarterly*, vol. 13, no. 4, 1990, pp. 433–450. JSTOR, www.jstor.org/stable/40862257. Accessed 4 May 2020.

"The Constitution of New York : April 20, 1777." *The Avalon Project*, Yale Law School: Lillian Goldman Law Library, avalon.law.yale.edu/18th_century/ny01.asp.

Continental Congress and Constitutional Convention. Library of Congress, www.loc.gov/static/collections/continental-congress-and-constitutional-convention-from-1774-to-1789/articles-and-essays/to-form-a-more-perfect-union/creating-a-constitution.html.

Currie, David P. "Rumors of Wars: Presidential and Congressional War Powers, 1809-1829." *The University of Chicago Law Review*, vol. 67, no. 1, 2000, pp. 1–40. JSTOR, www.jstor.org/stable/1600325. Accessed 1 May 2020.

"The Debate Over the President and the Executive Branch." *Center for the Study of the American Constitution*, University of Wisconsin-Madison, csac.history.wisc.edu/document-collections/constitutional-debates/executive-branch/.

"The Declaration of Independence and Natural Rights." *Constitutional Rights Foundation*, Constitutional Rights Foundation, www.crf-usa.org/foundations-of-our-constitution/natural-rights.html.

"The Federalist Papers." *The Avalon Project*, Yale Law School: Lillian Goldman Law Library, avalon.law.yale.edu/18th_century/fed26.asp.

"The First American Constitutions Republican Ideology and the Making of the State Constitutions in the Revolutionary Era." *The First American Constitutions Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, by Willi Paul Adams et al., Rowman & Littlefield Publishers, 2001, pp. 290–290.

"George Clinton." Edited by The Editors of Encyclopaedia Britannica, *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 22 July 2019, www.britannica.com/biography/George-Clinton-vice-president-of-United-States.

"Hobbes, Locke, Montesquieu, and Rousseau on Government." *Constitutional Rights Foundation*, Constitutional Rights Foundation, www.crf-usa.org/bill-of-rights-in-action/bria-20-2-c-hobbes-locke-montesquieu-and-rousseau-on-government.html.

Jefferson, Thomas. *Notes on the State of Virginia.* Edited by William Peden. Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture, Williamsburg, Virginia, 1954.

John, Locke. "Two Treatises of Government CHAP. XIV. Of Prerogative." *John Locke, "On Prerogative Power,"* University of Colorado, www.colorado.edu/herbst/sites/default/files/attached-files/nov_9_-_presidency.pdf.

"Madison Debates, August 17, 1787." *The Avalon Project*, Yale Law School: Lillian Goldman Law Library, avalon.law.yale.edu/18th_century/debates_817.asp.

"Modern History Sourcebook: Montesquieu: The Spirit of the Laws, 1748." *Internet History Sourcebooks*, Fordham University, sourcebooks.fordham.edu/mod/montesquieu-spirit.asp.

Morey, William C. "The First State Constitutions." *The Annals of the American Academy of Political and Social Science*, vol. 4, 1893, pp. 1–32. JSTOR, www.jstor.org/stable/1009012. Accessed 4 Apr. 2020.

Sevi, Michael. "Original Intent, Timetables, and Iraq: The Founders' Views on War Powers." *Texas Review of Law and Politics*, vol. 13, no. 1, Fall 2008, p. 73-104. HeinOnline.

"The Presidency and Political Science: Paradigms of Presidential Power from the Founding to the Present." *The Presidency and Political Science: Paradigms of Presidential Power from the Founding to the Present*, by Raymond Tatalovich et al., M.E. Sharpe, 2014, pp. 89–90.

"Thomas Jefferson, a Brief Biography." *Monticello*, www.monticello.org/thomas-jefferson/brief-biography-of-jefferson/.

Tuckness, Alex. "Locke's Political Philosophy." *Stanford Encyclopedia of Philosophy*, Stanford University, 11 Jan. 2016, plato.stanford.edu/entries/locke-political/#SepPowDisGov.

"U.S. Constitution." *Legal Information Institute* , Cornell Law School, www.law.cornell.edu/constitution.

USA-project. "First Draft of the Constitution (August 6)." *Department of Alfa-Informatica*, University of Groningen, www.let.rug.nl/usa/documents/1786-1800/the-anti-federalist-papers/first-draft-of-the-constitution-(august-6).php.

"War Powers." *Lawfare*, Lawfare and Brookings Institute, 31 Oct. 2019, www.lawfareblog.com/war-powers.

Yazawa, Melvin. "Contested Conventions: The Struggle to Establish the Constitution and Save the Union, 1787–1789." *Google Books*, JHU Press, 15 Aug. 2016, books.google.com/books/about/Contested_Conventions.html?id=MIqfDAAAQBAJ.

Chapter II Works Cited

"An Act Declaring War Between the United Kingdom of Great Britain and Ireland and the Dependencies Thereof and the United States of America and Their Territories." *Avalon Project - Documents in Law, History and Diplomacy*, Yale Law School: Lillian Goldman Law Library, avalon.law.yale.edu/19th_century/1812-01.asp.

"April 15, 1861: President Lincoln Calls Congress into Emergency Session." *The Civil War: The Senate's Story*, United States Senate, 22 Jan. 2020, www.senate.gov/artandhistory/history/common/civil_war/LincolnEmergencySession_FeaturedDoc.htm.

"Bas v. Tingy, 4 U.S. 37 (1800)." *Justia Law U.S. Supreme Court*, Justia, supreme.justia.com/cases/federal/us/4/37/.

"Close Act of April 25, 1898, Public Law 55-69, 30 STAT 364, Which Declared War between the United States and Spain." *National Archives and Records Administration*, National Archives and Records Administration, catalog.archives.gov/id/299824.

Dueholm, James A. "Lincoln's Suspension of the Writ of Habeas Corpus: An Historical and Constitutional Analysis." *Journal of the Abraham Lincoln Association*, Michigan Publishing, University of Michigan Library, 2008, quod.lib.umich.edu/j/jala/2629860.0029.205/--lincoln-s-suspension-of-the-writ-of-habeas-corpus?rgn=main%3Bview.

Elsea, Jennifer K., and Matthew C. Weed. “Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications.” *Congressional Research Service*, the Library of Congress, 2014.

“February 16 1898: Battleship U.S.S. Maine Explodes.” *PBS*, Public Broadcasting Service, 1999, www.pbs.org/crucible/tl10.html.

Fisher, Louis. "The Mexican War and Lincoln’s “Spot Resolutions”." *The Law Library of Congress*, http://loufisher.org/docs/wi/433. pdf. 2009.

“Korematsu v. United States, 323 U.S. 214 (1944).” *Justia Law U.S. Supreme Court*, Justia, supreme.justia.com/cases/federal/us/323/214/.

Lindsay, James M. “TWE Remembers: A War ‘Unnecessarily and Unconstitutionally’ Begun.” *Council on Foreign Relations*, Council on Foreign Relations, 3 Jan. 2011, www.cfr.org/blog/twe-remembers-war-unnecessarily-and-unconstitutionally-begun.

“Marbury v. Madison, 5 U.S. 137 (1803).” *Justia Law U.S. Supreme Court*, Justia, supreme.justia.com/cases/federal/us/5/137/.

“Official Declarations of War by Congress.” *United States Senate*, United States Senate Office, 10 Apr. 2019, www.senate.gov/pagelayout/history/h_multi_sections_and_teasers/WarDeclarationsbyCongress.htm.

"Prize Cases." *Oyez*, www.oyez.org/cases/1850-1900/67us635. Accessed 10 Apr. 2020.

Ramsey, Michael D. “Constitutional War Initiation and the Obama Presidency.” *American Journal of International Law*, vol. 110, no. 4, Aug. 2016, pp. 701–717., doi:10.1017/s0002930000763184.

"Talbot v. Seeman, 5 U.S. 1 (1801)." *Justia Law U.S. Supreme Court*, Justia, supreme.justia.com/cases/federal/us/5/1/.

"The Blockade of Confederate Ports, 1861–1865." *U.S. Department of State Office of the Historian*, U.S. Department of State, history.state.gov/milestones/1861-1865/blockade.

"The Declaration of War." *The War of 1812: A Forgotten Conflict*, by DONALD R. HICKEY, University of Illinois Press, 2012, pp. 28–47. *JSTOR*, www.jstor.org/stable/10.5406/j.ctt3fh41c.8. Accessed 8 Apr. 2020.

The Writings of James Madison. Edited by Gaillard Hunt. 9 vols. New York: G. P. Putnam's Sons, 1900--1910. *See also:* Federalist

"U.S. Constitution." *Legal Information Institute*, Cornell Law School, www.law.cornell.edu/constitution.

"United States Declaration of War with Mexico (1846)." *Statutes at Large*, Library of Congress, www.loc.gov/law/help/statutes-at-large/29th-congress/session-1/c29s1ch16.pdf.

Wallenfeldt, Jeff. "Texas Revolution." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 15 Dec. 2017, www.britannica.com/topic/Texas-Revolution.

Waxman, Matthew. "The Mexican-American War and Constitutional War Powers." *Lawfare*, Lawfare and Brookings Institute, 5 Feb. 2020, www.lawfareblog.com/mexican-american-war-and-constitutional-war-powers.

Chapter III Works Cited

Adler, David Gray. "'The Law': The Clinton Theory of the War Power." *Presidential Studies Quarterly*, vol. 30, no. 1, 2000, pp. 155–168. JSTOR, www.jstor.org/stable/27552075. Accessed 20 Apr. 2020.

Anderson, Scott R. "Where Trump's Veto Leaves the Yemen Resolution." *Brookings*, Brookings, 18 Apr. 2019, www.brookings.edu/blog/order-from-chaos/2019/04/18/where-trumps-veto-leaves-the-yemen-resolution/.

Arkin, Daniel, et al. "Trump Announces Strikes on Syria Following Suspected Chemical Weapons Attack by Assad Forces." NBCNews.com, NBCUniversal News Group, 14 Dec. 2018, www.nbcnews.com/news/world/trump-announces-strikes-syria-following-suspected-chemical-weapons-attack-assad-n865966.

Bash, Dana. "White House pressed on 'mission accomplished' sign". *CNN*. Cable News Network. October 27, 2003. Archived from the original on July 15, 2006. Retrieved April 23, 2020.

Beckwith, Ryan T. "Donald Trump's Nuke Button Tweet Raises Concerns, Again." *Time*, Time, 3 Jan. 2018, time.com/5085979/donald-trump-nuke-button-nuclear-north-korea/.

Benjamin, Medea, and Leonardo Flores. "Threatening Military Intervention in Venezuela During a Pandemic?" *Common Dreams*, Common Dreams, 15 Apr. 2020, www.commondreams.org/views/2020/04/15/threatening-military-intervention-venezuela-during-pandemic.

Bergen, Peter, et al. “America's Counterterrorism Wars (Data on Pakistan, Yemen, Somalia and Libya).” *New America*, New America, 30 Mar. 2020, www.newamerica.org/international-security/reports/americas-counterterrorism-wars/.

Borger, Julian, et al. “US Military to Maintain Open-Ended Presence in Syria, Tillerson Says.” *The Guardian*, Guardian News and Media, 17 Jan. 2018, www.theguardian.com/us-news/2018/jan/17/us-military-syria-isis-iran-assad-tillerson.

Brandon-Smith, Heather. “The 2002 Iraq AUMF: What It Is and Why Congress Should Repeal It.” *Friends Committee on National Legislation*, FCNL, 3 July 2019, www.fcnl.org/updates/the-2002-iraq-aumf-what-it-is-and-why-congress-should-repeal-it-2194.

“Bill Clinton and America’s Credibility after the Cold War.” *Who Fights for Reputation: The Psychology of Leaders in International Conflict*, by Keren Yarhi-Milo, Princeton University Press, PRINCETON; OXFORD, 2018, pp. 223–264. *JSTOR*, www.jstor.org/stable/j.ctv69th2b.12. Accessed 21 Apr. 2020.

Burgin, Eileen. “Congress, the War Powers Resolution, & the Invasion of Panama.” *Polity*, vol. 25, no. 2, 1992, pp. 217–242. JSTOR, www.jstor.org/stable/3235109. Accessed 19 Apr. 2020

Carter, Stephen L. “The Constitutionality of the War Powers Resolution.” *Virginia Law Review*, vol. 70, no. 1, 1984, p. 101., doi:10.2307/1072825.

Curtis A. Bradley, and Jack L. Goldsmith. “Obama's AUMF Legacy.” *The American Journal of International Law*, vol. 110, no. 4, 2016, pp. 628–645. JSTOR, www.jstor.org/stable/10.5305/amerjintelaw.110.4.0628. Accessed 23 Apr. 2020.

Damrosch, Lori Fisler. “The Clinton Administration and War Powers.” Law and Contemporary Problems, vol. 63, no. 1/2, 2000, pp. 125–141. JSTOR, www.jstor.org/stable/1192445. Accessed 21 Apr. 2020.

“DEFENSIVE WAR: The Cuban Missile Crisis and Cambodian Incursion.” *War Powers: The Politics of Constitutional Authority*, by Mariah Zeisberg, Princeton University Press, Princeton; Oxford, 2013, pp. 146–183. JSTOR, www.jstor.org/stable/j.ctt2854xj.6. Accessed 18 Apr. 2020.

Dreazen, Yochi. “Candidate Trump Promised to Stay out of Foreign Wars. President Trump Is Escalating Them.” *Vox*, Vox, 25 Aug. 2017, www.vox.com/world/2017/8/25/16185936/trump-america-first-afghanistan-war-troops-iraq-generals.

Elsea, Jennifer K., and Matthew C. Weed. “Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications.” *Congressional Research Service*, the Library of Congress, 2014.

“Ex Parte Quirin, 317 U.S. 1 (1942).” *Justia Law U.S. Supreme Court*, Justia, supreme.justia.com/cases/federal/us/317/1/.

“Executive Order 9066: The President Authorizes Japanese Relocation.” *History Matters*, George Mason University, 18 Mar. 2018, historymatters.gmu.edu/d/5154.

"Executive Order -- United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force." *National Archives and Records Administration*, National Archives and Records Administration, 1 July 2016, obamawhitehouse.archives.gov/the-press-office/2016/07/01/executive-order-united-states-policy-pre-and-post-strike-measures.

Fisher, Louis. "Basic Principles of the War Power." *J. Nat'l Sec. L. & Pol'y 5* (2011): 319.

Fisher, Louis. "Deciding on War against Iraq: Institutional Failures." *Political Science Quarterly*, vol. 118, no. 3, 2003, pp. 389–410. JSTOR, www.jstor.org/stable/30035781. Accessed 23 Apr. 2020.

Fisher, Louis. "Military Action against Iraq." *Presidential Studies Quarterly*, vol. 28, no. 4, 1998, pp. 793–798. JSTOR, www.jstor.org/stable/27551933. Accessed 21 Apr. 2020.

Fisher, Louis. "Military Operations in Libya: No War? No Hostilities?" *Presidential Studies Quarterly*, vol. 24, no. 1, 2012, pp. 176-189.

Fisher, Louis. "Unconstitutional Presidential Wars." *Project On Government Oversight*, POGO, 29 Aug. 2018, www.pogo.org/analysis/2018/08/unconstitutional-presidential-wars/.

Fisher, Louis. "Unconstitutional Wars from Truman Forward." *Humanitas Journal*, vol. XXX, Nos. 1 and 2, 2017.

Ghattas, Kim. "House of Representatives Votes against US Libya Role." *BBC News*, BBC, 24 June 2011, www.bbc.com/news/world-us-canada-13908202.

Golan-Vilella, Robert. “A Tale of Two AUMFs.” *The National Interest*, no. 133, 2014, pp. 59–66., www.jstor.org/stable/44151202. Accessed 23 Apr. 2020.

Hamedy, Saba. “All the Times Trump Has Insulted North Korea.” *CNN*, Cable News Network, 9 Mar. 2018, www.cnn.com/2017/09/22/politics/donald-trump-north-korea-insults-timeline/index.html.

Jackson, David, and Tom Vanden Brook. “Trump Threatens Iran – Again – If It Attacks U.S. Interests in Iraq.” *USA Today*, Gannett Satellite Information Network, 1 Apr. 2020, www.usatoday.com/story/news/politics/2020/04/01/donald-trump-threatens-iran-again-if-attacks-u-s-iraq/5104981002/.

Jacobs, Ben. “Trump Threatens 'Military Option' in Venezuela as Crisis Escalates.” *The Guardian*, Guardian News and Media, 12 Aug. 2017, www.theguardian.com/world/2017/aug/11/donald-trump-venezuela-crisis-military-intervention.

Kim, Seung Min. “House Blocks Funds for Libyan Rebels.” *Politico*, Politico, 7 July 2011, www.politico.com/story/2011/07/house-blocks-funds-for-libyan-rebels-058513.

Klarevas, Louis J. “Trends: The United States Peace Operation in Somalia.” *The Public Opinion Quarterly*, vol. 64, no. 4, 2000, pp. 523–540. JSTOR, www.jstor.org/stable/3078741. Accessed 21 Apr. 2020.

Kosar, Kevin. “Reclaiming Congress' War Powers.” *LegBranch*, LegBranch, 4 Aug. 2019, www.legbranch.org/reclaiming-congress-war-powers/.

Kurtzleben, Danielle. “CHART: How The U.S. Troop Levels In Afghanistan Have Changed Under Obama.” *NPR*, NPR, 6 July 2016, www.npr.org/2016/07/06/484979294/chart-how-the-u-s-troop-levels-in-afghanistan-have-changed-under-obama.

Landler, Mark, et al. “Trump to Withdraw U.S. Forces From Syria, Declaring 'We Have Won Against ISIS'.” *The New York Times*, The New York Times, 19 Dec. 2018, www.nytimes.com/2018/12/19/us/politics/trump-syria-turkey-troop-withdrawal.html.

“Libya and War Powers: Hearing Before the S. Comm. on Foreign Relations.” *112th Congress*. (June 28, 2011) (statement of Louis Fisher, The Constitution Project), available at http://loufisher.org/docs/wplibya/libyasenfr.pdf

McKelvey, Tara. “Trump Revokes Obama Rule on Reporting Drone Strike Deaths.” *BBC News*, BBC, 7 Mar. 2019, www.bbc.com/news/world-us-canada-47480207.

“Medellin v. Texas (2008).” *Oyez*, Oyez, www.oyez.org/cases/2007/06-984.

Nelson, Dana D. “Presidential War Powers and Politics as War.” *Bad for Democracy: How the Presidency Undermines the Power of the People*, NED - New edition ed., University of Minnesota Press, Minneapolis; London, 2008, pp. 109–144, www.jstor.org/stable/10.5749/j.ctttt9zk.6. Accessed 14 Apr. 2020.

“OPERATION ENDURING FREEDOM.” *Outsourcing Security: Private Military Contractors and U.S. Foreign Policy*, by Bruce E. Stanley, University of Nebraska Press, 2015, pp. 102–126. JSTOR, www.jstor.org/stable/j.ctt1d9nhv7.11. Accessed 24 Apr. 2020.

Ramsey, Michael D. “Constitutional War Initiation and the Obama Presidency.” *American Journal of International Law*, vol. 110, no. 4, Aug. 2016, pp. 701–717., doi:10.1017/s0002930000763184.

Rotter, Andrew Jon. *Light at the End of the Tunnel: a Vietnam War Anthology*. Rowman & Littlefield, 2010, p. 77.

Rubner, Michael. “The Reagan Administration, the 1973 War Powers Resolution, and the Invasion of Grenada.” *Political Science Quarterly*, vol. 100, no. 4, 1985, pp. 627–647. JSTOR, www.jstor.org/stable/2151544. Accessed 19 Apr. 2020.

Schonberg, Karl K. “Global Security and Legal Restraint: Reconsidering War Powers after September 11.” *Political Science Quarterly*, vol. 119, no. 1, 2004, pp. 115–142., doi:10.2307/20202307. Accessed 14 2020.

Seligman, Lara. “No 'End Date' for U.S. Troops in Syria.” *Foreign Policy*, 25 Nov. 2019, foreignpolicy.com/2019/11/25/no-end-date-for-u-s-troops-in-syria/.

Sifton, John. “A Brief History of Drones.” *The Nation*, The Nation, 7 February 2012, www.thenation.com/article/archive/brief-history-drones/.

Snow, Shawn, and Leo Shane III. “Trump Says Tweet Serves as 'Notification' to Congress That US May 'Quickly & Fully Strike Back' against Iran.” *Military Times*, Military Times, 7 Jan. 2020, www.militarytimes.com/flashpoints/2020/01/05/trump-says-tweet-serves-as-notification-to-congress-that-us-may-quickly-fully-strike-back-against-iran/.

Spector, Ronald H. “Vietnam War (1954–75).” *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 14 Feb. 2020, www.britannica.com/event/Vietnam-War.

Tankel, Stephen, et al. “Donald Trump's Shadow War.” *POLITICO Magazine*, Politico, 9 May 2018, www.politico.com/magazine/story/2018/05/09/donald-trumps-shadow-war-218327.

“The Iraq War Timeline (2003-2011).” *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/timeline/iraq-war.

“The Truman Doctrine, 1947.” *U.S. Department of State Office of the Historian*, U.S. Department of State, history.state.gov/milestones/1945-1952/truman-doctrine.

Thrall, Trevor. “Libya and the 5 Stages of U.S. Intervention.” Cato Institute, Cato Institute, 19 Apr. 2016, www.cato.org/publications/commentary/libya-5-stages-us-intervention.

Truman, Harry S. *Memoirs by Harry S. Truman*. Vol. 2, Doubleday & Co., 1956, pp. 331-333.

“War Powers.” *Orchestrating the Instruments of Power: A Critical Examination of the U.S. National Security System*, by D. Robert Worley, University of Nebraska Press, 2015, pp. 58–86. JSTOR, www.jstor.org/stable/j.ctt1d98b41.10. Accessed 22 Apr. 2020.

“War Powers Resolution.” *Avalon Project - War Powers Resolution*, Yale Law School: Lillian Goldman Law Library, avalon.law.yale.edu/20th_century/warpower.asp.

Weed, Matthew C. “2001 Authorization for Use of Military Force: Issues Concerning Its Continued Application,” *Congressional Research Service*, the Library of Congress, April 14, 2015; Washington D.C.. (https://digital.library.unt.edu/ark:/67531/metadc505530/: accessed April 23, 2020)

Weed, Matthew C. “Presidential References to the 2001 Authorization for Use of Military Force in Publicly Available Executive Actions and Reports to Congress,” *Congressional Research Service*, the Library of Congress, May 11, 2016; Washington D.C.. (https://digital.library.unt.edu/ark:/67531/metadc855911/: accessed April 23, 2020)

“Youngstown Sheet Tube Co. v. Sawyer (1952).” *C-SPAN Landmark Cases, National Cable Satellite Corporation*, 2020, landmarkcases.c-span.org/Case/7/Youngstown-Sheet--Tube-Co-v-Sawyer.

“Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).” *Justia Law U.S. Supreme Court*, Justia, supreme.justia.com/cases/federal/us/343/579/.

“Youngstown Sheet Tube Co. v. Sawyer - Significance.” *Law Library - American Law and Legal Information*, Web Solutions LLC., 2020, law.jrank.org/pages/25147/Youngstown-Sheet-Tube-Co-v-Sawyer-Significance.html.

Zelizer, Julian E. “How Congress Got Us Out of Vietnam.” *The American Prospect*, The American Prospect, Inc., 19 Feb. 2007, prospect.org/features/congress-got-us-vietnam/.

Zenko, Micah, and Jennifer Wilson. “How Many Bombs Did the United States Drop in 2016?” *Council on Foreign Relations*, Council on Foreign Relations, 5 Jan. 2017, www.cfr.org/blog/how-many-bombs-did-united-states-drop-2016.

Zenko, Micah. “Obama's Final Drone Strike Data.” *Council on Foreign Relations*, Council on Foreign Relations, 17 Jan. 2017, www.cfr.org/blog/obamas-final-drone-strike-data.

Zenko, Micah. “Reflecting on Obama's Presidency: Obama’s Embrace of Drone Strikes Will Be a Lasting Legacy.” *The New York Times*, The New York Times, 12 Jan. 2016, www.nytimes.com/roomfordebate/2016/01/12/reflecting-on-obamas-presidency/obamas-embrace-of-drone-strikes-will-be-a-lasting-legacy.

Conclusion Works Cited

Goodman, Ryan, and Steve Vladeck. “Why the 2002 AUMF Does Not Apply to Iran.” *Just Security*, Just Security, 2 Apr. 2020, www.justsecurity.org/67993/why-the-2002-aumf-does-not-apply-to-iran/.

Kosar, Kevin. “Reclaiming Congress' War Powers.” *LegBranch*, LegBranch, 4 Aug. 2019, www.legbranch.org/reclaiming-congress-war-powers/.

Setzler, Elliot. “White House Releases Report Justifying Soleimani Strike.” *Lawfare*, Lawfare and Brookings Institute, 14 Feb. 2020, www.lawfareblog.com/white-house-releases-report-justifying-soleimani-strike.