

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.					
1. REPORT DATE (DD-MM-YYYY) 08-05-2018		2. REPORT TYPE Master's of Military Studies		3. DATES COVERED (From - To) Sep 17 - Apr 18	
4. TITLE AND SUBTITLE To Declare War: Restoring Balance to the Use of Military Force				5a. CONTRACT NUMBER N/A	
				5b. GRANT NUMBER N/A	
				5c. PROGRAM ELEMENT NUMBER N/A	
6. AUTHOR(S) Ronnau, Thaddeus, L, Major, USAF				5d. PROJECT NUMBER N/A	
				5e. TASK NUMBER N/A	
				5f. WORK UNIT NUMBER N/A	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) USMC Command and Staff College Marine Corps University 2076 South Street Quantico, VA 22134-5068				8. PERFORMING ORGANIZATION REPORT NUMBER N/A	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) Approved for public release, distribution unlimited.				10. SPONSOR/MONITOR'S ACRONYM(S) Dr. James H. Joyner, Jr.	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S) N/A	
12. DISTRIBUTION / AVAILABILITY STATEMENT					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT Since the founding of the nation, the Constitution has served both as a framework for growth and a source of conflict. In order to provide clarifying guidance, Congress passed the War Powers Resolution in 1973 over President Richard Nixon's veto. While conceived with good intention, it abrogated legislative authority over deciding whether to go to war in clear violation of the Constitution. This error was compounded by the 2001 Authorization for Use of Military Force. In an attempt to provide the commander-in-chief with the ability to confront a complex enemy following the attacks against the United States on September 11, 2001, Congress yielded broad war making powers, with vague language and no expiration date, to the President. Now in its seventeenth year of existence, the AUMF has been used by three Presidents to justify actions in Afghanistan, Iraq, Syria, Libya, and other less well-known conflicts around the globe. Presidents have pursued adversaries that did not exist in 2001 to locations that have little to no connection to 9/11. The result of these two laws is that Congress has been released from any responsibility in war making while the President is left without oversight. In so doing, the American people have been removed from the decision about when and where to use military force.					
15. SUBJECT TERMS Use of Military Force, AUMF; War Powers Resolution, WPR, Constitutional, Constitutional Authority, Constitutional Powers; Decla					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT UU	18. NUMBER OF PAGES 36	19a. NAME OF RESPONSIBLE PERSON USMC Command and Staff College
a. REPORT UNCLAS	b. ABSTRACT UNCLASS	c. THIS PAGE UNCLASS			19b. TELEPHONE NUMBER (include area code) (703) 784-3330 (Admin Office)

*United States Marine Corps
Command and Staff College
Marine Corps University
2076 South Street
Marine Corps Combat Development Command
Quantico, Virginia 22134-5068*

MASTER OF MILITARY STUDIES

TO DECLARE WAR: RESTORING BALANCE TO THE USE OF MILITARY FORCE

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

MAJOR THADDEUS L. RONNAU, USAF

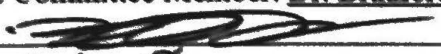
AY 2017-18

Mentor and Oral Defense Committee Member: Dr. James H. Joyner, Jr.

Approved: 

Date: 27 April 18

Oral Defense Committee Member: Dr. Bradford A. Wineman

Approved: 

Date: 3 May 18

Executive Summary

Title: To Declare War: Restoring Balance to the Use of Military Force.

Author: Major Thaddeus L. Ronnau, United States Air Force

Thesis: To restore the system of checks and balances and ensure the military follows the will of the people, Congress must reassert their Constitutional powers by passing legislation to limit the President's ability to make war independently.

Discussion: Since the founding of the nation, the Constitution has served both as a framework for growth and a source of conflict. In order to provide clarifying guidance, Congress passed the War Powers Resolution in 1973 over President Richard Nixon's veto. While conceived with good intention, it abrogated legislative authority over deciding whether to go to war in clear violation of the Constitution. This error was compounded by the 2001 Authorization for Use of Military Force. In an attempt to provide the commander-in-chief with the ability to confront a complex enemy following the attacks against the United States on September 11, 2001, Congress yielded broad war making powers, with vague language and no expiration date, to the President. Now in its seventeenth year of existence, the AUMF has been used by three Presidents to justify actions in Afghanistan, Iraq, Syria, Libya, and other less well-known conflicts around the globe. Presidents have pursued adversaries that did not exist in 2001 to locations that have little to no connection to 9/11. The result of these two laws is that Congress has been released from any responsibility in war making while the President is left without oversight. In so doing, the American people have been removed from the decision about when and where to use military force.

Conclusion: Congress must act to put new legislation in place that supersedes the War Powers Resolution and repeals the 2001 Authorization for Use of Military Force, using a format that defines the task, purpose, and desired state, as well as sets an expiration date for the use of their authority. Additionally in these two pieces of legislation, Congress must further codify when the President may act without their prior approval and shorten the period of time he or she may do so. By taking these actions, Congress may once again assert their constitutional authorities and check the growing powers of the President to conduct war without vigorous oversight.

DISCLAIMER

THE OPINIONS AND CONCLUSIONS EXPRESSED HEREIN ARE THOSE OF THE INDIVIDUAL STUDENT AUTHOR AND DO NOT NECESSARILY REPRESENT THE VIEWS OF EITHER THE MARINE CORPS COMMAND AND STAFF COLLEGE OR ANY OTHER GOVERNMENT AGENCY. REFERENCES TO THIS STUDY SHOULD INCLUDE THE FOREGOING STATEMENT.

QUOTATION FROM, ABSTRACTION FROM, OR REPRODUCTION OF ALL OR ANY PART OF THIS DOCUMENT IS PERMITTED PROVIDED PROPER ACKNOWLEDGEMENT IS MADE.

Table of Contents

	Page
EXECUTIVE SUMMARY.....	1
DISCLAIMER.....	2
PREFACE.....	4
INTRODUCTION.....	5
THE MILITARY IN A NEW NATION.....	6
WAR POWERS RESOLUTION.....	11
AUTHORIZATION FOR USE OF MILITARY FORCE.....	16
ISSUES FOR CONSIDERATION.....	22
RECOMMENDATIONS.....	24
CONCLUSION.....	28
ENDNOTES.....	30
BIBLIOGRAPHY.....	33

Preface

The powers given to the President under the War Powers Act and 2001 Authorization for Use of Military Force (AUMF) have been used to deploy countless individuals around the globe to defend the nation with slim legal justification. While I have sworn to support and defend the Constitution, it seems as though the nation has lost some interest in interpreting what the document says and means. Likewise, while the use of force was an important talking point throughout the 2016 election cycle, once the smoke had cleared little was done beyond a symbolic proposal to adjust the AUMF. It is naive to believe that this document will change the path of politics in the United States or drive any elected official to action; however, it may inform some discussion and open debate between individuals with differing opinions. I believe that open and continuing discourse is potentially more important than achieving the perfect solution.

I would like to personally thank Dr. James Joyner for his guidance in developing a logical outline, finding additional resources, as well as committing his time and effort in editing, thus making this project a reality.

INTRODUCTION

American society has always been fearful of a standing army, its ability to control populations, conduct violence, and repress the people. This core belief is listed amongst the grievances against the British crown in the Declaration of Independence. To declare war and control violence through command of a standing military has been seen through history as the ultimate form of power. Untrusting of putting that much power in the hands of one individual, the Founding Fathers of the United States divided these powers between the executive and legislative branches of government. The Congress would fund the military and decide when and whether to declare war while the President would serve as the commander-in-chief of the armed forces. Until the advent of the Cold War this concept served the nation well; however, it was usually accompanied by the drastic reduction of the military in peacetime.

As America became a super power after World War II the idea of building an army to defeat the enemy when the need arose was no longer feasible in its simplest form. In an era of potential nuclear exchange, attack from non-state actors, and rapid global reach, the need to react quickly to the evolving threat demanded a revision of the status quo. Legislation was needed which would prevent abuse of the military in places like Vietnam, yet provided latitude to secure the nation from attack or terrorist threats like those on September 11, 2001. To meet this demand, legal actions such as the War Powers Resolution and the 2001 Authorization for Use of Military Force consolidated much of the nation's war making powers in the Office of the President, and over time nearly removed the Legislative body from the decision-making process. This new reality created a different problem. Few Americans now fear that the military will be used to suppress their rights, but because they no longer have to ask Congress to raise an Army, presidents have assumed the authority to send the nation to war.

While the historical considerations and reasoning behind these two pieces of legislation are sound, the perversion of them over time has ensured the nation's involvement in prolonged conflict with little oversight from the people. To restore the system of checks and balances and ensure the military follows the will of the people, Congress must reassert their Constitutional powers by passing legislation to limit the President's ability to make war independently. Much like military Rules of Engagement, war-making legislation must allow for and not limit the President's powers to conduct self-defense; however, in aggression on foreign soil, Presidential powers to take military action must be further limited in scope. These calls to take offensive action will drive additional debate and a deeper understanding of the situation and desired end state, in turn, resulting in a comprehensive government, Executive and Legislative, approach to the use of military force and a declaration of war.

In this discussion we will look back briefly at the history of America's founding and draw out the Founding Fathers' intent in separating the ability to make war and the historical solution to American concerns. Once complete, we will then discuss modern actions taken to consolidate power and increase the nation's ability to rapidly defend itself from aggression. Finally, we will look at the current state of military control by the government and make a recommendation as to future legislation that is applicable to the current threat. As our founding documents tell us, the goal is to "form a more perfect Union," and to strive for perfection is most likely the closest we shall come to it, but participation in the American experiment is an invitation to struggle in this endeavor.¹

THE MILITARY IN A NEW NATION

From the birth of the nation and throughout most of its history, American society has been untrusting of a standing army. One of the grievances listed in the Declaration of

Independence is that King George “has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.”² These troops signified to the people an oppressive force imposing the will of the sovereign. Using the nation’s military to oppress the population when it is supposed to provide security from external threats created a great deal of animosity in the colonies. After the defeat of the British military the new nation not only struggled to establish a new form of government, but also to establish the relationship between the people, the government, and the military.

Immediately following the revolution and the establishment of the new government, the nation struggled to determine how much of, or if, a standing Army should exist. In the period leading up to the ratification of the United States Constitution, this was one of the central pillars of debate. In the back-and-forth debate between the Federalist and the Anti-Federalists the main fear was that the central government would gain too much power. If the government gained too much power they could use the military to oppress the People or to conduct wars independent of the People’s consent. Having just thrown off the bindings of a tyrant, many feared trading one tyrant three thousand miles away for three thousand tyrants one mile away.³ While for most of the nation’s history the fear of powerful armies has been relatively non-existent, the Founding Fathers still believed it was important to separate the war making power between two co-equal branches of government to avoid its abuse.

Alexander Hamilton set forth the argument for the uniquely American method of raising an Army in The Federalist Papers, Number 24. Military might would be subject to the same checks and balances as the government as a whole. While the Executive would act as the commander-in-chief and direct the military, the Legislature would “raise and support” such a force.⁴ To further limit the potential abuse of power, the Legislature could only make provisions

to support the military for a period of two years.⁵ By dividing power amongst the two elected branches of government and subjugating it to civil authority, the military was less likely to be abused. As with many portions of the United States Constitution, experience and time would draw forth varying interpretations of the document and provide precedents for those that followed.

The first test to this arrangement took place less than a decade after ratification of the Constitution when the United States found herself in conflict with the French. In a feud stemming from the refusal of the U.S. Government to repay war debts owed to the previous French government, the two nations found themselves in what became known as a quasi-war since war was not officially declared.⁶ This resulted in three Supreme Court cases seeking to clarify the roles and responsibilities of the Legislative and Executive branches and how the nation declares and conducts war. In asking Congress to declare hostilities against the French, President John Adams held “it remains for Congress to prescribe such regulations as will enable our seafaring citizens to defend themselves against violations of the laws of nations.”⁷ While the Legislative branch did not make a formal declaration of war, the Supreme Court held in *Bas v. Tingy* (1800) that Congress had placed the nation at war, albeit only at sea, when it authorized naval engagement and seizure of French naval vessels.⁸ While at its root the case of *Bas v. Tingy* was about the payment owed to naval captains after recapture of their ships taken by the enemy, the Supreme Court took it as opportunity to define when the Congress had declared a state of “war.”⁹ In finding that a state of war had been declared, the precedent was now set that a formal decree is not necessary.ⁱ Questions as to the scope and duration of wars, however, remained.

ⁱ The case of *Bas v. Tingy* (1800) set many precedents including the methods in which congress can declare war and the ability for Congress to limit the scope, location, persons,

In declaring war, the Justices of the Supreme Court unanimously stated in the opinion written by Justice Bushrod Washington that a single declaration of war was not sufficient to carry the fight against any entity anywhere around the globe. In the case of *Bas v. Tingy*, it was recognized that an authorization of hostilities against the French at sea, which amounted to a de facto declaration of war, did not mean that even an Army would be raised to launch a land offensive. Instead, a declaration of war short of total war may limit hostilities in time, scope, or area.¹⁰ⁱⁱ Justice William Paterson, in a concurring statement, expressed this view in finding that even with boundaries on the conduct of a war, “it is therefore a public war between two nations qualified, on our part, in the manner prescribed by the constitutional organ of our country.”¹¹

Taking the thought of limiting conflict and commitment one step further, the case of *Talbot v. Seeman* (1801) declared that the ability to take the nation to war rested in Congress alone, whether in limited or total war.¹² The issue in this particular case revolved around whether or not the USS *Constitution* had the legal authority to seize the *Amelia*, from the French, since it was taken illegally from a firm in Hamburg, a non-party in the conflict.¹³ While not the declared purpose of the case, the Supreme Court once more took the opportunity to discuss who may declare war on behalf of the U.S. No matter the size and scope of the military operation being undertaken, the United States Congress was the responsible authority for declaring it as the

and things at war. This case is important to many well-known pieces of legislation such as the Gulf of Tonkin Resolution and the 2001 AUMF in both what they do and do not restrict.

ⁱⁱ Restoring the Balance, Weinberger, pg. 39-40, Throughout American history Congress has limited the scope, location, or duration of American military involvement from denying additional forces for the Spanish American War (Wilson), to restricting hostilities in Vietnam from spilling into Laos and Cambodia (Johnson), or denying the continuation of mission in Somalia (Clinton).

representatives of the people.ⁱⁱⁱ In keeping with these legal precedents, the nation has also taken rather drastic action in the reduction of its military during interwar periods to prevent its abuse.

Content with the idea that the world's problems should remain theirs alone unless they interfered with American interests, the United States Government all but disbanded the Army and the Navy following successive wars. After the American Revolution only a skeleton military remained in place to fill key roles during build-up in a time of war.^{14iv} The bulk of the armed forces would continue to be provided by the militia, and the nation would rely on its distance from potential enemies to buy time for mobilization. This system sustained the United States military from the founding of the nation and well into the 20th century. Even the end of WWII saw a mass demobilization of the military and the military industrial complex following a successful campaign against the new form of tyrants. Not until after the rapid remobilization of the Korean War and when the nation found itself involved in the Cold War with the Soviet Union, did the United States retain a large standing, peacetime military.

From the birth of the nation less than 200 years earlier, many important factors had changed the global and national landscape. To list them all in this document would be a fool's

ⁱⁱⁱ Thomas Eagleton, *War and Presidential Powers*, "Alexander Hamilton noted in the *Federalist Papers* that declaration of war had fallen into disuse. Justice Story, in his *Commentaries on the Constitution*, made the same assertion. Of the 117 wars which took place throughout the world between 1700 and 1870, only 10 were declared. Thus, it may be inferred that the Founding Fathers expected "perfect wars to be the exception, rather than the rule." It follows that in giving Congress power to declare war, they had no intention of limiting Congress and removing it from the decision-making process in the majority of war situations."

^{iv} Weigley, pg. 220-223, From the end of the American revolution and through the first four Presidencies of the new nation, both Congress and the President struggled with how best to man, train, and equip the military. While most were distrusting of a standing army, the leadership realized the need for at least a small professional force to secure the nations frontiers and national interests.

errand; however, we shall focus on three.^v First, with the advent of more rapid modes of transportation, notably jet airplanes, the time needed to mobilize and train the military meant the nations enemies might seek and attain the military initiative around the globe. Second, the use of nuclear weapons and the revelation that other nations possessed this technology, and the ability to strike the United States in under an hour meant that the nation must be ready to respond in kind immediately. Third, the nation's new position as one of only two superpowers in the world meant that men and equipment must be positioned to perform multiple missions. In doing so, they in turn would be closer to potential enemies and need to respond more quickly.

The new normal during that last half of the 20th century and beyond forced the nation to look at the military through a new lens. Throughout the earlier portions of the nation's existence, the ability to field a large army to conduct a war took time and enabled public discourse. While the system is and was open to interpretation, as many Presidents have pushed the bounds of what is politically and legally acceptable, two major pieces of legislation have dominated recent discussion about United States military commitments. The War Powers Resolution (WPR) and Authorization for the Use of Military Force (AUMF) have provided Presidents with unparalleled ability to engage in combat operations with limited additional approval or coordination with the Congress.

WAR POWERS RESOLUTION

^v The rate of technological advances from the late 18th century until the end of WWII would be an entire book unto itself, just look at how many are written about the American Civil War. Each advance had impacts on each other and future development; however, these three topics were seen as the most germane to the discussion at hand.

The framers of the United States Constitution did not believe it to be prudent nor possible for the President to consult with Congress before every military engagement.^{15vi} In dividing the ability to make war between Executive and Legislative branches of government the consensus remains that even though the President cannot start a war on his own volition, he does have the implied authority under the title of “commander-in-chief” to defend the nation from attack.^{16vii} Early in the history of the U.S., President Thomas Jefferson put this idea of offensive and defensive warfare to task. Prior to receiving Congressional approval, President Jefferson authorized the use of force on the Barbary Coast in defense of the nation.¹⁷ In the course of doing so, Jefferson authorized the use of offensive operations in foreign territory to conduct a defensive war.¹⁸ This same basic principle would be at the forefront of debate regarding U.S. involvement in the Vietnam War and paramount to the language ultimately embodied in the War Powers Resolution (WPR). Much of the impetus for the WPR came from a combination of rapid growth in the Executive branch, the Executive exceeding constitutional limits, and a series of misadventures in Vietnam, which resulted in the Gulf of Tonkin Resolution.

Beginning in 1954, President Dwight Eisenhower, at the request of the French, sent support to Vietnam in the form of money and limited numbers of military advisors.¹⁹ Through

^{vi} Federalist Papers, No. 74, covers the role of the President as commander-in-chief during war as well as his ability to pardon, and clearly lays sets the precedent that Alexander Hamilton did not assume the President would have the ability to confer with the Legislature before making every decision to which they should be a party. Hamilton states on pages 447-448 that “the dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity.”

^{vii} Aircraft that took to the skies on 11 September 2001 were ordered into their combat air patrols, but the President did not have the time nor the requirement to seek Congress’ approval. These actions fall under the President’s responsibilities as the commander-in-chief and are generally viewed as inherent powers under the U.S. Constitution.

the rest of the Eisenhower and Kennedy administrations the financial and physical military escalation grew to a level, which by the time Johnson took office included helicopter gunship strikes by American crews against the North Vietnamese.^{viii} Finally, in August 1964 President Johnson, citing two attacks by North Vietnamese patrol boats against American naval vessels, requested a joint resolution to use military force to strike back.

In the limited debate that followed President Johnson's request for a joint resolution, only a few voices were heard recommending the use of restraint. One such voice was Senator Gaylord Nelson who offered an amendment to the resolution stating "Johnson would seek 'no extension of the present military conflict' and that 'we should continue to attempt to avoid a direct military involvement in the Southeast Asian conflict.'"²⁰ The amendment, well within the Constitutional authority of Congress, was struck down before debate on the basis that it would take too long to enact the resolution if it was presented to Congress.²¹ As history reveals, this in turn led to an escalation of U.S. military involvement in Vietnam and the extension of the war into the neighboring countries of Laos and Cambodia. The Gulf of Tonkin Resolution as it became known, served as a de facto declaration of war in Vietnam but did not limit the powers of the President to expand the war, both of which are in the purview of Congress in accordance the rulings of *Bas v Tingy* (1800), and *Talbot v. Seeman* (1801). As such, largely on presidential initiative by subsequent administrations, the war in Vietnam grew exponentially and spiral out of control. In response to this abdication of Congressional authority to check the powers of the

^{viii} Fisher, pg. 127-128 and 132-133, Eisenhower took the first steps of putting American forces in Vietnam; however, he refused to allow them to take offensive action through airstrikes over the request of the French when it became obvious Congress would not support such actions. During the Kennedy administration the escalation continued and placed forces in direct conflict with North Vietnamese forces. This in turn put the *USS Maddox* in position to be attacked in the Gulf of Tonkin.

President, the Legislative branch proposed the legislation that would become the WPR beginning in 1970.^{ix}

The goal of the WPR was clarification as to the commitment of U.S. forces and the limitation of the President's ability to make war unilaterally. The initial intent was to clarify the President's responsibility to commit forces to defend of the nation in conflict of a defensive nature when time is of the essence.^x Included in the idea of defensive operations were the concepts of defending the nation from aggression, preemptively striking in the case of an immanent threat, and rescuing or recovering American hostages and prisoners.²² Nothing in the Framers' intent for the roles of the Legislative or Executive branch are contrary to these ideas.^{xi} Additionally, with the President continually over-reaching his authority in Southeast Asia through escalation and expansion of military operations, Congress hoped to reign in the power they had yielded in 1964. In these efforts, the WPR has failed spectacularly!

Instead of requiring the combined judgment of the Executive and Legislative bodies to commit the nation to war, the WPR essentially gives the President an ability to conduct a war for

^{ix} Fisher, Pg. 130, In an additional moment of clarity, Representative Edwin Adair wondered if passing of the resolution would signal that Congress was "abdicating our congressional rights and our congressional responsibilities with respect to the declaration of war with respect to foreign affairs generally," but the Executive assured they were not!

^x War and Presidential Power by Thomas Eagleton, pages 184-205 provides a first person accounting of the events and compromise that led to the signing of the War Powers Resolution by then Senator Eagleton, published one year after the legislation was passed.

^{xi} Eagleton, Pg. 9, "Article I, Section 10, forbids the states – without congressional consent – from keeping military forces in time of peace and from engaging 'in war, unless actually invaded, or in such imminent Danger as will not admit of delay.' Article II, Section 2, makes the President '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 IV, Section 4, provides that the central government shall guarantee 'a Republican Form of Government' to every state and 'shall protect each of them against invasion.'"

up to 90 days before they need Congressional approval.^{23xii} In that period of time the President is to report to Congress within 48 hours; however, there is no penalty if this statute is violated.^{xiii} Believing that the WPR actually encroached on his Constitutional authorities, President Nixon vetoed the bill. In his reasoning, Nixon stated, “‘it was impractical and dangerous to try to fix in a statute the procedures by which the President and Congress would share the war power’ and the ‘only way in which the constitutional powers of a branch of Government can be altered is by amending the Constitution.’”²⁴ By overriding the president’s veto Congress unlawfully relinquished their ability to restrain the powers of the president to commit the nation to war without the consent of the people via the Legislative branch.^{xiv}

While the WPR was initially passed over presidential veto, every President since has used the statute to justify both action and inaction.^{xv} In the 1980s, Presidents Reagan and Bush (the

^{xii} While the WPR attempts to limit the opportunities to introduce forces to combat by stating “the constitutional powers of the President as commander-in-chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces. This verbiage does not stop the President from committing troops without permission (Eagleton, 201-216) and soldiers are “deployed, being shot at, dying, and the flag is committed.” (Eagleton, 219)

^{xiii} For more in depth discussion about the War Powers Resolution, its design, and its limitations, see Louis Fisher’s book, *Presidential War Power, 3 ed., Revised*.

^{xiv} Eagleton, Pg. 9, The Articles of the Constitution “‘were devised so that the Congress, the chief executive, and the states would have a framework within which they could cooperate in the protection of the nation from external harm. Going to war was intended to be an orderly process in which deliberation would be given full play before conflict began in which reason and caution would be used once hostilities had commenced. It was the hope that every effort would be made to prevent war through chance or mistake and that prudence and countervailing power would strengthen the forces of rationality.”

elder) ordered the military to conduct operation in Grenada and Panama without consulting Congress. Operations URGENT FURY and JUST CAUSE combined cost the lives of 45 American servicemen in the invasion of two sovereign nations that possessed no ability to threaten the national security of the U.S.²⁵ More recently, President Obama refused to commit American forces to action in Syria after drawing a “red line” at the use of chemical weapons, citing that he wanted to work with Congress for their approval; however, this did not stop him from subsequently using lethal force via airstrikes without additional authorization. nor from extending operations in Libya beyond 90 days by declaring that the force threshold was unmet.^{26xvi} In either situation it has allowed for each side of the political argument, Executive and Legislative, to claim credit or to cast blame.

Even with its wide latitude it provides to the President, the War Powers Resolution has not been the sole source of Congressional bypass at the Executives disposal. Following the attacks on the World Trade Center and the Pentagon on 11 September 2001, the nation once again sought to give the President everything he would need to take the fight to the enemy, wherever that may be. In doing so the Congress produced a poorly scoped Authorization for Use of Military Force and opened the door even more for the President to take unilateral military action in subsequent operations with little oversight, citing this piece of legislation as justification..

AUTHORIZATION FOR USE OF MILITARY FORCE

^{xv} Weinberger, Pg. 39, has a non-all-encompassing list of times when the President has used force without the consent of Congress starting with operations in Grenada.

^{xvi} In his letter to Congress, President Obama stated that he possessed the authority to act unilaterally but he was seeking Congress’ approval as a sign of how they might work together in the future. These actions hide the ulterior motive of seeking to avoid action against Syria after his bluff had been called when he drew a “red line” at the use of chemical weapons.

Following the attacks of 9/11 the U.S. desired to take the fight to the enemy, but identification of the threat and determining its exact location was extremely difficult. To compare and contrast this briefly with the attack on Pearl Harbor, the feelings of pain, loss, betrayal, and anger were familiar, but Japan had a nation and government to project it upon. In most military operations in American history, identification of the adversary is not a horribly complex task. While proxy wars, guerilla wars, and insurrections are not new to the U.S., the War on Terror became a war the nation did not and does not understand.^{xvii}

In their haste to authorize the commander-in-chief to take action the Congress passed Public Law 107-40, Authorization for Use of Military Force, and gave the President near carte blanche to conduct a war against perceived terrorist threats whenever and wherever he so chooses. The law states in Section 2.a, “That 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.”²⁷ Furthermore, Section 2.b clarifies that the AUMF is subordinate to the WPR.^{xviii} The verbiage is sufficiently short and vague that it fails to limit the use of force in any way. Once again, as was the case in the Gulf of Tonkin Resolution, the Congress placed the nation in a state of war by approving the

^{xvii} For this discussion we shall use “War on Terror” as it was originally called for simplicity and to avoid any argument on semantics.

^{xviii} Public Law 107-40, Section 2.b War Power Resolution Requirements – (1) Specific Statutory Authorization – Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution. (2) Applicability of Other Requirements – Nothing in this resolution supercedes any requirements of the War Powers Resolution.

AUMF, but failed to limit the time, scope, and location of the conflict, as it is within their authority. Since the approval of the AUMF in 2001, every administration has used this legislation to promote and/or legitimize their agenda with no true repercussions. Short of political backlash or impeachment, the Congress has few tools at their disposal to stop the President from using the large standing military as he deems fit.^{28xix} Instead of being limited to retaliating against the forces of evil that attacked the U.S., the President could take action wherever he desires.

The logical objection on behalf of Congress is that their duty is simply to “declare” war, not to set its limits. In doing so they leave the commander-in-chief the ability to employ the military as best as he or she sees fit with the advice of the National Security Council. While on the surface this seems to be a strict adherence to the constitutional constructs, it once again is an abdication of authority. Without defining the problem and narrowing the scope of operations it becomes easy for any individual to justify their actions no matter the time and place; however, we have seen through Legislative precedent and Supreme Court ruling the idea that Congress has the right and obligation to restrict the use of military force. In all problem solving there is a need to scope the problem to a manageable level in order to take action. Once the nation has defined what it wants to do then the President and the military can further refine its course of action. The AUMF in its brevity and haste did not define the problem and was void of direction. Military historian Richard Kohn stated, “a lack of clear war aims meant there was no way for citizens to understand the war and whether it was achieving its objectives.”²⁹

^{xix} See Joyner’s “Bloody Nose” article in Real Clear Defense for a brief summation of the complexities surrounding the issue of Presidential authority and a standing military with historical context.

From the beginning, planners struggled to determine if the goal of military operations was to get Osama bin Laden, destroy al Qaeda and the Taliban, ensure Afghanistan would cease to be a terrorist stronghold, send a message to other terrorist supporters, or all the above.³⁰ This lack of definition and not knowing what the desired state would look like led to many problems in the conduct of the war. Over time this ambiguity would allow the AUMF to be used to justify counter terrorism operations in Libya, Syria, Afghanistan, and Pakistan, to name only a few. During his State of the Union address in January 2002, just four months after the 9/11 attacks, President George W. Bush articulated the threat as the “Axis of Evil” and the threat that terrorist organization might gain access to weapons of mass destruction.³¹ This denoted an extreme shift in targets as now the focus became three sovereign states which intelligence determined had not directly supported the attack.^{xx} Foreign policy writer James Mann illustrated this change in direction by stating:

Thus...the administration had progressively shifted the focus of the war on terrorism from (a) retaliating against the perpetrators of the September 11 attacks to (b) stopping terrorist from acquiring weapons of mass destruction to (c) preventing states from supplying terrorists with these weapons. Indeed, there were suggestions in Bush’s speech that a link between the states and terrorism wasn’t necessary; what mattered above all were (d) the axis-of-evil states and their weapons programs.³²

This shift in focus was enabled by a compliant Congress and the President’s Office of Legal Council’s opposing view that presidential power to conduct war is beyond the scope of checks and balances during wartime.³³

White House legal counsel John Yoo presented the case to the President that Presidential war powers allowed for the conduct of military operations around the globe without additional

^{xx} The debate over intelligence reports leading up to Operation IRAQI FREEDOM has been well documented and while WMDs exist in Iraq, though not nuclear weapons, there was no connection between the targeted terrorist groups and the Iraqi government, nor any intention of providing them with WMDs.

approval. Through his interpretation of the Constitution, Yoo justified that, as the commander-in-chief the President not only had the authority to conduct wars, but also to initiate them.³⁴ Additionally, Yoo argued “that Congress’s power to declare war does not constrain the President’s independent and plenary constitutional authority over the use of military force.”³⁵ Therefore, the AUMF does not limit the President’s powers to conduct, escalate, or expand a war. The President is the only person with the authority to conduct the war. All other opinions as to the methods, means, and locations of military operations are just that, opinions, not legal precedent as to how the Congress can limit the conduct of war.^{xxi} Despite public statements challenging these views, without a legal check of Presidential power by the Congress, no body existed to counter Yoo’s assessment.

For multiple reasons the Presidency of George W. Bush receives the most attention as to its interpretation of the use of military force. As the first administration directly facing the issues of terrorism in the public light, the learning curve was rather drastic. Simply put, the “new” enemy provided little opportunity to direct attack thus making defining the problem and authorizing action more difficult. While more complex issues such as “enhanced interrogation”/torture and status of prisoners were more complex and took the center stage, basic principles as to when and how to employ the military slipped through the cracks. While President Bush may have been the first to use the AUMF to justify his policy, he has not been the last.

^{xxi} Griffin, Pg. 223- 227, White House Office of Legal Council led by John Yoo took a drastically different approach to Presidential war powers than has been presented throughout this document. The evidence sighted above from the Founding Fathers through the passing of the War Powers Resolution were interpreted differently or simply disregarded as in the case of certain Supreme Court decisions. This in turn led to multiple secret memorandums and understanding as to the conduct of war and less than sound legal advice and justification.

Throughout his time in office, President Barack Obama was able to use the AUMF to carry out the security policy he favored, both in fighting wars and avoiding them. After threatening military action in Syria if they used chemical weapons on the civilian populace, the infamous “red line,” President Obama declared that he would seek an additional authorization from Congress to expand the war, even though it was not legally required. In doing so, the President would either save face by being denied, or he would share responsibility of the conflict with Congress. This request was in turn denied and thus gave the President the legal justification for not further extending the commitments of the U.S. military. This justification while sound does not hold water when compared to the actions in Libya and Syria. In both instances President Obama directed the military to conduct airstrikes, and in some instances limited ground operations, citing the 2001 AUMF as legal justification.³⁶

On the surface of these decisions it would appear that the President is either working within the confines of the current authorization or seeking Congress’ counsel, but in fact neither are the case. In launching strikes against the so-called Islamic State in Libya and Syria under the auspices of the current AUMF, the President associated the forces with the same individuals who attacked on 9/11. In reality, at least at the time, Al Qaeda and the Islamic State forces were opposing each other.³⁷ These forces neither presented an immanent threat to the U.S., nor were they associated with al Qaeda. This selective application of the legal statutes serves to cut the Legislative branch out of the decision making process and thus it cuts out the American people. Following this blue print there is no oversight of the President’s actions.

While the President may use a varying view on the limitations put in place, only the Judicial or Legislative branches of government can hold him or her accountable. Under Judicial review there would have to be a case that the President overstepped his authority; however, even

a loose connection between terrorist organizations can justify the actions. On the other hand, the Legislature owns the authority to declare war, and as such it is theirs to take away. Congress has no skin in the game; therefore, they have no interest in reversing the trend. In the present form the President and Congress can both complain about the use of force and still buck the responsibility to their constituents.

ISSUES FOR CONSIDERATION

Two key factors that cannot be overlooked in the process of defining war powers are the large scale and rapid destruction that is possible with weapons of mass destructions and the unpredictable nature of terrorism. While only a few nations on earth have the ability to rapidly deploy nuclear weapons capable of striking the U.S., the ability to rapidly respond in order to defend the nation and the credibility of a first strike greatly enhance national security. To tie the President's hands in this matter in any way would be to invite disaster. Not only does it provide security from other nuclear powers, but it also provides security against more conventional threats with mutually assured destruction. Luckily the debate over self-defense was settled by the Founding Fathers in the Constitution; however, the idea of a first strike as self-defense is a modern concept.

Stealing a concept from the military rules of engagement, a hostile act or hostile intent can serve as justification when applying force against an adversary.^{xxii} If evidence exists that an

^{xxii} TheFreeDictionary.com and GlobalSecurity.org both define Hostile Act and Hostile Intent as follows. A **hostile act** is an attack or other use of force by any civilian, paramilitary, or military force or terrorist(s) (with or without national designation) against the United States, US forces and, in certain circumstances, US nationals, their property, US commercial assets, or other designated non-US forces, foreign nationals, and their property. Force used directly to preclude or impede the mission and/or duties of US forces, including the recovery of US personnel and vital US Government property. When a hostile act is in progress the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if

enemy is preparing for a conflict that will credibly endanger or take the lives of American civil or military forces, the President has the responsibility to act. Nothing in the American legal code, nor in western Just War Theory, restricts the individual or national right of self-defense; even though it may restrict other items such as the method and duration in which it may be conducted. That said, just like in the American penal code, the truth of the matter might be up for debate. In this instance the Legislative branch has the right and obligation to question the facts in order to further refine if and when to use force. Any conflict can result in new legislation clarifying what actions are acceptable or be brought before the judicial branch for a ruling. The idea of preemptively using force is also not exclusive to nuclear weapons.

In the fight against terrorism, actionable intelligence moves quickly. Due to this, the need to strike high value and time sensitive targets (HVT/TST) around the globe is crucial to increasing the security of Americans both at home and abroad. The debate about when, where, and how to strike such targets is wide-ranging and hotly contested. The use of clandestine services, special operations forces, and remotely piloted aircraft within the territorial confines of other sovereign nations has caused concern with our allies, security partners, and definitely amongst those states whose borders are violated. Any debate about the methods lies at the feet of the President as the commander-in-chief, leading both the Department of State, which must deal with the political fallout of such actions, and the military, which must conduct them. That

necessary, to destroy the threat. **Hostile intent** is the threat of imminent use of force by a foreign force or terrorist unit (organization or individual) against the United States, U.S. forces, and in certain circumstances, U.S. citizens, their property, U.S. commercial assets, or other designated non-U.S. forces, foreign nationals and their property. When hostile intent is present, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if necessary, to destroy the threat. A determination that hostile intent exists and requires the use of proportional force in self-defense must be based on evidence that an attack is imminent.

aside, the principles of self-defense still apply. Knowing that our nation's enemies sit in foreign lands hostile to the U.S. and create new schemes does not remove our responsibility to act. To sit and wait for the next assault would cost American lives.

RECOMMENDATIONS

The first step in reclaiming its Constitutional authority is for Congress to acknowledge it has relinquished too much power to the nation's chief executive. As the discussion above illustrates, no legislative body from the Founding Fathers onward had any intention of giving the President as much unilateral authority as they wield now. After admitting that there is an abdication of authority on the part of Congress and a conflict in interpretation of authority revolving around war powers, Congress must pass new legislation in the form of a bill, which supersedes the WPR and AUMF and defines the roles and responsibilities of the two branches in regards to making war.

It is clear, both through the words of the individuals who passed the laws and the resulting lack of accountability, that the WPR and AUMF have failed in their design. Additionally, the statutes are in clear violation of separation of powers as the Framers of the U.S. Constitution designed it. American history has provided us with countless examples of when the President or the Congress has overstepped their authority, but these two pieces of legislation are a voluntary abdication of responsibility by the Legislature. Many portions of the government delegate their authority, but the failure is in the lack of vigorous Congressional oversight. In a matter as important as committing U.S. forces to combat, the risk of unilateral action is too costly to accept in the interest of political blame casting. It has been said that the road to hell is paved with good intentions, and while Congress attempted to clarify the division of power, or provide for the nations defense, it failed. While failure is a normal part of government and life, it

must also be identified and corrected. In superseding or repealing these statutes, we must be certain not to throw the good out with the bad.

Since their inception, the pros and cons of both the WPR and AUMF have been identified, but no one has taken the appropriate actions to correct them. To begin, the language of the original authorization is in agreement with the Constitution, and by clarifying some of the verbiage it can be applicable to the nations current situation. The new statute should retain this language from the WPR. “The President may introduce troops only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by a hostile act or hostile intent, upon the United States, its territories, or its armed forces.”^{38xxiii} These limitations are in agreement with Supreme Court precedents and the terms hostile act and hostile intent already possess agreed upon legal definitions. This, in turn, allows Congress to provide direction and retain their authority to declare war while allowing the President sufficient ability to defend the nation.

Simply put, it is more wise for Congress to pass a bill to define war powers as we know them today vice seeking a Constitutional amendment. While the amendment would provide a more lasting change, that in turn would become part of the problem. The Founding Fathers never dreamt of a world in which multiple nations would possess nuclear weapons, aircraft fly beyond the speed of sound, or a man walked on the moon. The world of tomorrow is uncertain and thus our response needs to be tailorable to the time we live in.

The first action must be to pass a 2018 War Powers Resolution that supersedes previous legislation with a new statute that clarifies when unilateral action is acceptable, as in the case of self-defense, and defines hostile act and hostile intent. While this first step is crucial to resetting

^{xxiii} Hostile act and hostile intent are previously defined in footnote xvii.

the baseline, it is only enforceable if Congress is also willing to take bold action to ensure compliance. One such example of Congress exercising its responsibility to provide oversight is found in the Boland Amendments. In these amendments, Congress passed legislation that forbid the Executive to use appropriated funds to support the overthrow of the Nicaraguan government, and thus limited the commander-in-chiefs ability to take unilateral action.^{39 40xxiv} After resetting the baseline a new Authorization for Use of Military Force can clarify the existing conflict.

Second, Congress must repeal the 2001 Authorization for Use of Military Force. Any new authorization must have five key components: task, purpose, desired state, a system of checks and balances, and an expiration date. By identifying a task and purpose such as defeating a nation or militant group the Congress is thereby giving the direction of the people. In turn they can vary the scope and restrict operations to achieve the nations goals. Once again the people of the U.S. will have a voice in when and where the nation fights its wars. Once there is a task and purpose for action, the Congress must determine what the desired state of things will be in order to complete the operation or campaign.

Finally, any government approval for one branch to exercise the powers of another must have a system of checks and balances, and an expiration date. The current AUMF does not have an expiration date and the current war has no end in sight. This means the President could continue to play “whack-a-mole” with any terrorist group around the globe and never need an

^{xxiv} In the Boland Amendments, Congress stipulated that the Central Intelligence Agency (CIA) and Department of Defense (DoD) could not use there funding to directly or indirectly support any person, group, or movement with the intent of overthrowing the Nicaraguan government. Additionally, approved funds to support the Contras could not be used to purchase weapons. The public is most familiar with these actions as backdrop in the investigations of the Iran-Contra affair where the executive branch attempted to circumvent the law by selling weapons to Iran and give the profits to the Contras, thus supporting their effort to overthrow the Nicaraguan government. By restricting the use of appropriated funds, the Congress exercised their oversight on the use of military force.

additional authorization. In addition, the repeal of the WPR must direct that if the President takes action under one of the three instances listed above, he/she must report to Congress within 48 hours to receive approval for continuing the operation. If Congress does not authorize the continued use of force, they must then pass legislation, which restricts the scope, location, duration, or use of allocated finances, as is in their perview. Similar to the conversation about the Boland Amendments above, Congress must be ready and willing to exercise aggressive oversight. If the event that drove the nation to action was so rapid and threatening that the President could not consult Congress it should not be an issue to reconvene the Legislative bodies in an age of rapid air mobility and cell phone technology. In the instance of attack an approval should be forthcoming, and in reference to HVTs and TST, a withdraw of forces should be relatively easy.

Using the current fight against the so-called Islamic State as a backdrop and the template from above, an example of the verbiage in new authorization to use force is as follows. Congress authorizes the President to conduct military operations against forces of the so-called Islamic State in Jordan, Iraq, and Syria in order to deny the enemy reinforcements, financial resources, and to support friendly forces in the region, thus restoring the territorial and governmental sovereignty of Iraq and bringing stability in Syria. Additionally, the Congress authorizes the use of force against forces that display hostile actions or intent toward coalition forces executing this mission. The President must provide an accounting of military operations to the House and Senate Armed Services Committees every quarter. Congress must additionally reauthorize this use of force annually. In case this statute is not renewed, the President will have 180 days to withdraw American forces from combat. Any expansion of military operations beyond the limits described above must receive additional Congressional approval.

Critics of this process will debate that the Congress now possesses too much power and there will never be enough votes to commit the nation to action. The counter to this is that the debate over when and where to use military force should be extensive. If secrecy is paramount for military success, Congress may hold closed-door discussions in the House and Senate Armed Services Committees. In doing so there is still oversight as well as limiting the dissemination of sensitive data. By providing the President authority to defend the nation from actual or immanent attack the need to act rapidly is fulfilled. If the nation wishes to commit its forces to action under other circumstances it is welcome to do so with the consent of the people through their elected officials. While in an era of hyper partisanship it may be naive to propose that the people hold the government accountable, either one believes in the American form of government or they do not.

CONCLUSION

The Constitutional division of authorities centered on the use of military force will continue to be an area for heated discussion for the foreseeable future. The U.S. is engaged in the longest war in its history and throughout the world in both overt and covert operations designed to ensure the security of the nation. Overlapping these day-to-day operations with the requirement to provide the nation with a viable means of self-defense only adds additional wrinkles to an already complex problem. Because it is a problem and it is difficult to solve does not relieve responsible citizens from engaging in the political debate, on the contrary, it makes the topic that much more important.

Most recently, this topic was readdressed by the Corker-Kaine draft AUMF which was proposed after the President directed strikes in Syria as a response to chemical attacks in the city of Douma, Syria. The desire of this proposed piece of legislation is to limit the commander-in-

chief's ability to expand the war on terror and direct a greater amount of dialogue between the branches of government prior to the use of military force.⁴¹ Unfortunately, the bill was considered dead on arrival even though it was proposed to solve something almost universally considered to be flawed. The reason for this is not simply that the previous authorizations provide legal cover to politicians, but also because there is no demand for action from the American people. Even though certain actions are illegal or unconstitutional, the People do not see the system as not working, so there is no call for action. Likewise, the Executive branch sees the powers as "sufficient" to carry out the war on terror, and unless there is another large attack on American soil, there is limited political will in any branch of the government to change the status quo.⁴² Due to these sentiments, the rebalancing of powers in a flawed dynamic is likely to remain unchanged for the foreseeable future.

In relinquishing their ability to declare war in any real form the Congress gave ground in the fight over checks and balances. While the proverbial "war is not lost," the actions set a precedent and provide legal background for the President to act without approval from the People via their elected legislators. In an effort to clarify roles and responsibilities as well as ensure the nation's safety, the ability to bring the nation into war has essentially been consolidated in one person or branch of government. Benjamin Franklin is quoted as saying, "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."⁴³

While any attempt to correct the imbalance of power will most certainly not be perfect, it does not mean that the actions should not be taken. In checking the power of the President as commander-in-chief the Congress can once again take a leading role in governing the nation in one of their most important tasks. It will not be politically popular, and it removes a potential

scapegoat to cast blame upon, but it is essential that Congress, as the voice of the People, reassert themselves into the nation's ability "to declare war."

Endnotes

¹ Roger H. Davidson, "'Invitation to Struggle': An Overview of Legislative-Executive Relations" *The Annals of the American Academy of Political and Social Science*, vol. 499 (September 1988): 9, <http://www.jstor.org/stable/1045814>.

² George Brown Tindall and David E. Shi, *America: A Narrative History*, 6th ed. (New York, NY: W.W. Norton and Company, 2004), A44.

³ Wentworth Hamilton Eaton, "Mather Byles: Boston's Jester to the Revolutionary Cause," *New England Historical Society*, accessed February 25, 2018, <http://www.newenglandhistoricalsociety.com/mather-byles-bostons-jester-to-the-revolutionary-cause/>.

⁴ Thomas F. Eagleton, *War and Presidential Power: A Chronicle of Congressional Surrender* (New York, NY: Liveright, 1974), 8.

⁵ *Ibid.*, 8-9.

⁶ Allan R. Millett and Peter Maslowski, *For the Common Defense: A Military History of the United States of America* (New York, NY: The Free Press, 1994), 100-103.

⁷ Thomas F. Eagleton, *War and Presidential Power: A Chronicle of Congressional Surrender* (New York, NY: Liveright, 1974), 16-17.

⁸ *Ibid.*, 18.

⁹ *Bas v. Tingy*, 4 US 37, 37 (1800).

¹⁰ Thomas F. Eagleton, *War and Presidential Power: A Chronicle of Congressional Surrender* (New York, NY: Liveright, 1974), 19.

¹¹ *Ibid.*, 19.

¹² *Ibid.*, 19.

¹³ *Talbot v. Seeman*, 5 US 1, 1 (1801).

¹⁴ Russell F. Weigley, "The American Civil-Military Cultural Gap: A Historical Perspective, Colonial Times to the Present," in *Soldiers and Civilians: The Civil-Military Gap and American National Security*, ed. Peter D. Feaver and Richard H. Kohn (Cambridge, MA: MIT Press, 2001), 222.

¹⁵ Alexander Hamilton, John Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter, (New York, NY: New American Library, 2003), 448.

¹⁶ Sotirios A. Barber, "Inherent Powers," *Encyclopedia.com*, February 25, 2018, <https://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/inherent-powers>.

¹⁷ Edward Keynes, *Undeclared War: Twilight Zone of Constitutional Power* (University Park, PA: The Pennsylvania State University Press, 1982), 38.

¹⁸ *Ibid.*, 39.

¹⁹ Louis Fisher, *Presidential War Power*, 3rd ed. (Lawrence, KS: University Press of Kansas, 2013), 127.

²⁰ *Ibid.*, 129.

²¹ *Ibid.*, 129.

²² Thomas F. Eagleton, *War and Presidential Power: A Chronicle of Congressional Surrender* (New York, NY: Liveright, 1974), 201.

²³ Louis Fisher, *Presidential War Power*, 3rd ed. (Lawrence, KS: University Press of Kansas, 2013), 148.

²⁴ *Ibid.*, 146.

²⁵ Ronald H. Cole, "Grenada, Panama, and Haiti: Joint Operational Reform." *Joint Force Quarterly*, no. 20 (March 1999): 59-61.

²⁶ Barack Obama, President, Authorization for the Use of United States Armed Forces in Connection with the Islamic State of Iraq and the Levant, to The Congress of the United States, Washington, D.C., February 11, 2015.

²⁷ Authorization for Use of Military Force, 50 U.S.C. § 1541 (2001).

²⁸ James Joyner, "'Bloody Nose' Strike Illegal but Unstoppable," *RealClearDefense.com*, February 9, 2018, https://www.realcleardefense.com/articles/2018/02/09/bloody_nose_strike_illegal_but_unstoppable_113041.html

²⁹ Stephen M. Griffin, *Long Wars and the Constitution* (Cambridge, MA: Harvard University Press, 2013), 229.

³⁰ *Ibid.*, 229.

³¹ *Ibid.*, 231.

³² Ibid., 231.

³³ Ibid., 223.

³⁴ Ibid., 224.

³⁵ Ibid., 224.

³⁶ Mary Louise Kelly, "When the U.S. Military Strikes, White House Points to a 2001 Measure," *NPR.org*, September 6, 2016, <https://www.npr.org/sections/parallels/2016/09/06/492857888/when-the-u-s-military-strikes-white-house-points-to-a-2001-measure>.

³⁷ Ibid.

³⁸ Louis Fisher, *Presidential War Power*, 3rd ed. (Lawrence, KS: University Press of Kansas, 2013), 148.

³⁹ New York Times, "Iran-Contra Hearings; Boland Amendments: What They Provided," New York Times, 10 July 1987, <https://www.nytimes.com/1987/07/10/world/iran-contra-hearings-boland-amendments-what-they-provided.html>.

⁴⁰ Public Broadcasting Service, "The Iran-Contra Affair," *Public Broadcasting Service*, accessed 1 April, 2018, <http://www.pbs.org/wgbh/americanexperience/features/reagan-iran/>.

⁴¹ Robert Chesney, "A Primer on the Corker-Cain Draft AUMF" LawFareBlog.com, 17 April 2018, <https://lawfareblog.com/primer-corker-kaine-draft-aumf>.

⁴² John T. Bennett, "White House Has Tepid Response to Corker-Kaine AUMF" RollCall.com, 17 April 2018. <https://www.rollcall.com/news/politics/white-house-opposes-corker-kaine-aumf-official-says>

⁴³ Benjamin Wittes, "What Ben Franklin Really Said," *Lawfare* (blog), July 15, 2011, <https://www.lawfareblog.com/what-ben-franklin-really-said>.

Bibliography

- Cole, Ronald H. "Grenada, Panama, and Haiti: Joint Operational Reform." *Joint Force Quarterly*, no. 20 (March 1999): 57-64.
- Davidson, Roger H. "'Invitation to Struggle': An Overview of Legislative-Executive Relations." *The Annals of the American Academy of Political and Social Science* 499 (1988): 9-21. <http://www.jstor.org/stable/1045814>.
- Eagleton, Thomas F. *War and Presidential Power: A Chronicle of Congressional Surrender*. New York, NY: Liveright, 1974.
- Fisher, Louis. *Presidential War Power*. 3rd ed. Lawrence, KS: University Press of Kansas, 2013.
- Griffin, Stephen M. *Long Wars and the Constitution*. Cambridge, MA: Harvard University Press, 2013.
- Hamilton, Alexander, John Madison, and John Jay. *The Federalist Papers*. Edited by Clinton Rossiter. New York, NY: New American Library, 2003.
- Joyner, James. "'Bloody Nose' Illegal but Unstoppable." *RealClearDefense.com*. February 9, 2018, https://www.realcleardefense.com/articles/2018/02/09/bloody_nose_strike_illegal_but_unstoppable_113041.html.
- Joyner, James. "Constitution: An Invitation to Struggle." *OutsidetheBeltway.com*. December 31, 2010, <http://www.outsidethebeltway.com/constitution-an-invitation-to-struggle>.
- Kelly, Mary Louise. "When the U.S. Military Strikes, White House Points to a 2001 Measure." *NPR.org*. September 6, 2016. <https://www.npr.org/sections/parallels/2016/09/06/492857888/when-the-u-s-military-strikes-white-house-points-to-a-2001-measure>.
- Keynes, Edward. *Undeclared War: Twilight Zone of Constitutional Power*. University Park, PA: The Pennsylvania State University Press, 1982.
- Millett, Allan R. and Peter Maslowski, *For the Common Defense: A Military History of the United States of America*. New York, NY: The Free Press, 1994.
- Obama, Barack, President, Authorization for the Use of United States Armed Forces in Connection with the Islamic State of Iraq and the Levant. President Barack Obama to The Congress of the United States, Washington, D.C., February 11, 2015.

Sotirios A. Barber, "Inherent Powers," *Encyclopedia.com*, February 25, 2018, <https://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/inherent-powers>.

Tindall, George Brown and David E. Shi. *America: A Narrative History*. 6th ed. New York, NY: W.W. Norton and Company, 2004.

US Congress. House. Authorization for Use of Military Force, 50 U.S.C. § 1541 (2001).

Weigley, Russell F. "The American Civil-Military Cultural Gap: A Historical Perspective, Colonial Times to the Present." In *Soldiers and Civilians: The Civil-Military Gap and American National Security*, edited by Peter D. Feaver and Richard H. Kohn, 215-245. Cambridge, MA: MIT Press, 2001.

Weinberger, Seth. *Restoring the Balance: War Powers in the Age of Terror*. Denver, CO: ABC-CLIO, LLC. 2009.