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The President, Foreign Policy, and War Powers: A Survey on the Expansion and Setbacks of Presidential Power

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The President, Foreign Policy, and War Powers: A Survey on the Expansion and Setbacks of Presidential Power

Abstract

How powerful is the President of the United States in the arena of foreign policy? This question has opened many discussions, and hotly contested debates as to the extent of the president's actual power. To make matters more complicated, the United States' foreign policy has developed and evolved over the course of the United States' more than two-hundred years history. These foreign policy concerns and international conflicts have mired the presidency into debates and consistent trials over the constitutional extent of the presidency, specifically concerning presidential war powers. Moreover, the Presidents have varied in their approaches to each of these international policy concerns and conflicts. From President George Washington's Proclamation of Neutrality in 1793, to Gulf of Tonkin Resolution under President Lyndon Johnson's guise, and the Iran Contra Affair and Cold War policies of the Reagan Administration, American presidents have varied greatly on their outlook to the president's role in foreign policymaking, and international conflict resolution. The goal of this research paper is not to definitively limit the various branches of the federal government on their responsibilities, as the Constitution allows for flexibility. Rather, the goal of this research paper is to understand the constitutional underpinnings of the President's role in foreign policy and war making in relation to the separation of powers, and checks and balances delineated in the Constitution, survey the history of the presidents' foreign policy approaches from George Washington to Ronald Reagan, and how the various Presidents have contributed to the expansion of the powers and roles of the President in foreign affairs – as well as international military conflict – in a historical context.

Keywords

President, Foreign Policy, Separation of Powers, U.S. Constitution, constitutional powers, Senate, treaty war powers, Commander in Chief, Congress, Supreme Court, Supreme Court opinions, Federalist Papers, Monroe Doctrine

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The President, Foreign Policy, and War Powers: A Survey on the Expansions and Setbacks of Presidential Power

Michael Wilt

History and Government

Introduction

How powerful is the President of the United States in the arena of foreign policy? This question has opened many discussions and debates as to the extent of the president's actual power. To make matters more complicated, the United States' foreign policy has developed and evolved over the course of the country's history. These foreign policy concerns and international conflicts have mired the presidency into debates and consistent trials over the constitutional extent of the presidency, specifically concerning presidential war powers. Moreover, the presidents have varied in their approaches to each of these international policy concerns and conflicts. From President George Washington's Proclamation of Neutrality in 1793, to the Gulf of Tonkin Resolution under President Lyndon Johnson's guise, to the Iran-Contra Affair and Cold War policies of the Reagan Administration, American presidents have varied on their outlook of their role in foreign policymaking and international conflict resolution. The goal of this research paper is not to definitively limit the various branches of the federal government on their responsibilities, as the Constitution allows for flexibility. Rather, the goal of this research paper is to understand the constitutional underpinnings of the president's role in foreign policy and war making in relation to the separation of powers and checks and balances delineated in the Constitution, survey the history of the presidents' foreign policy approaches from George Washington to Ronald Reagan, examine how various presidents have contributed to the expansion of executive involvement in foreign affairs – as well as international military conflict – in a historical context.

Constitutional Aspects to Consider

Legally speaking, the U.S. Constitution defines certain parameters, in which the office of president must work. These roles are explained in *Article II, Section 2* of the Constitution, which reads:

The 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...He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors.¹

Section 3 of Article II continues the discussion of the president's constitutional powers concerning foreign policy: "He shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."² These

¹ *Article II, Section 2, U.S. Constitution.*

² *Article II, Section 3, U.S. Constitution.*

words contain the breadth of the president's responsibilities: serve as commander in chief of the U.S. military; make treaties with foreign nations; nominate ambassadors and cabinet officials; receive ambassadors and other public officials from foreign countries; and, execute the laws faithfully.

Since the beginnings of the country, the president has taken the central role in foreign policymaking: The president's constitutional powers, as previously explained, point to the centrality of the president in the constitutional scheme of the federal government. As the central representative of the United States to the world, the president serves as head of state, a role that denotes a level of prominence when considering foreign policy. For example, the president regularly meets with world leaders, specifically at global summits or in individual visits to countries. The president also negotiates trade deals for the United States – usually with the aid of cabinet-level members and ambassadors – as well as peace treaties.

However, considering the Constitution, the functions of the presidency have expanded dramatically throughout the United States' history, specifically within the context of foreign policymaking. And although the president has regularly assumed centrality and pre-eminence in foreign affairs policymaking, the limitations of his duties and responsibilities have consistently come into question. Presidents have abused war making and foreign affairs under the guise of national security concerns, while other presidents refused to act in certain scenarios over constitutional concerns. Some have seen these abuses of power as an encroachment on the constitutional powers of the legislative branch.³ The suspension of the *writ of habeas corpus* during the Civil War, or the use of military action by President Lincoln in the South – before a declaration of war had been issued by Congress – are just two of several examples of situations in which the Constitution does not explicitly state whether or not his actions were technically constitutional given the context of the Civil War. Additionally, controversial decisions like the Gulf of Tonkin Resolutions or Polk's War Message to Congress – each based on limited or disputable information – dilute the president's clear and decisive role in foreign policy and war making. Other issues – like the constitutionality of the Louisiana Purchase, or the dropping of the atomic bombs in 1945 by President Truman – bring to mind the increasingly multifaceted and ambiguous nature of the president's constitutional limitations and practical applications.

The Federalist Papers

In order to consider the executive branch within its constitutional limits, it is then prudent to consider the legislative and judicial branches' constitutional powers with respect to foreign policy and international security, and consider the checks and balances asserted by each branch. The government designed by the Founders denotes a strong belief in the separation of powers, as is confirmed in the three articles which specifically delineate powers to three separate branches within the federal scheme of government. Additionally, the *Federalist Papers*, a series of newspaper articles written in support of the Constitution in the time of its formation, attest to the Founders' strong desire to separate the branches of government into three separate, yet coordinate branches of within the federal government system.

The designers of the U.S. Constitution reasoned in *Federalist Paper No. 47* that “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

³ Masters, Jonathan. “U.S. Foreign Policy Powers: Congress and the President.” *Council on Foreign Relations*, 2 March 2017. <https://www.cfr.org/backgrounder/us-foreign-policy-powers-congress-and-president>

tyranny.”⁴ Federalist James Madison lauded the efforts of Montesquieu for recommending separation of powers, and quoted Montesquieu, saying, “there can be no liberty, where the legislative and executive powers are united in the same person, or body of magistrates.”⁵

Even more so, the U.S. Constitution manifests the natural continuation into the installment of checks and balances. *The Federalist Papers* provide in-depth explanations and backgrounds into the Founders’ understandings and intentions for the Constitution and its proper role known by the people of that time. Specifically, in *Federalist Paper No. 51*, James Madison writes of the importance of checks and balances: “Ambition must be made to counteract ambition.”⁶ Madison writes of “auxiliary precautions,” with the goal to “divide and arrange the several offices in such a manner as that each may be a check on the other.”⁷ The Founders also recognized the importance of separating the ‘power of the purse’ and the ‘power of the sword’ as a “bedrock principle.”⁸

Therefore, it is important to note the various roles of the legislative and judicial branches in order to ascertain the limits of the executive branch, and the check each branch provides on the others. In doing so, a proper framework can serve as a guide to ascertain whether presidential actions have evaded constitutional limits, or whether they are justified. Each branch has a coordinate responsibility to play in the realm of foreign policy; some branches, arguably, more than others. For instance, the Supreme Court cannot make foreign policy, per se; however, they have discretion, under the auspices of constitutional concerns, to interpret laws and treaties. Moreover, the Congress’ power to control the purse is indicative of its ability to direct funding powers through appropriations. Further consideration of both the legislature and judiciary will be beneficial to gain a stronger sense of the president’s proper role.

In *Federalist Paper No. 69*, Alexander Hamilton sets out to discuss the job of treaty-making, and how both the executive and the legislative branches are tasked with this responsibility. He signals that the “authority of the president in the article of treaties” is “concurrent” with the Senate in order to divide the power of treaty-making and approving on behalf of the nation. However, it should be noted that this shared power is only designated in the making and approving of treaties, not in the termination of treaties, which comes up in later Supreme Court cases. Hamilton, too, notes the significance of the Senate and its role of “advise and consent” when considering the president’s appointments of cabinet officers, foreign ambassadors, or dignitaries. Together, the president’s capacity to appoint persons in the realm of foreign policy may be wide, but the Senate’s “advise and consent” role serves as a political check on the president’s appointment (or a political check upon the choice of appointee prior to the Senate committee hearing). In essence, it serves as a limit on the president’s ability to appoint people to positions of considerable power in the realm of foreign policy, and can be viewed as a limited, and in some manner, a shared power between the executive and legislative branch. This check is noted at-length in *Federalist Paper No. 76*, in which Hamilton states that the Senate’s role of ‘advise and consent’ “would have a power, though in general, a silent

⁴ Madison, James. *Federalist Paper No. 47. Federalist Papers*, edited by Robert A. Ferguson. Barnes and Nobles Classics: New York, 2006.

⁵ Ibid.

⁶ Madison, James. *Federalist Paper No. 51. Federalist Papers*, edited by Robert A. Ferguson. Barnes and Nobles Classics: New York, 2006.

⁷ Ibid.

⁸ Fisher, Louis. *Presidential War Power, Third Ed. Revised*. University of Kansas: Lawrence, Kansas, 2013. Page 11.

operation. It would be an excellent check upon a spirit of favoritism in the president and would tend greatly to prevent the appointment of unfit characters.”⁹

Furthermore, Hamilton writes on the treaty-making process in *Federalist Paper No. 75* that the role “does not seem strictly to fall within the definition of either legislative or executive.”¹⁰ Moreover, the removal of the legislature would lead to the executive seeking “his own aggrandizement,” while the absence of the executive in the treaty-making process would remove the president’s ability to “enjoy the confidence and respect of foreign powers in the same extent with the constitutional representative of the nation; and, of course, would not be able to act with an equal degree of weight or efficacy.”¹¹ Here, Hamilton argues that the absence of the Senate would lead to the accumulation of powers and wealth in the executive in treaties, while the absence of the presidency in treaty-making would result in the loss of the president’s ability to serve effectively as the representative of the nation.

Another facet of presidential power is found in the president’s role as the commander in chief of the United States’ military. Specifically discussing the role of the president as commander in chief, Hamilton writes in *Federalist Paper No. 74* “the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.”¹² Furthermore on the executive, Hamilton argues for a more “energetic executive,” in that it would secure the liberties of the people. Hamilton writes the following in *Federalist Paper No. 70*:

It is essential to the protection of the community against foreign attacks: it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.

Hamilton characterizes this energetic executive with these ingredients: “unity; duration; an adequate provision for its support; competent powers.”¹³ And, Hamilton argues that unity will be best achieved by entrusting the executive in a single hand, one that can better accomplish the executive responsibilities with “decision, activity, secrecy, and [dispatch].”¹⁴ The execution of the military and war powers, however, is not discussed further, nor is it clearly limited in the Constitution, except for the fact that the legislature retains the ability to declare war and authorize the actions of the president in certain circumstances, whether that be financially support the war, or by declaration impose restrictions or limitations on the president’s war powers. The president retains the role of commander in chief of the U.S. military and is entrusted to prosecute the war, holding the role of “command and direction” of the military forces.¹⁵

The Legislature

The legislature serves as an important check on the executive branch in a number of capacities. The Senate retains the sole authority to either approve or reject ambassador appointments, cabinet-level appointments such as United Nations’ Ambassador or Secretary of State, as well as treaty

⁹ Hamilton, Alexander. *Federalist Paper No. 76*.

¹⁰ Hamilton, Alexander. *Federalist Paper No. 75*.

¹¹ Ibid.

¹² Hamilton, Alexander. *Federalist Paper No. 74*.

¹³ Hamilton, Alexander. *Federalist Paper No. 70*.

¹⁴ Ibid.

¹⁵ Hamilton, Alexander. *Federalist Paper No. 69*.

confirmations. The Senate's "Advise and Consent" role is hotly debated as to the extent of political considerations when considering appointments or treaties; but, the undefined nature of the Senate's proper role is open to interpretation, and therefore, has varied in its application.

The historic context of the legislature has been relatively inconsistent with the nature of its role in foreign policy. In some cases, the legislature has moved to limit the president's foreign policy and international security powers, while in other cases, Congress has moved to increase the powers of the president or acknowledge his leadership within this field. One such example was the USA Patriot Act, which moved to authorize the president to collect information and data about the American populace in order to combat the global rise of terrorism. Additionally, supplemental legislation has supported executive action in a number of cases, specifically when the president did not have enough time to receive congressional authorization. At the same time, Congress has moved to condemn the president's actions, and has limited the scope of the president's powers. Such pieces of legislation include the War Powers Act, which has been seen by some as a usurpation of the legislature over the executive in the realm of foreign policymaking and national security concerns. Still, others contend it serves as a proper check upon the 'imperial presidency.' This legislation will be considered in the forthcoming sections concerning the historic context of the president's powers, the expansion of those stated powers, and the reaction of the courts and legislature.

The Courts

The courts have been a constant force when dealing with the separation of powers. Specifically, the Supreme Court has ruled on several cases dealing with the extent of the foreign policy powers of the legislative branch in comparison to those of the executive. The Supreme Court has also ruled on cases concerning presidential authority and power demarcation that will be important to note in the overall considerations of the president's powers. Furthermore, the nature of the Court's *stare decisis* concerning the president's role in foreign policy will be important to note for the concerns of the paper. The two most notable cases involving presidential power in foreign affairs come from *Youngstown Sheet & Tube Co. v. Sawyer* and *United States v. Curtiss-Wright Export Corporation*. These two cases present the epitome of the culmination of presidential power in relation to Congress (*Youngstown*), and the codifying and preeminence asserted in the presidency concerning foreign powers (*Curtiss Wright*).

United States v. Curtiss-Wright Export Corporation, 299 U.S. 304 (1936)

During President Franklin D. Roosevelt's tenure, Roosevelt sued the Curtiss-Wright Export Corporation for selling arms to Bolivia and Paraguay in violation of an arms-sale ban to these countries. In a concurring opinion, Justice Sutherland pens what has been called the *sole-organ theory*. Justice Sutherland wrote that the president is the "sole organ of the federal government in the field of international relations," and that "He, not Congress, has the better opportunity of knowing conditions which prevail in foreign countries, and especially is this true in times of war."¹⁶ Here, one can see the implications of such a broad claim: The president, argues Sutherland, is the chief leader in the realm of foreign affairs, and should then receive discretion in how he or she carries out foreign policymaking.

Youngstown Sheet & Tube Co. v. Sawyer 343 U.S. 579 (1952)

Likely the most well-known and most-cited case concerning the extent of presidential power, *Youngstown Sheet & Tube Co. v. Sawyer* (*Youngstown*, hereafter) serves as a legal precedent. In this

¹⁶ *United States v. Curtiss-Wright Export Corporation, 299 U.S. 304 (1936)*. Concurring opinion, Justice Sutherland.

case, President Truman directed his Secretary of Commerce, Charles Sawyer, to “seize and operate the steel mills.”¹⁷ This action was in response to the United Steel Workers’ call to strike during the time of the Korean War. In a six-to-three decision, the Supreme Court rebuked President Truman for abusing his powers by seizing the steel mills. Moreover, the Court rejected the president’s assertion that national security concerns necessitated the assumption of control of the steel mill. Concurring, Justice Jackson writes of the nature and extent of presidential powers – particularly concerning foreign policy:

(1) When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate...(2) When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain...(3) When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his constitutional powers minus any constitutional powers of Congress over the matter.¹⁸

Other cases will be discussed in the following pages concerning presidential authority and reach into the policymaking of foreign affairs. However, for now, a consideration of the *Youngstown* and the *Curtiss-Wright* will serve as touchstones for understanding legal precedent surrounding executive power.

Historic Overview of Presidential Powers in Application

With each new president came new responsibilities, new challenges, and new constitutional questions concerning the extent of their influence, control, and power. Overall, presidents have consistently expanded the reaches of their powers in the areas of military intervention and foreign policymaking. The president, as commander in chief, holds the preeminent role within the hierarchical military establishment, and serves as the chief envoy and representative of the United States abroad as the head of state. Furthermore, presidents often expand their reach farther than the precedents set by previous presidents in favor of more rigorous and all-encompassing powers. A good analogy to consider is a balloon – the more one blows into or stretches a balloon, the easier it will be to continue to blow the balloon and expand it further. Such is the growth of presidential powers. Moreover, the justification of presidential actions that were necessitated based on circumstances, such as “defensive wars,” have led to the increase in presidential power in the area of foreign policy.¹⁹ President George Washington, following the War of Independence, pursued the responsibility to lead the formation and application of America’s foreign policy from the beginning – and Congress let him.

President George Washington believed the prerogatives of foreign affairs lied in the executive office.²⁰ During the nascent nation’s beginnings, President George Washington advocated strongly for the United States to remain neutral in the face of the European intra-wars. Specifically,

¹⁷ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

¹⁸ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Concurring opinion, Justice Jackson.

¹⁹ Fisher, *Presidential War Power*, 16.

²⁰ Knott, Stephen. “George Washington: Foreign Affairs.” The University of Virginia Miller Center, 2018. <https://millercenter.org/president/washington/foreign-affairs>

President Washington wrote “the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers.”²¹ President George Washington’s Proclamation of Neutrality in 1793 set a strong tone, and surprising precedent. Many presidents following Washington adopted a similar model of governing with respect to the United States and Europe. Not only was the Proclamation of Neutrality of 1793 a surprising precedent, given the pledge the United States made to France to support them in return for their support of the United States’ fight for independence; this was also a surprise given that it was President George Washington who made this announcement, and that the country supported his neutral stance.

President Washington continued this line in his *Farewell Address*, where he reminds the country of the call for neutrality with respect to the European theater. He considered the Proclamation of Neutrality of 1793 to be the “index of his plan.”²² In it, President Washington outlined his desire for the United States to “steer clear of permanent alliances with any portion of the foreign world.”²³ While he strongly intends to see that the commitments made by the United States be carried out, he states that “it would be unwise to extend them.”²⁴ Looking back, it is unfortunate to consider that the United States chose not to honor its pact with France. Following the War of Independence, the United States agreed to aid France, its original ally, in the event of France going to war with another nation, like England, Spain, or Portugal. However, when war finally broke out, President Washington broke the commitment and pursued a neutral policy out of concern for the United States’ best interests as a burgeoning nation. Another action during Washington’s presidency is the Jay Treaty, which was widely viewed then as a weak and unfulfilling treaty. Nonetheless, President Washington received Congress’ approval, and the Treaty was subsequently ratified.

Following President Washington was his natural successor and at the time, Vice President of the United States: John Adams. Adams was a Federalist of Federalists. He was on the committee during the drafting of the Declaration of Independence and was a firm supporter of a strong national government. Furthermore, he served as the Ambassador to Great Britain, affording him diplomatic skills as well as his negotiation acumen. However, during his presidency, John Adams was mired in the XYZ Affair. This foreign policy scandal hindered the executive branch’s ability to command respect and international acknowledgement as a legitimate partner. Franco-American relations worsened especially, as a quasi-naval war broke out between the United States and France. Such an incident did not play well into the idea of the president’s supremacy or prominence concerning foreign affairs and impaired the presidency. From then on, presidents have acknowledged the need to remain cautious concerning diplomatic relations, secret diplomacy, and the spy network.

President Thomas Jefferson set two major precedents concerning presidential power and authority: the Louisiana Purchase, and the Barbary Pirates War. An ardent Anti-Federalist and strong opponent to his predecessor, John Adams, Jefferson made it a point in the Constitutional Convention to oppose the new Constitution as a usurpation of states’ sovereignty. Moreover, President Jefferson – among many other Anti-Federalists following the successful adoption of the new Constitution – pursued a narrow and strict view of the document. Such a stance became known

²¹ Washington, George. “The Proclamation of Neutrality, 1793.” *Avalon Law School*, 2008, Lillian Goldman Law Library. http://avalon.law.yale.edu/18th_century/neutra93.asp

²² Washington, George. “Farewell Address.” *Evolving Presidency*, edited by Michael Nelson, Los Angeles: Sage Books, 2016. Pages 54-62.

²³ *Ibid.*

²⁴ *Ibid.*

as the strict constructionist view.²⁵ President Jefferson's strict constructionist views, though, limited him to the writings of the Constitution. And when the Louisiana Purchase was made possible by Napoleon Bonaparte in the early nineteenth century, President Jefferson was conflicted over his proper constitutional roles.

Nowhere in the Constitution did it say the president could purchase territory in the name of the United States. Furthermore, because the Constitution failed to address the acquisition of new land, it was difficult for Jefferson to discern the best course of action. On one hand, the strict constructionist view inside of him was pushing him to wait for Congress or the states to pass a constitutional amendment, which would grant authority to a branch of government to make acquisitions of territory in the name of the United States. However, Napoleon's offer to sell the Louisiana Territory from France for just \$15 million dollars was a bargain for such a vast, resource-filled expanse.²⁶ And, such an offer made by Napoleon was not going to last long. Therefore, Jefferson concluded he had no choice but to make the purchase. He believed he had the nation's support and negotiated a treaty for the Louisiana Territory's purchase. Even though his actions strayed from the strict constructionist view of the Constitution, his actions were praised as fiscally and visionally prudent for the nation's future; Jefferson secured the purchase with congressional approval as well. In all, the Louisiana Purchase nearly doubled the size of the United States at the time. Future presidents would later replicate Jefferson's actions, most notably, President Pierce for the Gadsden Purchase.

The second precedent of presidential power under Jefferson came in response to the Barbary Pirates. The Barbary Pirates were a group of pirates primarily operating in the Mediterranean between the Iberian Peninsula to the North and Northern Africa to the South. This connecting point was vital in reaching the Mediterranean Sea trade, and, thus, southern European trading markets. After completing a review of the nation's expenditures, President Jefferson noticed an excess of one million dollars was being spent to buy off the Barbary Pirates' appeasement, as well as release of American hostages. The actions of the Barbary Pirates infuriated Jefferson, leading to aggressive retaliation by the president to the actions of the pirates. As noted by Denis Caplan in "John Adams, Thomas Jefferson, and the Barbary Pirates: An Illustration of Relevant Costs for Decision Making," Congress had "authorized the construction of six ships... in anticipation of fighting the pirates." Ultimately, however, diplomatic efforts on behalf of the United States to halt the increasing tensions and hostilities between the U.S. and the Barbary Pirates failed:

U.S. relations with Algiers, Tunis, and Tripoli deteriorated in the final years of the eighteenth century, when their leaders became increasingly bold in their demands and blatant in their disregard of diplomatic protocol. In May 1801, President Jefferson ordered a squadron to sail for the Mediterranean, and by the time the squadron set out, Tripoli had already declared war against the United States. The first naval engagement occurred in August 1801, and the campaign known as the Tripolitanian War continued until 1805.²⁷

President Jefferson pursued a policy of aggression and retaliation toward the Barbary Pirates in what was known as the Tripolitanian War. This war, which the United States formally declared,

²⁵ Merriam Webster Dictionary Staff. "Strict Constructionism." *Merriam Webster Dictionary*, 2018. <https://www.merriam-webster.com/dictionary/strict%20constructionist>

²⁶ Greenspan, Jesse. "Eight Things You May Not Know about the Louisiana Purchase." *History Channel*, 30 April 2013. <https://www.merriam-webster.com/dictionary/strict%20constructionist>

²⁷ Caplan, Dennis. "John Adams, Thomas Jefferson, and the Barbary Pirates: An Illustration of Relevant Costs for Decision Making." *Issues in Accounting Education*, vol. 18, no. 3, August 2003, pages 265-273.

authorized President Jefferson the allocated war powers he needed to ensure that the United States was able to accomplish its objectives in the Mediterranean Sea. In the end, “Tripoli signed a treaty favorable to the U.S. that ended hostilities with the Barbary States,”²⁸ which led to the resolution and conclusion of the war, which was as the first major war campaign outside the United States. Overall, the Tripolitanian War “provided impetus for the construction of ships such as the U.S.S. *Constitution*,”²⁹ as well as the building of U.S. naval power, which would become crucial in the years to come.

The next president to expand the powers of the executive branch substantially was President James Monroe, who remains inextricably connected to one of the most consequential presidential doctrines in American history: the Monroe Doctrine. The Monroe Doctrine was a bold move, made with the advice and pressing of Secretary of State (and soon to be president) John Quincy Adams. In essence, the Monroe Doctrine:

- 1) Announced the self-determination of the United States within the Western Hemisphere;
- 2) Established the United States as the leading power within the Western Hemisphere;
- 3) Declared a policy of non-intervention by European powers within the Western Hemisphere, specifically opposing the establishment of colonies within the Western Hemisphere;
- 4) Pursued a neutral policy with respect to European powers and initiated a decree to not become involved in the European theater of political struggles;
- 5) And, threatened retaliation for the infringement of these policies.³⁰

President Monroe’s Annual Address solidified the executive’s central role in the area of foreign policy and consolidated the focus and attention on international matters to the office of the presidency. Furthermore, it took President George Washington’s declaration of neutrality and expanded it to include the entirety of the European theater, banning European powers from interfering – not just with the United States’ business – but also with the entire Western Hemisphere. Moreover, Congress’ inaction to either refute or support the Monroe Doctrine supports the view that Congress acquiesced to the president the determination to pursue this policy.

Monroe clearly delineated his position in his Annual Address: “Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers.”³¹ However, Monroe expanded America’s leadership role in the Western Hemisphere:

We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers [Europe] to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety...But with the South American Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any

²⁸ Ibid.

²⁹ Ibid.

³⁰ Library of Congress. “A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 – 1875.” *Annals of Congress*, Senate, 18th Congress, 1st Session.

³¹ Monroe, James. “Monroe Doctrine.” *Evolving Presidency*, edited by Michael Nelson, Los Angeles: Sage Books, 2016. Pages 68-72.

other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition towards the United States.³²

Many contend the historic significance of the Monroe Doctrine, and even debate whether it should be a policy the United States should pursue with respect to international concerns. Regardless, the Monroe Doctrine was a clear statement of America's power and desire to be recognized and acknowledged, and a clear signal of the extension of the president's prominence in the realm of foreign affairs.

Following the Monroe Doctrine came the challenges of American expansionism and manifest destiny. One president often associated with American expansionism is James K. Polk, who secured the annexation of Texas and led the country during the Mexican-American War among other things in the name of American idealism and expansionism. Here, questions arise over the level of involvement President Polk placed had in placing American troops within harm's way to gain the outcome of war, which President Polk could deduce would lead to the annexation of Texas and California, as well as the adoption of the Rio Grande river as the border between the United States and Mexico. Robert Merry, in his book *A Country of Vast Designs*, wrote of President Polk's involvement in the Mexican-American War beginnings:

One of the biggest mysteries was the level of involvement by President Polk. What we know is that Stockton joined up with Charles A. Wickliffe...who had been sent to Galveston by Polk. Together, they aligned with Major General Sidney Sherman of the Texas militia in a plan to attack Mexico. The concept was that, in the ensuing war between Texas and Mexico, the United States would be drawn in to protect Texas, and the result would be U.S. acquisition of California.³³

Altogether, such a strategy would accomplish the objectives of Manifest Destiny. Essentially, Manifest Destiny "refers to the nineteenth-century idea that God had chosen the American people to expand westward across North America to the Pacific Ocean."³⁴

Whatever his involvement in the beginnings of the Mexican-American War, Polk's conduct during the war secured multiple concessions and ultimately garnered the support of the American people. Polk expanded the powers of the presidency subtly. Forcing the hand of the Mexicans to attack the Americans (or vice versa) then forced the hand of Congress to respond in retaliation to the attacks by the Mexican government. Because he himself could not declare war and required congressional authorization, forcing the hand of Congress to declare war has become a practice of several presidents.

During that time, congressional approval was not forthcoming as many senators and congressmen opposed supporting the war on the account of President Polk's actions. Polk declared, after placing General Zachary Taylor in disputed territories which led to a breakout of armed hostilities, that Mexico "has passed the boundary of the United States, has invaded our territory, and has shed American blood upon American soil."³⁵ Louis Fisher provides an astute recount of the constitutional concerns arising from the breakout of the Mexican-American War:

³² Ibid.

³³ Merry, Robert W. *A Country of Vast Designs: James K. Polk, the Mexican War, and the Conquest of the American Continent*. Simon and Schuster: New York, 2009.

³⁴ Ruth, Michael. "Manifest Destiny." *Salem Press Encyclopedia*, 2014.

³⁵ Fisher, *Presidential War Power*, 41

Senator John Calhoun tried to resist the stampede in Congress to rush blindly and mechanically toward a declaration of war...Other senators echoed Calhoun's sentiments. Senator John Middleton Clayton 'condemned' the conduct of President Polk: 'I do not see on what principle it can be shown that the President, without consulting Congress and obtaining its sanction for the procedure, has a right to send an army to take up a position, where, as it must have been foreseen, the inevitable consequence would be war.'³⁶

Polk was also challenged on the constitutional front in an impassioned speech by Senator Henry Clay on the Senate floor. However, Congress was not able to prevent the Mexican-American War outbreak, nor were they able to break off the consequences of such a war, which included the border dispute settling of the Rio Grande, and the annexation of California. Overall, Polk's expansion of presidential powers in the arena of foreign policy and military powers were subtle, yet noticeable, as Manifest Destiny became the hallmark of his Administration's foreign policy objectives.

Yet, out of this war came an important consideration in terms of the Supreme Court. In *Fleming v. Page*, the Supreme Court ruled the following: "As Commander in Chief, he [the president] is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy."³⁷ Fisher, here, notes the Court's precedent: "The power of Commander in Chief, necessarily broad, must adhere to the policy declared by Congress in law."³⁸

The next significant presidential expansion came during the American Civil War. During the Civil War, President Lincoln had to be constitutionally prudent, yet shrewd at the same time. With belligerent states in the South, President Lincoln and his Secretary of State, William Seward, maintained one goal concerning the Civil War's foreign policy: maintain European neutrality throughout the entirety of the war. Led by delegate Charles Francis Adams of the Adams' presidential family tree, Lincoln and Seward pressed Adams to achieve their goal:

Lincoln and Seward emphasized that the conflict in America was a domestic proposition, and they warned against any form of outside involvement, whether mediation, arbitration, armistice military force, or simply the offering of good offices for peace talks. Recognition of the South, Seward proclaimed to Times of London correspondent William H. Russell, meant a war with the Union that would 'wrap the world in fire'.³⁹

President Lincoln continued to pursue this policy while simultaneously expanding the powers of the presidency in foreign affairs through the suspension of the *writ of habeas corpus*. This controversial decision, though technically constitutional in light of the southern states' rebellion, made its way to the Supreme Court on the account of a citizen in the North who was not a member

³⁶ Fisher, *Presidential War Power*, 41

³⁷ *Fleming v. Page*, 50 U.S. (9 How.) 603, 615 (1850).

³⁸ Fisher, *Presidential War Power*, 42.

³⁹ Zeiler, Thomas W., and Robert J. McMahon. *Guide to U.S. Foreign Policy: A Diplomatic History*. CQ Press, 2012.

of any infantry losing his *writ to habeas corpus*.⁴⁰ Though President Lincoln suspended it forthright on his own volition, Congress passed a law supporting the president's actions. President Lincoln also expanded the powers of the Oval Office in other significant ways:

- Lincoln increased the size of the army and the navy;
- ordered the blockade of southern ports; instructed the Treasury to purchase \$2 million in military supplies;
- Imposed new travel restrictions;
- And banned 'treasonable correspondence' from being exchanged by the Post Office.⁴¹

President Lincoln viewed the executive office as the savior of the Union, the one who should pursue all possible routes to prevent the dissolution of the Union. "So viewing the issue, no choice was left but to call out the war power of the Government; and so to resist force, employed for its [the Union's] destruction, by force, for its preservation."⁴² Upon this, and the "faithful execution of the laws," rested President Lincoln's decision to move in a bold way to complete the objectives he set out to achieve.

The Prize Cases, 68 U.S. 635, 668 (1863) provided Lincoln with the appropriate powers to respond to immediate threats of internal war. Moreover, Lincoln's powers as president were expanded under the auspices of Justice Grier's opinion, which stated that the president is obligated to respond to an invasion: "He [the president] does not initiate the war, but is bound to accept the challenge without waiting for the special legislative authority."⁴³ However, Justice Grier's opinion stopped short of expanding the president's power to initiate war. Justice Grier made this explicitly clear when he wrote that Lincoln "has no power to initiate or declare a war against either a foreign nation or a domestic State."⁴⁴

President Lincoln's restriction of the *writ of habeas corpus*, however, was reined in by the Supreme Court in *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866), following the close of the Civil War. A soldier accused of conspiring with the Confederates was denied the use of the *writ of habeas corpus*. He was then tried in a military tribunal set up in the Union state of Indiana. However, the Supreme Court checked the president's power in restricting the writ due to the fact that military courts were not allowed to function in states where federal courts had consistently been in operation.⁴⁵ Congress followed with legislation that limited the courts' ability to hear such cases.

Following the close of the Civil War and the Reconstruction Era, the Gilded Age engendered support for an American Empire. Under President McKinley, this dream could be realized with the Spanish-American War. Following the war, America not only obtained Cuba, but also annexed the Philippines, giving the United States a foothold in East Asia and the Asian markets. President McKinley's attempt to expand the presidential powers he had was short-lived, however, following his assassination.

President Theodore Roosevelt also expanded presidential power in the realm of foreign policy with his international objectives, particularly in considering the imperialist opportunities presented to the United States during his presidency. President Roosevelt's policy was to "Speak Softly and Carry

⁴⁰ Refer to *Ex parte Milligan*.

⁴¹ Lincoln, Abraham. "Abraham Lincoln's Message to Congress in a Special Session." *Evolving Presidency*, edited by Michael Nelson, Los Angeles: Sage Books, 2016. Pages 83-88.

⁴² *Ibid*.

⁴³ *The Prize Cases*, 68 U.S. 635, 668 (1863).

⁴⁴ *Ibid*.

⁴⁵ *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866).

a Big Stick.”⁴⁶ This particular foreign policy was the antecedent to the “Peace through Strength” mantra, which would later become a staple of the Republican Party platform. Theodore Roosevelt’s presidency came on the heels of the Spanish-American War, which saw the acquisition of the Philippines and Cuba from Spain, and the annexation of Hawaii as a territory. During this time of unprecedented wealth and security for the American people, labor reforms, and environmental conservation efforts, President Theodore Roosevelt’s agenda was to promote American ideals and principles to the world. He established an addendum to the Monroe Doctrine, known famously as the Roosevelt Corollary. This maxim sought to oppose European intervention in Latin America and the Western Hemisphere at-large. Instead, the United States would be the one who would promote America as the “policeman” of the Western Hemisphere – much to the dismay and disapproval of Latin America.⁴⁷ President Roosevelt’s extension of his foreign policy power came in the form of continuing the Monroe Doctrine into the twentieth century and convincing Congress to build up the U.S. Navy as a sign of American strength and resolve.⁴⁸ Roosevelt deployed the Corollary in the Dominican Republic as he moved to set up a “fiscal protectorate,” which was deemed unconstitutional by Congress absent a formal treaty, thereby checking the presidency. Roosevelt hoped to gain the support of Congress; however, the absence of their support required Roosevelt to draft a new treaty in order to gain congressional sanction.⁴⁹

The election of Woodrow Wilson to the Presidency also caused a shift in foreign policy and war-making powers. During President Wilson’s first term, he pursued a neutral policy toward the erupting wars throughout Europe – much like his predecessors Washington, Monroe, and Theodore Roosevelt. In fact, he was the first Democratic president elected to a second consecutive term since Andrew Jackson in the 1916 presidential election, all under the slogan, “He Kept Us Out of the War.”⁵⁰ Ironically, not five months later, it was Wilson who ushered America into the First World War by seeking congressional authorization upon the culmination of several factors, including Germany’s resuming its unrestricted submarine warfare, attacking neutral shipping, and offering to help Mexico reclaim parts of Texas, New Mexico, and Arizona. Wilson’s approach was tailored through a moralist and idealist lens.⁵¹

President Wilson, following the deadly and costly First World War, engaged Europe rather than shrinking away from being involved. This approach was new and unique, as it parted ways from the Monroe Doctrine’s maxim to remain uninvolved in the European theater: He proposed the League of Nations, an organization of nations from around the world coming together to seek peaceful discussions on global issues. His proposal highlighted both domestic agendas he set at home and global policies predicated on his version of American idealism. Overall, the plan was progressive in nature, and advocated for increased globalization and liberalization of American foreign policy approaches. President Wilson called for an open covenant of peace (the League of Nations forum), “absolute freedom of navigation upon the seas,” the removal of trade barriers between nations, reduction of arms, and a “free, open-minded, and absolutely impartial adjustment of all colonial claims.”⁵²

⁴⁶ Milkis, Sidney. “Theodore Roosevelt: Foreign Affairs.” *University of Virginia’s Miller Center*, 2018.

<https://millercenter.org/president/roosevelt/foreign-affairs>

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Fisher, *Presidential War Power*, 59-60.

⁵⁰ Cogan, Charles. “He Kept Us Out of War.” *Huffington Post*, 2012. https://www.huffingtonpost.com/dr-charles-g-cogan/he-kept-us-out-of-war_b_3931495.html.

⁵¹ Wilson, Woodrow. “Fourteen Points.” *Avalon Project (Yale)*, 2018.

http://avalon.law.yale.edu/20th_century/wilson14.asp

⁵² Ibid.

Politically, Wilson sought to accomplish incredible amounts of his progressive policy agenda. Wilson turned away from Washington's neutrality stance, even after Europe pulled the United States into a bloody war. Wilson sought a more peaceful world with stronger integration of the nation-states on the global stage. The idea was noble and laid the groundwork for the United Nations. However, where President Wilson failed was in securing Senate ratification of the treaty he helped develop. Even though the U.S. Senate was led by the opposing party (Republican Party under Senator Harry Cabot Lodge of Massachusetts), President Wilson's inability to garner enough support to include the United States in the League of Nations exposed the shortcomings of President Wilson's leadership, political capital, and presidential powers. Moreover, this highlighted the first attempt by a president to truly obtain an international forum for various countries to come together and speak their minds rather than resorting to war to solve conflicts between countries. The Senate's disapproval of the League of Nations Treaty serves as an important reminder and example of their role within foreign policy; the Senate's position also displayed the isolationist tendencies of many Americans during that period.

Franklin D. Roosevelt, president of the United States during the first half of World War II, also changed America's standing on the world stage and the role of the oval office in foreign affairs. President Roosevelt followed the neutral policy towards Europe like many of his predecessors, but with a few caveats. He called for an exchange of goods with Great Britain and France, namely, American arms. This agreement became to be known as the Atlantic Charter, which was essentially a "Treaty Agreement between Franklin D. Roosevelt and Winston Churchill that committed their countries to peace, [and recognized] the right of self-determination for all nations."⁵³ The Atlantic Charter became the foundation on which the United Nations would be founded. In fact, on January 1, 1942, President Roosevelt further changed the course of global forums, first coining the term 'United Nations.'⁵⁴ Following conclusion of World War II, representatives from nearly fifty nations met in the United States to draw up the United Nations Charter; after being ratified, the United Nations was officially established.⁵⁵ Many in the Democratic Party saw this as a major progressive victory, specifically on the part of Presidents Wilson, Roosevelt, and Truman.

President Roosevelt, though, violated his constitutional authority in that he allowed older-aged destroyers to be transferred to the Allied powers absent congressional authorization. President Roosevelt claimed executive powers afforded him the ability to make such trade agreements, but in reality, he needed congressional approval, given the extent of financial considerations. The United States was also not at war, further limiting the president. However, in 1941, Congress passed the Lend-Lease Act, "which authorized the president to manufacture any defense article and to 'sell, transfer title to, exchange, lease, lend, or otherwise dispose of' the defense articles to any country whose defense he deemed vital to the defense of the United States."⁵⁶

After pursuing neutrality in Europe following the outbreak of war like many of his predecessors, the United States found itself called to action following the surprise attack by Axis-ally, Japan, on Pearl Harbor on December 7, 1941. On December 8, President Roosevelt secured a war declaration from the U.S. Congress, as well as a mandate from the American people, seeking for the United States and the Allied nations to win a swift victory. President Roosevelt capitalized on the new-

⁵³ Barratt, David. "Atlantic Charter." *Salem Press Encyclopedia*, 2013.

⁵⁴ The United Nations. "History of the UN." *The United Nations*, 2017, <http://www.un.org/en/sections/history/history-united-nations/>.

⁵⁵ *Ibid.*

⁵⁶ Fisher, *Presidential War Power*, 77.

found powers he had been granted by Congress. He forged an alliance with the nations of Great Britain and the Soviet Union, known simply as the Allied Powers. This partnership led to a successful coalition to defeat Italy and Germany from multiple fronts. President Roosevelt also managed to pull together a strong team of military leaders and spearheaded a victorious military strategy. He also became the first president to win re-election to a third term, defeating Wendell Willkie in 1940. President Roosevelt's real strength lay in his ability to effectively communicate with the American people, as he did during the 'Fireside Chats'. With radios in millions of homes across America, Roosevelt was able to share his policies and agenda with millions of Americans; through this medium, he displayed his desire to lead the American people to victory.

He, however, overstepped his constitutional authority and placed Japanese-Americans in internment camps. Executive Order 9066 was signed a few months following the Pearl Harbor attacks, fresh on the minds of all Americans. He called for all Japanese-Americans from military areas to be removed and relocated; the military subsequently deemed a majority of the West Coast – heavily populated by Japanese-Americans – as a military area. Millions of Japanese-Americans endured horrifying living conditions and received inadequate treatment. President Roosevelt grossly abused his constitutional powers, and the Supreme Court supported his decision on the grounds of national security and marshal law. In *Korematsu v. United States*, 323 U.S. 214 (1944), President Roosevelt's decision to authorize the creation of "military zones" for the purposes of controlling certain areas – and certain people groups – was upheld by the Supreme Court as a legitimate extension of the "power to protect," as well as "to prevent espionage and sabotage."⁵⁷ Such an abuse of presidential power is obvious in retrospect, and should serve as a warning to posterity.

Presidents since have followed Roosevelt and Wilson's examples by pursuing more integration into the global stage. President Truman led the conclusion of World War II by using the ultimate presidential military power: the dropping of the atomic bomb – twice. This extension of executive power culminated and – some argue – allowed the president to reach the apogee of presidential power. During the war, President Truman made his stance clear: if necessary, the United States would drop the bomb in order to speed up the conclusion of the war. To the Soviet Union, Truman displayed the terrible and awesome power of the nuclear power the United States of America held in its arsenal and signaled to the Soviet Union to tread lightly. Truman's decision to drop the bomb signaled, void of congressional approval, that he had the legitimate power to drop the atomic bomb as president. Single-handedly, President Truman's deployment of the atomic bomb ushered in a swift arms race that would haunt both the United States and the Soviet Union in subsequent decades. Furthermore, Truman's decision to drop the bomb highlights the civilian control over the military, and that the president could drop such a powerful weapon without congressional authorization.

Moreover, President Truman led the charge of the free world against communism. In his congressional message to secure over \$400 million from Congress, President Truman advocated for the support of nations like Turkey and Greece against the communist enticements. He stated, "It must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures,"⁵⁸ thereby ushering in the Truman Doctrine. His successful attempt to garner support for these nations from a Republican Congress led to an enduring bipartisan Cold War foreign policy approach, one that would be hotly contested, but

⁵⁷ *Korematsu v. United States*, 323 U.S. 214 (1944). O'Brien, David. *Constitutional Law and Politics: Struggles for Power and Governmental Accountability, Volume 1 (Ninth Edition)*. W.W. Norton & Company: New York, 2014.

⁵⁸ Truman, Harry S. "The Truman Doctrine." *Evolving Presidency*, edited by Michael Nelson, Los Angeles: Sage Books, 2016. Pages 158-163.

nonetheless pursued. However, the Korean War – which Truman relied upon the UN Participation Act to prosecute – displayed Truman’s shortcomings in the arena of foreign policy. Despite the fact that the UN sanctioned the use of armed forces in retaliation to North Korea’s “hostilities,” Truman still lacked congressional approval for the use of American armed forces in the Korean War.⁵⁹ Continuing, Truman never sought retroactive congressional authorization or support for his actions, just as Lincoln did in the initial outbreak of the Civil War.

President Eisenhower had just won an Allied victory across Europe as the Supreme Commander of the Allied Forces. His ability to bring complete, and unconditional victory for the Allied Powers was viewed as a sweeping success, and led to an incredible chance for him to secure eight years in the White House. His constitutional outlook concerning his role as commander in chief was both remarkable and reserved. Eisenhower’s Attorney General Herbert Brownell Jr. spoke of Eisenhower’s governing philosophy on war powers:

[His] view of the president’s place within a constitutional system of government allowed him to understand the rightful roles that the various institutions and political actors occupy in our political system so that he did not overextend the scope of presidential interest across the whole gamut of governmental activities. Moreover, it fostered an understanding of a need to establish a sense of comity with those individuals in the other branches with whom a president must necessarily deal.⁶⁰

Eisenhower repeatedly rejected unilateral action absent congressional authorization, most notably in the Indochina crises. Eisenhower’s Farewell Address to the nation highlighted, too, his concerns over the growth and expansion of the “industrial military complex” at the expense of America’s political institutions.⁶¹

President John F. Kennedy combined the policies of the Monroe Doctrine and the Truman Doctrine: He pushed for self-determination of the Western Hemisphere and for the rest of the world to remain out of its affairs, while calling for a strong-line against communist aggression. In his presidential inaugural address, President Kennedy stated, “Let all our neighbors know that we shall join with them to oppose aggression and subversion anywhere in the Americas. And let every other power know that this Hemisphere intends to remain the master of its own house.”⁶² He also renewed America’s commitment to the United Nations, taking the helm of establishing America’s new foreign policy. Unfortunately, he also brought the United States and the world closer to an all-out nuclear war than any other president had done so before or afterwards.

Kennedy’s response to the situation in Cuba is notable, as he relied on his own constitutional authority to act concerning the Cuban Missile Crisis. In response to questions on his authority as president, Kennedy replied, “I have full authority now to take such action” to quarantine Cuba.⁶³ Though the Cuba Resolution was passed on October 3, 1961, it did not “authorize presidential

⁵⁹ Fisher, *Presidential War Power*, 99.

⁶⁰ Fisher, *Presidential War Power*, 116-117.

⁶¹ Eisenhower, Dwight D. “Farewell Address.” Eisenhower Presidential Library. <https://www.dwightd.eisenhower.com/DocumentCenter/View/2448/Reading-Copy-of-the-Speech-PDF?bidId=>

⁶² Kennedy, John F. “John F. Kennedy’s First Inaugural Address.” *Evolving Presidency*, edited by Michael Nelson, Los Angeles: Sage Books, 2016. Pages 174-177.

⁶³ Fisher, *Presidential War Power*, 124.

action” in regard to the Communist island of Cuba. Rather, it “expressed the sentiments of Congress.”⁶⁴ Kennedy moved on his own volition to impose the quarantine of Cuba, and to repel USSR intervention, void congressional authorization of his military moves.

President Lyndon B. Johnson further expanded the powers of the presidency by steering the Gulf of Tonkin Resolution through Congress. President Johnson brought the US to the brink of war through his actions based on the Truman Doctrine. He placed American warships in the Southeast Asia waters; then, the North Vietnamese attacked the ships. President Johnson informed Congress of this incident, and asked Congress for a resolution to support retaliatory actions. The Gulf of Tonkin Resolution stated “Congress approves and supports 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 any further aggression.”⁶⁵ This resolution expanded presidential powers beyond the scope of what could be comprehended: Essentially, Congress wrote a blank, legal check for President Johnson (and Nixon after Johnson) to pursue any strategy of resolving the conflict in Vietnam and beyond. Such a resolution should not have been adopted unless Congress ratified a declaration of war with clear war powers delineated to the president.

In response to such a gross extension of the president’s powers, Congress later passed the War Powers Resolution. On November 7, 1973, the bill defined the limitations of the president’s authority as commander in chief, stating that the president can only introduce the United States into conflict there is a “(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.”⁶⁶ It also directs the president to consult Congress before introducing the United States into hostilities. However, the bill has several shortcomings. Who is considered to constitute Congress? The Speaker of the House, and the Majority Leader or president pro tempore of the Senate? All of Congress? The foreign affairs committees in the House and Senate? What about the secrecy of information in too many hands? Is this an overreach of congressional powers in the executive branch’s war-powers? Further, questions revolve around when the timing of the days begins. There is also confusion surrounding the time limits of 30 days, 60 days, or 90 days.

In *The Presidency and the Political System*, Andrew Polsky writes of the expansion of presidential powers during wartime. He writes that a “wartime president can capitalize on these circumstances to frame national war goals and define military strategy on his own terms.”⁶⁷ This is seen virtually every time the United States is ushered into a war: Roosevelt in World War II; Truman in World War II and the Korean War; and Johnson in Vietnam. Even more so, he highlights the national security crisis point that dramatically centralizes the focus of any response or reaction, militarily or politically, on the central military and foreign policy maker – the president of the United States. Polsky also points to an original Founder, Alexander Hamilton, stating, “presidential control over lesser military actions also comports with Alexander Hamilton’s vision of the executive as the branch capable of acting with energy to meet a crisis. Initiative then rests with the president.”⁶⁸

⁶⁴ Fisher, *Presidential War Power*, 125.

⁶⁵ Johnson, Lyndon B. “Gulf of Tonkin Resolution.” *Evolving Presidency*, edited by Michael Nelson, Los Angeles: Sage Books, 2016. Pages 182-186.

⁶⁶ *Ibid.*

⁶⁷ Polsky, Andrew J. “The Presidency at War: The Window of Agency in Wartime Presidential Leadership.” *The Presidency and the Political System*, 10th edition, edited by Michael Nelson. CQ Press, 2014. Pages 525-545.

⁶⁸ *Ibid.*

Polsky also highlights the ability of a president to manipulate situations to favor his intended outcomes and agendas. The president can place troops or the United States' resources precariously close to hostile territories. Moreover, since Congress authorized such a huge military apparatus during a time of peace, Congress "effectively surrendered its constitutional power to deny presidents the means to wage war."⁶⁹ The president also commands a large amount of discretion in building a team of advisors and leaders (like FDR did by picking Eisenhower), setting the military objectives, and establishing a strategy.⁷⁰

President Richard Nixon, too, expanded executive powers. Nixon began the turning of recognizing mainland China versus Taiwan, which was the representative of China on the international stage. This policy was an extension of President Nixon's ability to determine which ambassadors to not only receive, but also which representatives of other countries to engage with. President Nixon's time as president, however, saw incredible shifts in presidential power. *New York Times Co. v. the United States* (403 U.S. 713, 1971)⁷¹ proved to be a decisive case in determining that the United States' government had an obligation to protect its classified information; the failure of the government is what produced the leak known as the Pentagon Papers, and led to a widespread national backlash against President Nixon, and the government in general. Specifically, though, the presidency was under attack as the Supreme Court case highlighted the shortcomings of the executive branch and its corresponding bureaucracies, and heightened concerns over backroom dealings.

In practical terms, the application of the War Powers Resolution was difficult to discern. For example, President Jimmy Carter, upon the capture of the American Embassy in Tehran, Iran, ordered an evacuation operation to retake the Embassy and the 52 Americans hostages held there. However, President Carter stated he had full constitutional authority, under the guise of the War Powers Resolution, to act in regard to the military rescue operation. However, Carter notified Congress (notably Senator Byrd [D-WV]) following the unsuccessful rescue attempt. Congressional and public backlash was swift in condemning the president's actions as unconstitutional and reckless. However, no moves were made by Congress to limit the president further in regard to the Iran hostage situation.

Goldwater v. Carter (444 U.S. 996, 1979) was another Supreme Court case in which executive-legislative authority was disputed. Carter suspended a treaty that recognized Taiwan as the legitimate representative government for the country of China as it had been established for decades. Senator Goldwater (R-AZ) vehemently opposed this action, contending that the president did not have the sole power to terminate the treaty and must instead consult Congress for approval to nullify a treaty. The Supreme Court ruled in favor of President Carter, extending more authority to the presidency in the realm of terminating treaties, and removing the suggested necessity of Senate approval before the treaty could be nullified.⁷²

President Reagan was confronted with an attack on U.S. military personnel in Lebanon early in his administration. Prior to congressional involvement, Reagan "deployed troops pursuant to his 'constitutional authority'."⁷³ Following the attack, Reagan cooperated with Congress, and sought

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ *New York Times Co. v. the United States* (403 U.S. 713, 1971). 3

⁷² *Goldwater v. Carter*, 444 U.S. 996 (1979).

⁷³ Fisher, *Presidential War Power*, 160.

“congressional authorization.”⁷⁴ After obtaining an 18-month restriction on responding to the Lebanese terrorist attacks, Reagan opposed the restriction of 18-months on him as arbitrary, and practically unwise. Reagan also disagreed with Congress’ setting the initial time of the outbreak to a certain date. Moreover, the war itself lasted two years – well beyond the 18-month restriction.

Conclusion

On the whole, the legislature has been compliant to the wishes and leadership of the executive branch concerning war and treaties. Congress has willingly supported many presidents’ actions and desires concerning foreign policy approaches. They retroactively supported Lincoln’s actions concerning the blockade of Southern rebellious states, declared war on Mexico upon Pierce’s request, granted Johnson vague war powers in the Gulf of Tonkin Resolution, supported Jefferson’s purchase of the Louisiana Territory and Pierce’s Gadsden Purchase, and approved the military actions of President Kennedy in the Cuban Missile Crisis. However, following the escalation of the Vietnam War – culminating with corruption reports and the overall public distrust of the federal government – Congress fought back in the area of foreign policy and passed the War Powers Act, which limited the president’s actions concerning war powers and his role as commander in chief. The legislation, though, is mired by vague timetables, and still misses the mark of limiting the president’s actions completely. However, if the legislation did severely limit the executive power, then the president’s response to an attack on American soil or American lives may be severely limited until congressional approval is declared – thereby crippling America’s ability to respond in times of national emergency.

In review, the president holds the power to appoint ambassadors and cabinet members, but the Senate retains the power of ‘advise and consent’ to either accept or reject those nominees. The president retains the role of making treaties, in some cases, with the help of Congress; the Senate retains the role of ‘advise and consent,’ and can either reject or codify those treaties. The president, however, retains the power to reject or accept foreign dignitaries, can terminate ambassadors or cabinet-level secretaries and persons, and can terminate treaties with various countries. This delineates notable power of the president in the realm of foreign policy.

However, the legislature retains strong authority over the president concerning his actions and policy. The Senate can reject treaties as well as appointees to the positions of cabinet or ambassadorships, limiting the president’s sole leadership in the realm of foreign policy and international security. For example, the Senate rejected the League of Nations treaty proposed by President Wilson. Moreover, Congress retains the authority over commerce and war declaration – which has been used to limit the president on several occasions. Unfortunately, the nebulous statutes within the War Powers Resolution dilutes its overall effects on Congress’ desire to limit the executive branch in war-making. Such vague statutes have led to presidential action absent congressional authorization in the name of “constitutional authority” and the War Powers Resolution.

Overall, Justice Jackson’s concurring opinion in *Youngstown Sheet Tube Co. v. Sawyer* seems to hold precedent as the governing philosophy of a proper understanding of presidential powers, specifically concerning war powers⁷⁵:

- 1) The president’s power is at its peak when congressional approval and authorization are in place;

⁷⁴ Fisher, *Presidential War Power*, 160.

⁷⁵ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

- 2) The president relies on his own authority absent “congressional grant or denial of authority,” and void congressional action on the issue creates a “zone of twilight” in which presidential action may be constitutional;
- 3) Or the president’s “power is at its lowest ebb” when the president takes a course of action contrary to the “expressed or implied will of Congress.”

Moreover, Fisher notes of Jefferson’s comments concerning presidential war powers that the constitutional framework supports the following:

At best, it says that whenever Congress and the President have acted jointly to formulate foreign policy, it is the President who communicates, transmits, and explains that policy to other nations. Of course, the President can imitate policies on his own, such as the Monroe Doctrine, but those statements of national policy survive only with congressional support or acquiescence. Presidential announcements on foreign policy can be revoked or modified at any time by Congress.⁷⁶

Concerning emergency powers absent congressional authorization in the case of an attack, whether terrorist or hostile attack from another country, Fisher writes the following:

In a genuine emergency, a President may act without congressional authority (and without express legal or constitutional authority), trusting that the circumstances are so urgent and compelling that Congress will endorse his actions and confer a legitimacy that only Congress, as the people’s representatives, can provide. If the President exercises poor judgment and usurps power, he can be impeached and removed from office.⁷⁷

Overall, a review of the proper presidential powers in the realm of foreign policymaking and international security is necessary to ensure a proper understanding of the role of the president as commander in chief and as the major representative of the country abroad. The actions of past presidents have notably expanded presidential power and authorities. Even with congressional limitations, however, the president has at times violated his proper, constitutional role. It can be noted in this review that circumstances necessitate various reactions by the president, reactions that Congress cannot foresee. While that is a fair assumption on the part of Congress, it should also be noted that congressional acquiescence of their constitutional duty to serve as a proper check on presidential powers with regards to other nations must not be lessened, all in the name of national security. Deliberate reasoning and review of the circumstances and information, and a careful consideration of Congress’ proper role in authorizing funds or military action should be taken with the utmost concern by members of Congress. Furthermore, proper consideration of the circumstances, an understanding of presidential limitations and powers concerning actions in those circumstances, and precedents – whether constitutional or congressional – must guide future presidents concerning the arena of foreign policy. A president who leads in the arena of foreign policy is proper, as long as he gains congressional sanction in his actions and policies concerning financial support and military authorization.

⁷⁶ Fisher, *Presidential War Power*, 22.

⁷⁷ Fisher, *Presidential War Power*, 99.

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