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The Obama/Romney Amendments

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The Constitution, War Making and Foreign Affairs



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Occasionally, a candidate for the White House will deliver a penetrating critique of presidential assertions of authority in the realm of foreign affairs. Ohio Sen. Robert Taft, who might have made a fine president had it not been his misfortune to run against Dwight Eisenhower in the 1952 Republican primary, brought considerable constitutional knowledge to the campaign trail. He rightly criticized President Harry Truman for his usurpation of the war power in plunging the United States into the Korean War without congressional authorization, as required by the Constitution.

In 2007, Illinois Sen. Barack Obama justly attacked President George W. Bush for his aggrandizement of power, including some unprecedented claims of authority in his conduct of the “War on Terrorism.” As president, however, Obama changed his mind about the scope of presidential power in matters of foreign affairs and national security and, in due course, embraced several of Bush’s constitutional rationales. Obama is not the only president in American history to have reversed course in his understanding of the Constitution. Readers may recall the impressive knowledge of the Constitution displayed by then California Sen. Richard Nixon in his criticisms of President Truman’s usurpation of the war power. They may also recall his about face in the conduct of the Vietnam War when, as president, Nixon adduced a capacious view of untrimmed, unilateral executive power. Presidents, it appears, occasionally lose their constitutional compass.

It is little wonder that the mushrooming growth of presidential power in the realm of foreign affairs and national security has alarmed scholars and concerned citizens interested in maintaining constitutional limits that seek to corral the chief executive. Mindful of the impact of war on the blood and treasure of the nation, the framers of the Constitution were at pains to withhold from the

Read Adler on The Constitutional Convention and The War Power.



president unilateral authority to plunge the nation into war. Read Adler on The Constitutional Convention and The War Power. Their concerns reflected a historic rejection of the executive model and were manifested in a constitutional design for foreign affairs that made Congress the senior partner, and the president the junior partner, in the formulation, management and implementation of American foreign policy. Among other actions, delegates to the Constitutional Convention determined through the War Clause (Article 1, Section 8) to grant to Congress, not the president, the sole and exclusive authority to declare war.

The framers' blueprint for foreign affairs enjoyed, with few exceptions, a remarkably good run, as the executive and legislative branches exhibited respect for the framers' wisdom and vision for many decades. But with the emergence of the acute tensions and anxieties that marked the rise of the Cold War, the constitutional design for foreign affairs has been all but buried by an avalanche of newly contrived, self-serving executive branch missives that advance an untenable theory of presidential monopoly of foreign relations powers. Over the past half-century, Democratic and Republican presidents—liberals and conservatives alike—from Harry Truman, Lyndon Johnson and Richard Nixon, to Ronald Reagan, George W. Bush and Barack Obama, have laid claim to sweeping powers that find no support in the constitutional principles that govern American foreign policy.

Presidential candidates as well portray the power of the office, in equally strident tones. The current campaign for the Oval Office is no exception; President Obama and Governor Mitt Romney have urged upon the citizenry a robust view of presidential power. If anything, their perceptions of executive power in the realm of national security are remarkably similar. Then too, as we shall see, they are remarkably detached from the constitutional blueprint for foreign affairs and war making. In this regard, they mimic the claims of their predecessors who have consistently violated the Constitution.

Since 1950, every president, with the exception of Eisenhower, has asserted a unilateral executive authority to initiate war and lesser military hostilities on behalf of the American people. Assertion of a presidential "war power" has led to a series of unilateral executive wars in various regions of the world, from Korea and Vietnam, to Panama and Grenada, to Iraq and Libya. In 2007, in pursuit of the Democratic nomination, then Senator Obama criticized President Bush for his sweeping claims of executive authority in matters of war and foreign affairs, including the contention that the president has unfettered discretion as commander in chief to initiate war. President Bush, for example, had denied that he needed congressional authorization to invade Afghanistan and Iraq in the wake of the 9/11 outrage. When asked by Charlie Savage, a Pulitzer Prize winning reporter with the Boston Globe, if a president might bomb Iran without congressional



The USS Philadelphia burned in 1804, during the First Barbary War—an early example of extra-Constitutional war powers assumed by Thomas Jefferson / Edward Moran painting via Wikimedia Commons

authorization, Obama replied, “The president does not have the power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.”

Sen. Obama’s denial of a presidential war power proved short-lived. President Obama has continually asserted presidential authority to authorize bombing and drone strikes, without congressional authorization. In 2011, after the United Nations approved a military air campaign in Libya to protect civilians from attacks by the Gadhafi government, President Obama, without congressional authorization, dispatched American forces to join a NATO effort in an air campaign against Libyan forces. In defense of the legality of President Obama’s deployment of U.S. forces, the Justice Department issued a memorandum declaring that the president possesses an “inherent” constitutional power to initiate military force since he could “reasonably determine that such use of force was in the national interest.”

Gov. Romney’s view of presidential power to initiate force mirrors President Obama’s position. In a December 29, 2011 interview with the *New York Times* that covered a broad range of issues involving the exercise of executive power, Romney was asked about the claim of presidential authority to deploy military force in Iran. Romney stated: “Ever since the administration of Thomas Jefferson, U.S. presidents have relied on their inherent constitutional powers to authorize the use of military force even in the absence of an imminent threat to the U.S. homeland.” He added, “As president, I would do everything I can to anticipate national security threats before they emerge and use all elements of U.S. power—including diplomacy, intelligence, economic leverage, and the power of our ideas—to defend against such threats without the need for military action. I would also consult closely with Congress, the American people, and our allies to address threats that do emerge. But I would not hesitate to use force when necessary to protect the United States of America.”

The assertions by President Obama and Governor Romney of a unilateral presidential war power find no support in the architecture of the Constitution. Presidents have routinely flaunted constitutional principles governing matters of war and peace. This is deeply troublesome for a nation that professes to be committed to the rule of law. It is troublesome for Governor Romney, who frequently extols the virtues of the Founders and promises to remain faithful to their principles. It is troublesome as well for President Obama, a lawyer by trade, and who, as president, has a profound duty under the Take Care Clause, to “faithfully” execute the laws of the land. Above all else, the persistent violation of the War Clause for the past half-century, should be deeply worrisome for the American citizenry. As the learned historian Arthur Schlesinger, Jr. stated, “If citizens are unwilling to study the processes by which foreign policy is made, they have only themselves to blame when they go marching off to war.” In an election year in which citizens make crucial judgments that will shape the direction of our nation, those are, indeed, wise words of advice.

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The views and opinions expressed here are those of the writer and do not necessarily reflect those of Boise State University or the College of Social Sciences and Public Affairs.