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Unconstitutional War: Strategic Risk in the Age of Congressional Abdication

JOSEPH V. GALLAGHER III

There is an imbalance of constitutional power across the branches of the US government. Congress has failed to preserve its constitutional privileges, specifically its sole authority to declare war.¹ Over the past 60 years, through a combination of executive initiative and congressional abdication, the United States has engaged in large scale offensive wars absent congressional war declarations, despite Congress's constitutional authority and requirement to formally declare the nation's wars.²

For the 162 notable military deployments after World War II, Congress never declared war, opting instead to pass resolutions that effectively circumvented the constitutional war declaration process. Arguably, in its major military actions since 1950, the nation has failed to articulate political objectives commensurate with its sacrifice of blood and resources.³ This dubious record stands in stark contrast to the ends obtained from wars that Congress actually declared.

Congressional resolutions are an insufficient substitute for war declarations for a number of reasons. The resolution process undercuts the framers' well-conceived declaration process designed to assure popular support for the nation's wars. Thorough congressional deliberation is imperative for arguably the most important decision the Congress has the authority to make—committing the nation to war.

The executive branch's recent practice of engaging in war without exercising the process of declaring war has left the nation's military repeatedly engaged in open-ended conflict. The ensuing uncertainty exacerbates an already complicated strategy formulation process and often leads to truncated, incoherent, or episodic military strategies. As the keeper of the nation's treasury, Congress determines the sustainability of any military effort. Ultimately, all war strategy depends on the nation's ways and means, along with the national will to sustain the effort to meet desired ends.

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Whether a result of executive ambition, congressional abdication, or a combination of the two, committing US military forces to “war” without the benefit of the constitutional declaration process has not served the long-term interests of the nation. In addition to its questionable constitutionality, the resolution process has led to insufficiently defined national objectives. It constantly exposes strategy to political machinations. Finally, it fails over time to provide sufficient resources to achieve the uncertain objectives of the military actions that began extraconstitutionally.

War Power and the Constitution

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.⁴

The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.⁵ This principle applies in practice to all decisions of considerable national importance. Specific to war powers authority, the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief.⁶ This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

The Constitution, on the other hand, vaguely delegates authority to execute foreign policy. It contains no instructions regarding the use or custody of that power, except to “preserve, protect, and defend the Constitution of the United States.”⁷ Alexander Hamilton, known widely as an advocate of executive power, asserted:

The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.⁸

Accordingly, the founders never intended for the military to serve as the nation’s primary agency to interface with the rest of the world or stand as the dominant instrument of foreign policy. So the presidential authority of

Commander-in-Chief does not permit a president to use the nation's military simply to execute a president's foreign policy.⁹

Cold War Strategic Culture

Following World War II, the strategic landscape became volatile and uncertain. Two major events shaped what would become the predominant school of thought for developing US national security policy in this murky post-World War II strategic environment: the successful test of a nuclear weapon by the Soviet Union and the Communist victory in China. These two events fostered a national security staff that focused primarily on halting the advance of communism. US national security strategists formulated a robust, rigid strategy of containing communism as the panacea for foreign policy challenges and for defending national interests in the bipolar strategic landscape of the Cold War. Thus the doctrine of containment and the directive to implement it, National Security Council Report 68 (NSC-68), dominated US foreign policy for several decades following World War II.¹⁰ This new national security climate supported a decisionmaking culture comfortable with the executive branch as the primary or sole crafter of foreign policy.¹¹ It was not a coincidence, therefore, that Cold War security advisors eschewed the war declaration process and replaced it with a desultory resolution process to authorize the nation's uses of military power, for large and small operations.

The NSC-68 culture appeared to facilitate the concentration of power in the executive branch. Dean Acheson declared, "The purpose of the NSC-68 was to bludgeon the mass mind of 'top government' that not only could the president make a decision but that the decision could be carried out."¹² This mentality encouraged congressional abdication because nuclear warfare reduced decision cycles to minutes, not days or weeks.¹³ The new strategic concept of mutually assured destruction would not allow sufficient time for traditional wartime decisionmaking. This new strategic environment set the conditions for the gradual migration of war powers from Congress to the executive branch.

The policy formulation process, which gave birth to the NSC-68, led to executive dominance of the war-making powers, leaving Congress virtually irrelevant.¹⁴ Additionally, nuclear weapons and the aircraft and missiles that delivered them shifted the national decisionmaking mindset from traditional deliberation to crisis response, strengthening the perception that only the executive branch could act with the speed necessary to address the threat. The policy developed in the NSC-68 era inevitably disregarded congressional consensus and marginalized the traditional constitutional approach for authorizing the nation's use of force.

The Korean War

On 25 June 1950, North Korea invaded South Korea, dramatically challenging the new policy of containment. Additionally, a new international actor

in the form of the United Nations introduced another layer of complexity and bureaucracy among the member states with respect to military intervention.

President Truman directed a large military deployment for offensive operations across Korea's 38th parallel—all without the approval of Congress.¹⁵ In the process, President Truman formulated language in which the executive branch would circumvent constitutional war-making authority.¹⁶ The “police action” in Korea at its peak involved over 325,000 US military personnel, resulted in over 35,000 US casualties, and ended in a frozen conflict that continues to befuddle the United States.¹⁷

A product of the new Cold War environment, President Truman's actions were recklessly unprecedented. No previous president had deployed US forces into a foreign war without obtaining or at least seeking congressional approval.¹⁸ Congressional reactions were divided. Some in Congress objected to President Truman's initiative, but others acquiesced—claiming President Truman's actions were well within his authority as Commander-in-Chief. Perhaps most frightening was the congressional group that completely offshored oversight. They suggested President Truman's actions were consistent with the United Nations (UN) Charter because the Security Council passed Resolution 83 that recommended “military measures and assistance” from member states to “restore peace and security in Korea.”¹⁹

A UN resolution may serve to justify military intervention to the world community, but it should never replace the necessity for congressional authorization as the Constitution requires. Nonetheless, President Truman's initiative was accepted as sufficient to meet constitutional muster for taking the nation to war. He had taken the first step to increasing presidential overreach. With respect to war powers, President Truman's executive police action arguably set the precedent for empowering future presidents to engage in major war without congressional approval.²⁰

The Vietnam War

In 1949 President Truman offered financial aid to support French recolonization efforts in Vietnam without congressional debate or justification.²¹ Following the 1954 French defeat at Dien Bien Phu, the country was partitioned into two “countries” of dubious legitimacy. To strengthen the South against northern communist aggression, the United States began sending military advisors to Vietnam to provide initial support for the South's non-communist regime. US security advisors were seeking to avoid the “domino effect,” which posited that other regional nations would fall to communism if South Vietnam fell. Thus, the United States intervened with approximately 700 military advisors under President Eisenhower; their numbers increased to 16,000 under President Kennedy.²²

In August 1964, North Vietnamese gunboats allegedly attacked the USS Maddox and USS Turner Joy in the Gulf of Tonkin. In response, President Johnson successfully expedited through Congress the Gulf of Tonkin Resolution amid false reporting, misinformation, and what in hindsight could be called

deliberate obfuscation.²³ The perceived fog of crisis had dampened Congress's will to monitor executive initiatives. Congress thus granted President Johnson

*... a positive element to
... America's involvement in
Vietnam ... is Congress's attempt
to reassert its authority. . . .*

the authority to use any amount of military force to do whatever he thought was necessary in Vietnam.²⁴ Another axiom the Cold War induced was the notion that foreign policy decisions were too extraordinary for the underclass of Congress

and the public to decide.²⁵ President Johnson then launched a war in Vietnam, cloaking his personal agenda and true motivations. A compliant, acquiescent Congress failed to restrain the president's ambition and by default contributed to a national disaster.²⁶

In a relatively short period, August 1964 to spring of 1965, President Johnson deployed the "first" combat forces to Vietnam. At the war's height, the United States sent over 400,000 troops to Vietnam to participate in various modes of conventional and unconventional war—all executed under presidential authority granted by a congressional resolution contrived under false pretenses.²⁷ President Johnson took President Truman's initiative one unprecedented step further; the UN Security Council did not pass a resolution to address aggression in Vietnam as was the case with Korea.²⁸

The War Powers Resolution of 1973

If there is a positive element to the legacy of America's involvement in Vietnam, it is Congress's attempt to reassert its authority and rein in executive war power. The failure in Vietnam and President Nixon's unprecedented abuses of presidential power aroused Congress to draft legislation restricting executive war powers. In November 1973, the War Powers Resolution (WPR) was passed over President Nixon's veto and emerged as the congressional effort to limit the president's ability to intervene militarily without first seeking congressional approval. Contentious from the outset, the WPR divided lawmakers into camps either for or against limiting executive power.²⁹

The language in the WPR is convoluted and cryptic. It offers very little regarding the critical issue of enforcement. Subsequently, it has been dismissed by every administration since its passage.³⁰ The WPR set the requirement for the president to report to Congress within 48 hours of the introduction of armed forces with the intent to perform combat operations.³¹ Additionally, it requires congressional authorization for the president to sustain commitments of US forces beyond 60 days—and a new authorization if the commitment extends beyond 90 days.³² In reality, the WPR fails because the oversight mechanisms, flaccid as they are, do not apply until after US forces are deployed. One could argue that the crowning achievement of the WPR is that it affirms the aphorism that it is easier to beg forgiveness than to seek permission.

War Powers in the Post Cold War Period

The 1990 Iraqi invasion of Kuwait served again as a justification for massive US intervention. Despite having the time to consult with Congress, President G. H. W. Bush initiated Operation Desert Shield in August 1990 without congressional consultation or authorization.³³ Not until November 1990 did Congress earnestly review the situation in the Gulf. In December 1990, the Democratic caucus passed a resolution mandating the president obtain congressional authorization before initiating hostilities, a feeble attempt to close the barn door after the horse departed.³⁴

On 12 January 1991, Congress eventually authorized the use of force by a vote of 250 to 183 in the House and 52 to 47 in the Senate. However, this was months after President G. H. W. Bush directed the deployment of more than 150,000 troops to the Persian Gulf.³⁵ The ensuing resolution was perhaps the closest to a US war declaration since World War II. House Speaker Tom Foley called it the “practical equivalent of a declaration of war.” But it was not functionally a war declaration, because it only authorized the use of force to enforce UN Security Council Resolution 678.³⁶ Nonetheless, the United States mounted a major military operation. At its peak, the United States deployed approximately 350,000 personnel in support of operations to liberate Kuwait under the auspices of the UN resolution.³⁷

The US military campaign of Operation Desert Shield/Desert Storm exhibited operational and tactical genius. The campaign quickly fulfilled the conditions of the UN resolution by evicting Iraqi forces from Kuwait and restoring Kuwaiti sovereignty. But the lack of full, national debate on how to terminate the Persian Gulf War essentially facilitated the transition of quick military success into a 12-year open-ended quasi-war that continued until the 2003 invasion of Iraq—another undeclared war.³⁸

Afghanistan and Iraq, 2001-2003

In 2001, the al Qaeda attacks on New York and Washington DC easily justified authorization for US intervention in Afghanistan. The 9/11 attacks shocked, bruised, and bloodied a nation which then quickly responded with congressional expediency not seen since the 1941 attack on Pearl Harbor. On the following day, President George W. Bush declared “these deliberate and deadly attacks . . . were acts of war.”³⁹ Yet he did not ask Congress for a war declaration nor did Congress provide one.⁴⁰ Instead, on 14 September, Congress quickly passed a joint resolution authorizing the president:

To use all necessary force and appropriate force against those nations, organizations, or persons, *he* [emphasis added] 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.⁴¹

This resolution, which the president signed into law (P.L. 107-40) on 18 September, was unprecedented with regard to all provisions for war power authority. It provided *carte blanche* power for the president to invoke military force against all nations, organizations, and people associated with the 9/11 attack.⁴² It provided no oversight whatsoever; it indefinitely extended executive authority; it “legalized” a war, not on a defined sovereign entity, but on a vaguely defined instrument of war—a “War on Terror.” This broad sweeping language has been interpreted and invoked to support many controversial programs both abroad and at home.⁴³

It is important to note the nexus between the 9/11 use-of-force resolution process and the 2002 authorization for the use of force against Iraq. The unlimited, broad authority of the 2001 resolution was perhaps the first brick laid on the road to war with Iraq. This resolution gave the president the perceived authorization to initiate an entirely new and costly preemptive war in Iraq—a country with no visible, logical, or strategic connection to the 9/11 attack.⁴⁴

Ironically, however, congressional resistance to what would become such a polarizing issue and ultimately a tremendous sacrifice of blood and treasure was epitomized by the parody of congressional deliberation prior to the invasion.⁴⁵ At the height of the debates over the Iraq War in the House and Senate, fewer than ten percent of the members attended—a clear indication of congressional apathy.⁴⁶ Debate on the Senate floor was pedestrian; most senators read prepared statements and then departed.⁴⁷ The administration’s pre-invasion power grab and Congress’s acquiescence provided the most blatant example of power imbalance across the branches with respect to war power authority since Congress yielded its war powers at the beginning of the Cold War.⁴⁸

Understanding the Gap

Since World War II, a wide gap has developed between Congress and the executive branch with respect to the critical issue of war powers. Like a black hole, this gap draws in the roles and abilities of the branches to execute foreign policy. Ostensibly, this gap has resulted from two symbiotic behaviors: executive aggressiveness and congressional abdication. The historical record reveals the evolution of this phenomenon. But history does not clearly reveal the structural and political dimensions of this phenomenon.

The Constitution grants most foreign policy prerogative to Congress in Article I. Article II grants the president very limited authority in the foreign policy arena.⁴⁹ This results in a structural dichotomy because the executive branch is better positioned to lead and execute, but congressional actions are more indirect and diffuse. Congress’s bicameral design and widely dispersed support base do not optimize the expeditious exercise of its power. Consequently, considerable power has flowed from Congress to the president.⁵⁰

Execution of US foreign policy is fraught with political uncertainty and vulnerability. Compared to domestic issues, foreign policy decisions and initiatives are susceptible to greater unpredictability.⁵¹ Therefore, when dealing with high levels of uncertainty, Congress often finds it easier to defer to the

executive branch, thereby reducing congressional members' exposure or liability.⁵² Because most Americans elect their congressional representatives based on domestic issues, they tend to pay little attention to foreign policy; members of Congress often defer acting on foreign policy matters as a safer political option.⁵³ This political safe haven of indecision, however, does not serve the nation well because it encourages concentrating power in the executive branch. Likewise, it severs the link between the electorate, the constitutionally intended legislative process, and the executor. Matters of war, however, require the collective involvement of the people. Militaries fight wars, but nations go to war. In the final analysis, congressional abdication of its Article I authority to oversee the nation's foreign policy has exposed America to unacceptable strategic risk.

War, Strategy, and the Constitution

One of Clausewitz' greatest contributions to the study of war is his emphasis on the conceptual link between politics and war. "War is never a separate phenomenon," Clausewitz wrote, "but the continuation of politics by other means."⁵⁴ Behind this proposition is a deeply textured argument about the intrinsic political purpose of war. This political purpose encompasses the components comprising war: societal disposition, economic capability, and strategy. Clausewitz advised leaders to thoroughly consider any use of violence. So the link between war and politics "should never be overlooked."⁵⁵ Even in the 21st century, war retains this political dimension despite the recent emergence of nonstate actors and transnational groups.⁵⁶

In other words, success at the tactical level of war first requires careful preparations at the political and strategic levels. The enabling institutions for success in war—Congress, the president, the cabinet, and other advisors—all need to be fully engaged in the development of feasible, suitable, and acceptable strategy.⁵⁷ And this carefully crafted strategy needs to include legitimate justification for violence, rigorous calculation and valuation of political objectives, and commitment of resources sufficient to achieve strategic objectives.⁵⁸

Since 1945, the United States has built the world's most capable war-fighting machine. So why, then, have most of the nation's large military interventions since World War II ended in defeat or, at best, stalemate? Political leaders should attend more to what Clausewitz calls the political dimensions of war—national unity and the political value of the objective—as inseparable from national and military strategy.

War theorists have long emphasized the importance of national unity and the political value of the war objective. Thousands of years ago, Sun Tzu identified the necessary pre-condition of national unity for successful war strategy.⁵⁹ National unity enables political leaders to muster resources needed to win wars and to amass the human capital that makes an army. Clausewitz advised, "to discover how much of our resources must be mobilized for war, we must first examine our own political aim."⁶⁰

National unity underwrites the commitment the nation needs to successfully prosecute war, provided the war has political value commensurate to the

effort expended.⁶¹ The founders directed this nation to use a collaborative process to assess the political value of a war. So the Constitution requires Congress to deliberate on the decision to go to war and, when it so decides, to declare war. Therefore, the Constitution serves as the guarantor of ensuring national unity and a legitimate valuation of the war's political objective—provided through the mechanism of the war declaration. Consider the language of the 1941 war declaration against Japan. It captures the national unity, the political value of the objective, and the will and support of Congress to support the war.⁶²

A Risk to Strategy

As the practice of declaring war has become passé, American strategy has likewise become disjointed and disconnected from national security objectives. Following World War II, an acquiescent Congress and an aggressive presidency have, for decades, fostered a strategic climate that failed to maintain the links between the political dimensions of the state and its strategy. The predominant “NSC-68 thinking,” largely a product of executive national security panels that administrations have embraced and Congress has blithely followed, provided inadequate guidance on how objectives and capabilities should be joined to produce coherent overall strategy.⁶³ This connection, Clausewitz observed, is necessary for success in war.

For example, US strategy following World War II ironically came to resemble the German strategy of the early 20th century, relying heavily on military ways and means that failed to address the political and economic components of warfare.⁶⁴ Historians are quick to extol the superiority of the German military machine, but Germany lost two world wars. Similarly, the United States has pursued a strategy built on loosely linked operational and tactical successes. Unfortunately, without concretely defined end states specified in a coherent all-encompassing strategy, these successes have not achieved national strategic ends. In Vietnam, Afghanistan, and Iraq, our leaders failed to properly define the national strategic ends, so the attendant strategies have been inchoate. Leaders' attempts to match ways and means to fluctuating or poorly defined ends resulted in unacceptable levels of uncertainty and risk. These protracted and strategically uncertain conflicts are alien to America's strategic culture, which has little tolerance for long, risky, or uncertain conflicts.⁶⁵

More recently, as the executive branch exercises greater authority in directing military interventions, the gap between risk and strategy becomes wider. Theater commanders charged with developing adequate or complete strategies with sound ends and feasible ways to achieve them lack confidence in congressional support to provide the means necessary to achieve these strategic objectives.⁶⁶ As the world's only superpower, the United States can expect asymmetrical conflict as the norm. Future adversaries will increasingly focus on the strategic target of the American people's collective will in their efforts to subvert our national strategy.⁶⁷

Vietnam Strategy

The tragic military and political experience of Vietnam was spawned by an aggressive president promoting foreign policy absent congressional and public blessings.⁶⁸ Vietnam War strategy affirms how congressional abdication on war matters resulted in protracted disaster. As historian George Herring points out, “America’s failure in Vietnam and the tragedy that resulted also make clear what can happen when major decisions are made without debate or discussion.”⁶⁹ After Congress passed the Gulf of Tonkin Resolution, the strategy formulation and decision process operated vacuously, failing to determine strategic objectives and the means to obtain them.⁷⁰

President Johnson made numerous decisions concerning the strategy and operations of the war, resulting in a strategy of incremental gradualism. Despite some tactical successes, Vietnam strategy never developed sufficient coherence nor the sustained support of the American people. Through executive design, Congress and the people never fully vetted the value of the political objective in the context of large-scale military intervention before President Johnson committed forces to combat.⁷¹

As a result, President Johnson lacked the top cover of a war declaration. This prevented him from unleashing the nation’s enormous military capability to achieve full, quick military success. Instead, he implemented a strategy that he thought was least likely to jeopardize his legislative agenda, upset the domestic apple cart, or threaten his reelection.⁷² In retrospect, the incoherence of the Vietnam strategy reflected the real value of the political objective in the eyes of the American people; they could not have cared less about Vietnam.⁷³

Afghanistan and Iraq Strategies

The strategies for the ongoing conflicts in Iraq and Afghanistan have both failed to properly incorporate national strategic ends, ways, and means in a consistent manner across the whole of government. In the absence of a national consensus on strategic ends, Congressman James Marshall (D-GA) not surprisingly identified:

The mismatches among the needs of post-conflict stability operations in Afghanistan and Iraq, the size and the types of military forces available, and the pitiful scarcity of capability in the civilian branches of our government to effect nation-building efforts, as well as, our utter incompetence as a government in strategic communications.⁷⁴

US Afghanistan strategy has continually morphed from 2001 to the present. The sweeping language in the September 2001 congressional resolution did little to shape the effort and focus the nation on acceptable long-term national ends.⁷⁵ A careful analysis of coalition command and control structures indicates how the United States, partners, and allies prosecuted any number of operational strategies.⁷⁶ Strategic priorities changed from counterterrorism to counterinsurgency, to nation building, back to counterterrorism, then eventually to a combination of all of them.

During the lead-up to Operation Iraqi Freedom, significant executive power may have subjected the strategy to unnecessary risk. Indeed, failure of Congress to deliberate a declaration of war may have resulted in poorly defined national objectives and shoddy strategy.⁷⁷ Significant executive powers facilitated side-stepping full disclosure of policy risk. The president's obsession with regime change subordinated other key elements crucial to a comprehensive strategy, particularly with respect to clear strategic ends. This obsession obscured full debate and railroaded the nation into a course of action fraught with unexamined risk. Additionally, it masked the real cost of the strategy in terms of lives and dollars and inevitably compromised support for the effort when the strategy did not unfold as planned.⁷⁸

Eventually, the wars in Iraq and Afghanistan and their strategies became focal points in the 2008 presidential campaign. Similar to President Johnson on Vietnam, candidate Obama politicized the Iraq and Afghanistan conflicts, promising on the campaign trail that, if elected, he would redeploy US combat forces out of Iraq and refocus on Afghanistan as the central front on the war against extremism. This politicalization of the war efforts may have removed strategic considerations from decisionmaking, exposing the strategies to additional, unnecessary risk at a crucial time.⁷⁹

Another Cry for Reform

In 2009, The National War Powers Commission, a bipartisan group commissioned under the auspices of the University of Virginia's Miller Center for Public Affairs, reviewed the existing WPR and addressed executive overreach with respect to military intervention. Chaired by Warren Christopher and James Baker, the 2009 War Powers Commission concluded that the 1973 WPR does not function as intended and needs replacement.⁸⁰ Commission members testified before the House Foreign Affairs Committee and Senate Foreign Relations Committee recommending a policy to restore the constitutional grounding for mandatory congressional war declaration for "large" force deployments and "significant armed conflict."⁸¹

The Commission recommended replacing the 1973 WPR with the War Powers Consultation Act of 2009 that adds fidelity to the size, scope, and types of conflict subject to the Act. Most significantly, it directs the president to consult with Congress before introducing troops into "significant armed conflict."⁸² Despite the bipartisan clout of former Secretaries of State Warren Christopher and James Baker, the Commission's recommendations still lacked the necessary political power to prevent the president from deploying forces into significant armed conflict without the full blessing of Congress.⁸³

Conclusion

Reminiscent of the 1973 WPR, the National War Powers Commission's effort to redress war power authority hoists another warning flag about war power overreach and executive presumption of constitutional power. But it

is insufficient to have an academic debate over the constitutionality of war authority. Since the end of World War II, an assertive executive branch has run roughshod over an abdicating Congress, which has compromised US military efficacy. It has repeatedly resulted in the expenditure of national blood and treasure for strategically hollow ends.

The Constitution is, in itself, a strategic national security document. The founders' wisdom imbued within Articles I and II capture, in the Clausewitzian sense, the necessary prerequisites for successful prosecution of war. As the executive and congressional branches deviate from US constitutional foundations with respect to war authority, they increasingly leave the military—and the nation—vulnerable to unacceptable strategic risk. The current interpretations or disregard for war power authority, as practiced today, no longer maintain the necessary connective tissue between political and military muscle movements. As a result, US national and military strategy has become disjointed from legitimate political will. American military operations are hampered by the leadership's inability to harness the national will. If this nation declared war when it engaged in war, as the Constitution requires, the United States would wage fewer of them—and be far better positioned to win them.

NOTES

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2. U.S. Constitution, art. I, § 8.
3. Anne Leland and Mari-Jana Oboroceanu, *American War and Military Operations Casualties: Lists and Statistics* (Congressional Research Service, February 26, 2010), 3. The Korean conflict produced 36,574 American military dead and Vietnam produced 58,220. To say the nation was not at war does not match up with the loss of blood and treasure.
4. Technically the president is elected by the Electoral College.
5. James Madison, "The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments," *The Federalist Papers*, Number 51, February 6, 1788.
6. U.S. Constitution, art. II, § 2.
7. Walter A. McDougall, *The Constitutional History of U.S. Foreign Policy: 222 Years of Tension in the Twilight Zone* (Philadelphia, PA: Foreign Policy Research Institute, 2010), 8.
8. Alexander Hamilton, "The Treaty-Making Power of the Executive," *The Federalist Papers*, Number 75, March 26, 1788.
9. Kenneth B. Moss, *Undeclared War and the Future of U.S. Foreign Policy*, (Baltimore: The Johns Hopkins University Press, 2008), 217.
10. S. Nelson Drew, ed., *NSC-68: Forging the Strategy of Containment With Analysis by Paul H. Nitze*, (Washington D.C.: National Defense University Press, 1994), 54-55.
11. *Ibid.*, 1.
12. Ernest R. May, *American Cold War Strategy: Interpreting NSC 68* (Boston: Bedford Books, 1993), 98.
13. S. Nelson Drew, ed., *NSC-68: Forging the Strategy of Containment*, 57.
14. May, *American Cold War Strategy*, 4.
15. Louis Fisher, "Truman in Korea," in *The Constitution And The Conduct Of American Foreign Policy*, eds. David Gray Adler and Larry N. George (Lawrence, KS: The University Press of Kansas, 1996), 320.

16. On June 29, 1950, when questioned during a news conference on the situation in Korea, President Truman proclaimed, "We are not at war!" He later agreed with the suggestion from the press corps that it amounted to nothing more than a "police action" conducted under the auspices of the United Nations. See Louis Fisher, "Truman in Korea," in *The Constitution And The Conduct Of American Foreign Policy*, 320; McDougall, *The Constitutional History of U.S. Foreign Policy*, 30.

17. Leland and Oboeroceanu, *American War and Military Operations Casualties*, 3; Tim Kane, *Global U.S. Troop Deployment, 1950-2003*, The Heritage Foundation, October 27, 2004, <http://www.heritage.org/research/reports/2004/10/global-us-troop-deployment-1950-2003> (accessed January 21, 2011).

18. Robert Kennedy, *The Road To War: Congress' Historical Abdication Of Responsibility* (Santa Barbara, CA: Praeger, 2010), 90.

19. *Ibid.*, 89-90.

20. Arthur M. Schlesinger Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973), 135.

21. Robert M. Blum, *Drawing the Line: The Origin of the American Containment Policy in East Asia* (New York: Norton, 1982), 220; George C. Herring, *America's Longest War: The United States and Vietnam 1950-1975* (Boston: McGraw-Hill, 2001), 17.

22. Kennedy, *The Road To War*, 95.

23. Schlesinger, *The Imperial Presidency*, 179.

24. Herring, *America's Longest War*, 145.

25. *Ibid.*, 358.

26. *Ibid.*

27. Schlesinger, *The Imperial Presidency*, 179.

28. *Ibid.*

29. Richard F. Grimmett, *The War Powers Resolution: After Thirty-Six Years* (Congressional Research Service, April 22, 2010), 1.

30. McDougall, *The Constitutional History of U.S. Foreign Policy*, 33.

31. *War Powers Act of 1973*, Public Law 93-148, 93rd Cong., (November 7, 1973).

32. *Ibid.*

33. Edward Keynes, "The War Powers Resolution and the Persian Gulf War," in *The Constitution and the Conduct of American Foreign Policy*, eds. David Gray Adler and Larry N. George (Lawrence, KS: University Press of Kansas), 241.

34. Moss, *Undeclared War*, 95-96; Keynes, "The War Powers Resolution," 250.

35. Kennedy, *The Road To War*, 118.

36. Keynes, "The War Powers Resolution," 251-252.

37. Kennedy, *The Road To War*, 118.

38. Andrew J. Bacevich, *The New American Militarism: How Americans Are Seduced By War* (Oxford: Oxford University Press, 2005), 195.

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40. Jennifer K. Elsea and Richard F. Grimmett, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*, (Congressional Research Service, March 17, 2011), 104.

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Unconstitutional War: Strategic Risk in the Age of Congressional Abdication

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