

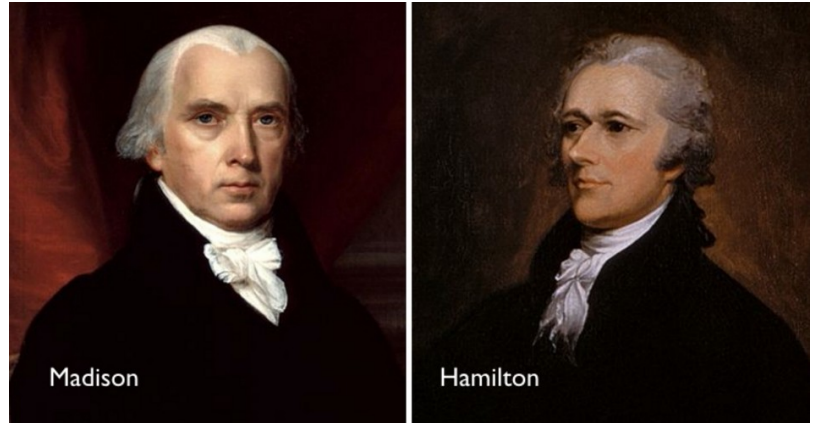


Written by [Joe Wolverton, II, J.D.](#) on June 18, 2017

Little Known Episode in U.S. History Explains Executive War Powers

In light of President Trump's decision to deploy thousands of troops to Afghanistan, a debate between James Madison and Alexander Hamilton could save thousands of lives.

For over 15 years, American presidents have ordered members of the U.S. military to sacrifice their lives in Afghanistan and Iraq. Considering that these presidential orders have come from every Oval Office occupant regardless of party affiliation, it is time to analyze the (lack of) presidential authority to wage war under the U.S. Constitution.



The current President, Donald Trump, recently ordered the Defense Department to ramp up the level of U.S. military presence in Afghanistan.

Secretary of Defense James Mattis informed the Senate Appropriations Subcommittee on Defense that President Trump delegated to him complete authority to deploy the necessary U.S. armed forces to Afghanistan so that we might start winning that war.

In 2011, Barack Obama sent over 100,000 American troops into Afghanistan. Later, he capped the number of U.S. servicemen serving in Afghanistan at about 8,400.

While this usurpation of the authority to wage war will undoubtedly continue into our country's future, we can learn lessons from our country's past on why we didn't constitutionally grant that power — ultimately, the power over life and death — to the president.

Within five years of the publishing of *The Federalist* papers (and four years of the ratification by the states of the Constitution), the co-authors of those seminal and influential essays on American political theory and constitutional interpretation were back at their desks once again writing letters to the editors of newspapers.

This time, however, James Madison and Alexander Hamilton weren't allies working to persuade others to commit to their common constitutional cause, but they were opponents, striving through their letters to reveal each other's perceived constitutional misdeeds to the American people.

This episode in American history is known as the Pacificus-Helvidius debates, named for the pen names adopted by Alexander Hamilton and James Madison, respectively.

In the earliest days of the republic, the precise balance of powers between the legislative and executive branches in the arena of foreign affairs was unsettled. The Constitution, many argued, wasn't clear on the point and the various views on the matter created controversy.

George Washington issued the Neutrality Proclamation of 1793 after France declared war on Holland



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and Great Britain. According to Washington's way of thinking, it was in the best interest of the country to avoid war at all costs and he did not want the belligerents to be unsure of the official American position.

While certainly laudable, some of Washington's colleagues considered the Neutrality Proclamation to be hostile to the French as it required the United States government to violate a provision of the Treaty of Alliance signed by France and the United States in 1778. Thomas Jefferson was among the most vociferous of the claque calling out Washington for allegedly violating the prior agreement.

Some of the opposition, including Jefferson and James Madison, believed that the advice and consent of the Senate should have been sought before President Washington issued any declaration of the official American position on any topic touching upon foreign affairs.

Alexander Hamilton was one of the first president's most ardent advocates, however. And that's where the trouble started.

Just weeks after the Neutrality Proclamation was published, Hamilton wrote a letter defending the document. Then, beginning in June 1793, he wrote an essay almost once a week, under the pen name *Pacificus*, in support of President Washington, his administration, and his policies.

After the seventh "*Pacificus*" letter was published on July 27, 1793, Thomas Jefferson wrote a now famous letter to James Madison, pleading, "my dear sir, take up your pen...."

Madison took up his pen and on the 24th of August, 1793, he responded to Hamilton's "*Pacificus*" essays, using the pseudonym "*Helvidius*."

In the first letter, Madison wrote that the first *Pacificus* essay "may prove a snare to patriotism" and warned that he (Hamilton) has advocated principles "which strike at the vitals of its constitution."

Later in the essay, Madison recommended that in all questions concerning the correct conduct of federal officials, Americans must be guided by "our own reason and our own constitution."

And, in a statement that is as timely now (perhaps more so) than it was then, Madison wrote that the power to declare war is "of a legislative and not an executive nature."

He continued on that subject:

"Those who are to conduct a war [the Executive Branch] cannot in the nature of things, be proper or safe judges, whether a war out to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws."

Madison was so strident in his insistence that the power to make war not be placed in the presidency, that his next letter (*Helvidius* Number 2) began with the bold pronouncement that if any president were to presume the war making power, "no ramparts in the constitution could defend the public liberty or scarcely the forms of republican government."

In the modern era, notably, it is typically the president who initiates the commitment of American troops to combat zones, who orders the military might of the United States of America to deploy here or there to fight this or that foreign foe. The Congress is rarely involved in that decision, with the exception of allocating money to the supplying the armed forces with requisite equipment, ammunition, and other necessary supplies.

Continuing on the same subject, Mr. Madison once again made a clear and constitutionally sound



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statement that, if applied today, would save the United States billions of dollars and thousands of lives in the prosecution of scores of unconstitutional combat missions over the past few decades.

“Until war be duly authorized by the United States, they are actually neutral when other nations are at war, as they are at peace (if such a distinction in terms is to be kept up) when other nations are not at war,” Madison wrote in Helvidius II.

Finally, Madison explained in Helvidius IV why Americans must remain vigilant, keeping close watch over the actions of their elected representatives. To equal degree, though, Americans must be familiar with the powers granted to those representatives lest they claim to possess constitutional powers, powers not enumerated in that document.

Regarding the duty of Americans to learn for themselves and enforce on their elected leaders the limits of federal power set out in the Constitution, Madison wrote:

It is also to be remembered, that however the consequences flowing from such premises, may be disavowed at this time, or by this individual, we are to regard it as morally certain, that in proportion as the doctrines make their way into the creed of the government, and the acquiescence of the public, every power that can be deduced from them, will be deduced, and exercised sooner or later by those who may have an interest in so doing. The character of human nature gives this salutary warning to every sober and reflecting mind. And the history of government in all its forms and in every period of time, ratifies the danger. A people, therefore, who are so happy as to possess the inestimable blessing of a free and defined constitution cannot be too watchful against the introduction, nor too critical in tracing the consequences, of new principles and new constructions, that may remove the landmarks of power.

May members of Congress be reminded by this article of their sole authority over the power to send soldiers to die in foreign fields and why the Framers of the Constitution included such a provision in that document.

Should lawmakers learn of this episode in American history, perhaps thousands of American military men and women will be spared sacrifice on the altar of empire at the hands of the American president.



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