



## President's Power to Wage War: A Constitutional Primer

*"But the safety of the people of America against dangers from foreign force depends not only on their forbearing to give just causes for war to other nations, but also on their placing and continuing themselves in such a situation as not to invite hostility or insult; for it need not be observed, that there are pretended as well as just causes of war."*

John Jay, Federalist No. 4 (1787)



In light of the Department of Defense's admission that it lowballed the number of American troops deployed in Afghanistan (closer to 11,000 than the 8,400 the Pentagon originally claimed) and President Donald Trump's proclamation that the United States will, regarding the country's enemies in Afghanistan, "defeat them, and we will defeat them handily," Americans committed to the Constitution must — regardless of political party and personal preference — insist that the limits on power placed within that sacred document be enforced.

Before examining the (lack of) constitutional authority granted to the president to prosecute or perpetuate foreign combat operations, historical accuracy and ancestral honor demand a respectful challenge to a couple of President Trump's recitations of events in our Republic's illustrious past.

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In his remarks given at Fort Myer in Arlington, Virginia, on August 21, Trump properly praised the American military, describing it as "a special class of heroes whose selflessness, courage, and resolve is unmatched in human history." There is no argument with that description.

Next, Trump continued his encomium, declaring that "American patriots from every generation have given their last breath on the battlefield for our nation and for our freedom."

There's a problem there.

Unfortunately, our Founding Fathers would not have stood with Trump in his statement that the decades of the spilling of the lifeblood of these brave warriors were critical to protecting our own safety. Here are two statements that President Trump — and all those who supporting the shedding of American blood in the name of building up or pulling down foreign regimes — should read: "Wherever the standard of freedom and independence has been or shall be unfurled, there will be America's heart, her benedictions, and her prayers. But she does not go abroad in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her



Written by [Joe Wolverton, II, J.D.](#) on September 7, 2017

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own.” — John Quincy Adams, Independence Day Address, July 4, 1821.

“Peace, commerce, and honest friendship with all nations, entangling alliances with none.” — Thomas Jefferson, First Inaugural Address, March 4, 1801.

We wish all people the privilege of enjoying the full panoply of liberties with which they were endowed by their Creator, but it is our own liberty for which we should be willing to sacrifice the blood of our brethren. Short of that necessity, we will be peaceful and honest with all nations.

Now we will analyze the constitutionality of the president’s (any president’s) command of troops.

Let us begin, again, by reviewing the words of those men who created the office of president by drafting and ratifying the Constitution and who, therefore, established the limits on the power of the executive.

In a letter to Thomas Jefferson written in 1798, James Madison explained to his frequent collaborator why the Constitution placed exclusive control over declaring war in the legislative branch:

The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care, vested the question of war in the Legislative. But the Doctrines lately advanced strike at the root of all these provisions, and will deposit the peace of the Country in that Department which the Constitution distrusts as most ready without cause to renounce it.

There is nothing in this statement that even hints that Madison would approve the proposition that the president possesses power to deploy the U.S. military and that Congress should play a merely advisory, post-hoc role in that potentially fatal decision.

In a letter written some years later, Madison recommends 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 writes that the power to declare war is “of a legislative and not an executive nature.”

Madison is so strident in his insistence that the power to make war not be placed in the presidency, in another letter (known as “Helvidius” No. 2) he begins 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 contrast to that warning, though, in his statement, President Trump claimed that increasing the U.S. military presence in Afghanistan was necessary “to preserve our republic.” That’s not the way Madison saw it.

President Trump may have the best intentions and he may genuinely believe that there may be some threat to our liberty and safety running around in the mountains of Afghanistan, but none of that matters at all when one views the president’s actions through the unbiased lens of the Constitution of the United States and the very purposefully limited powers it grants to the president. The power to deploy troops is not found therein.

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