



Written by [Thomas R. Eddlem](#) on March 20, 2011

## Rep. Amash Calls Libya Action Unconstitutional

In a [Facebook posting](#), Rep. Amash quoted then-presidential candidate Obama's view on the constitutional power of the President to commit troops without prior approval from Congress. The Illinois senator [told](#) a *Boston Globe* interviewer December 20, 2007: "The President does not have 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."



Amash [concluded](#): "Under the President's and my reading of the Constitution, the U.S. must halt all strikes against Libya. I call on congressional leadership to reconvene session so we can vote on whether to authorize military action."

Amash is correct in concluding that Senator Obama is right and President Obama is wrong, and he has the Founding Fathers in his corner as well as Senator Obama. James Madison [wrote](#) to Thomas Jefferson on April 2, 1798: "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 legislature."

Madison also [explained in an anonymous 1793 letter](#) (Helvidius #1): "In the general distribution of powers, we find that of declaring war expressly vested in the Congress, where every other legislative power is declared to be vested, and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature.... Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought 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."

Even Alexander Hamilton, that great proponent of executive power, [conceded](#) in an anonymous 1793 response (as Americanus #1) to James Madison that "war is a question, under our constitution, not of Executive, but of Legislative cognizance. It belongs to Congress to say—whether the Nation shall of choice dismiss the olive branch and unfurl the banners of War."

This may explain why the two primary authors of the [Federalist Papers](#), [delegates to the Constitutional Convention of 1787](#) and [signers](#) of that Constitution sought to [grant Congress — and Congress alone — the following exclusive powers](#):

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on



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Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

Under the U.S. Constitution, Congress is clearly the body charged with declaring war and making the rules for the military, not the President. This, of course, leads to the question: Why has President Obama had a change of heart?

*Photo: Rep. Justin Amash*

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