

Congress, the President, and the War Powers

Henry Clay's Speech in Lexington

November 13, 1847 (excerpts)

The Papers of Henry Clay, vol. 10, eds. Melba Porter Hay and Carol Reardon, (Lexington: University Press of Kentucky, 1991), 361-377.

"The day is dark and gloomy, unsettled and uncertain, like the condition of our country, in regard to the unnatural war with Mexico. The public mind is agitated and anxious, and is filled with serious apprehensions as to its indefinite continuance, and especially as to the consequences which its termination may bring forth, menacing the harmony, if not the existence of our Union.

[The War of 1812] was a war of National defence, required for the vindication of the National rights and honor, and demanded by the indignant voice of the People....How totally variant is the present war! This is no war of defence, but one unnecessary and of offensive aggression. It is Mexico that is defending her fire-sides, her castles and her altars, not we...This is the important subject upon which I desire to consult and to commune with you. Who, in this free government is, to decide upon the objects of a War, at its commencement, or at any time during its existence? Does the power belong to the Nation, to the collective wisdom of the Nation in Congress assembled, or is it vested solely in a single functionary of the government?

A declaration of war is the highest and most awful exercise of sovereignty. The Convention, which framed our federal constitution, had learned from the pages of history that it had been often and greatly abused...The Convention, therefore, resolved to guard the war-making power against those great abuses, of which in the hands of a monarch it was so susceptible. And the security, against those abuses which its wisdom devised, was to vest the war-making power in the Congress of the United States, being the immediate representatives of the people and the states...Congress, then, in our system of government, is the sole depository of that tremendous power.—The Constitution provides that Congress shall have power to declare war...

...Either Congress, or the President, must have the right of determining upon the objects for which a war shall be prosecuted. There is no other alternative. If the president possesses it and may prosecute it for objects against the will of Congress, where is the difference between our free government and that of any other nation which may be governed by an absolute Czar, Emperor, or King?

...in expounding the constitution, we ought to keep constantly in view the nature and structure of our free government, and especially the great object of the Convention in taking the war-making power out of the hands of a single man and placing it in the safer custody of the representatives of the whole nation. The desirable reconciliation between the two powers is effected by attributing to Congress the right to declare what shall be the objects of war, and to the President the duty of endeavoring to obtain those objects by the direction of the national force and by diplomacy.

I conclude, therefore, Mr. President and Fellow-Citizens, with entire confidence, that Congress has the right either at the beginning or during the prosecution of any war, to decide the objects and purposes for which it was proclaimed, or for which it ought to be continued. And, I think, it is the duty of Congress, by some deliberate and authentic act, to declare for what objects the present war shall no longer be prosecuted.

Congress, the President, and the War Powers

Representative Abraham Lincoln's "Spot" Resolutions December 22, 1847

Records of the U.S. House of Representatives,
National Archives Building, Washington, DC.

Whereas the President of the United States, in his message of May 11, 1846, has declared that "the Mexican Government not only refused to receive him, [the envoy of the United States,] or listen to his propositions, but, after a long-continued series of menaces, have at last invaded *our territory*, and shed the blood of our fellow *citizens* on *our own soil*."

And again, in his message of December 8, 1846, that "we had ample cause of war against Mexico, long before the breaking out of hostilities. But even then we forbore to take redress into our own hands, until Mexico herself became the aggressor by invading *our soil* in hostile array and shedding the blood of our *citizens*."

"And yet again, in his message of December 7, 1847, that the Mexican Government refused even to hear the terms of adjustment which he [our minister of peace] was authorized to propose; and finally, under wholly unjustifiable pretexts, involved the two countries in war, by invading the territory of the State of Texas, striking the first blow, and shedding the blood of our *citizens* on *our own soil*."

And whereas this House is desirous to obtain a full knowledge of all the facts which go to establish whether the particular spot of soil on which the blood of our *citizens* was so shed, was, or was not, *our own soil*, at that time; therefore,

Resolved by the House of Representatives, that the President of the United States be respectfully requested to inform this House—

1st. Whether the spot of soil on which the blood of our *citizens* was shed, as in his messages declared, was or was not within the territory of Spain, at least from the treaty of 1819 until the Mexican revolution.

2d. Whether that spot is, or is not, within the territory which was wrested from Spain by the Mexican revolution.

3d. Whether that spot is, or is not, within a settlement of people, which settlement had existed ever since long before the Texas revolution, until its inhabitants fled from the approach of the U.S. army.

4th. Whether that settlement is, or is not, isolated from any and all other settlements, by the Gulf of Mexico, and the Rio Grande, on the south and west, and by wide uninhabited regions on the North and East.

Congress, the President, and the War Powers

5th. Whether the *People* of that settlement, or a *majority* of them, or *any* of them, had ever, previous to the bloodshed, mentioned in his messages, submitted themselves to the government or laws of Texas, or of the United States, by *consent* or by *compulsion*, either by accepting office, or voting at elections, or paying taxes, or serving on juries, or having process served upon them, or in *any other way*.

6th. Whether the people of that settlement, did, or did not, flee from the approach of the United States army, leaving unprotected their homes and their growing crops, *before* the blood was shed, as in his messages stated; and whether the first blood so shed, was, or was not shed, within the inclosure of the people, or some of them, who had thus fled from it.

7th. Whether our *citizens*, whose blood was shed, as in his messages declared, were, or were not, at that time, *armed* officers, and *soldiers*, sent into that settlement, by the military order of the President through the Secretary of War, and

8th. Whether the military force of the United States, including those *citizens*, was, or was not, so sent into that settlement, after Gen. Taylor had, more than once, intimated to the War Department that, in his opinion, no such movement was necessary to the defence or protection of Texas.

Congress, the President, and the War Powers

President James Buchanan's message to Congress requesting legislation to protect Americans in the Isthmus of Panama (excerpts) February 18, 1859

Records of the U.S. Senate, National Archives Building, Washington, D.C.

To the Senate and House of Representatives:

* * *

If the President orders a vessel of war to any of these ports to demand prompt redress for outrages committed, the offending parties are well aware that in case of refusal the commander can do no more than remonstrate. He can resort to no hostile act. The question must then be referred to diplomacy, and in many cases adequate redress can never be obtained. Thus American citizens are deprived of the same protection under the flag of their country which the subjects of other nations enjoy. The remedy for this state of things can only be supplied by Congress, since the Constitution had confided to that body alone the power to make war. Without the authority of Congress the Executive can not lawfully direct any force, however near it may be to the scene of difficulty, to enter the territory of Mexico, Nicaragua, or New Granada for the purpose of defending the persons and property of American citizens, even though they may be violently assailed whilst passing in peaceful transit over the Tehuantepec, Nicaragua, or Panama routes. He can not, without transcending his constitutional power, direct a gun to be fired into a port or land a seaman or marine to protect the lives of our countrymen on shore or to obtain redress for a recent outrage on their property. The banditti which infest our neighboring Republic of Mexico, always claiming to belong to one or other of the hostile parties, might make a sudden descent on Vera Cruz or on the Tehuantepec route, and he would have no power to employ the force on shipboard in the vicinity for their relief, either to prevent the plunder of our merchants or the destruction of the transit.

* * *

Having thus recommended to Congress a measure which I deem necessary and expedient for the interest and honor of the country, I leave the whole subject to their wisdom and discretion.

James Buchanan

Congress, the President, and the War Powers

President Abraham Lincoln's Message to Congress in Special Session

July 4, 1861, (Excerpts)

A Compilation of the Messages and Papers of the Presidents, vol. 7, ed.
James D. Richardson, (New York: Bureau of National Literature, 1897)

Having been convened on an extraordinary occasion, as authorized by the Constitution, your attention is not called to any ordinary subject of legislation.

At the beginning of the present Presidential term, four months ago, the functions of the Federal Government were found to be generally suspended within the several States of South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida, excepting only those of the Post Office Department....an ordinance had been adopted in each of these States, declaring the States, respectively, to be separated from the National Union....By the affair at Fort Sumter...no choice was left but to call out the war power of the Government; and so to resist force, employed for its destruction, by force, for its preservation.

... a call was made for seventy-five thousand militia; and rapidly following this, a proclamation was issued for closing the ports of the insurrectionary districts by proceedings in the nature of Blockade. So far all was believed to be strictly legal. At this point the insurrectionists announced their purpose to enter upon the practice of privateering. Other calls were made for volunteers, to serve three years, unless sooner discharged; and also for large additions to the regular Army and Navy. These measures, whether strictly legal or not, were ventured upon, under what appeared to be a popular demand, and a public necessity; trusting, then as now, that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress.

Soon after the first call for militia, it was considered a duty to authorize the Commanding General, in proper cases, according to his discretion, to suspend the privilege of the writ of habeas corpus; or, in other words, to arrest, and detain, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety. This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what has been done under it, are questioned...Now it is insisted that Congress, and not the Executive, is vested with this power. But the Constitution itself, is silent as to which, or who, is to exercise the power; and as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended, that in every case, the danger should run its course, until Congress could be called together; the very assembling of which might be prevented, as was intended in this case, by the rebellion...Whether there shall be any legislation upon the subject, and if any, what, is submitted entirely to the better judgment of Congress.

...It was with the deepest regret that the Executive found the duty of employing the war-power, in defence of the government, forced upon him. He could but perform this duty, or surrender the existence of the government....In full view of his great responsibility, he has, so far, done what he has deemed his duty. You will now, according to your own judgment, perform yours. He sincerely hopes that your views, and your action, may so accord with his, as to assure all faithful citizens, who have been disturbed in their rights, of a certain, and speedy restoration to them, under the Constitution, and the laws.

Congress, the President, and the War Powers

Neutrality Act of 1935 (excerpts)

S.J. Res. 173, August 31, 1935. 74th Congress,
Records of the U.S. Senate, National Archives Building, Washington, DC.

An Act

Providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That upon the outbreak or during the progress of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to any port of such belligerent states, or to any neutral port for transshipment to, or for the use of, a belligerent country.

The President, by proclamation, shall definitely enumerate the arms, ammunition, or implements of war, the export of which is prohibited by this Act.

The President may, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

SEC. 3. ...When the President finds the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation, and the provisions of this section shall thereupon cease to apply.

SEC. 6. Whenever, during any war in which the United States is neutral, the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the lives of citizens of the United States, or the protection of the commercial interests of the United States and its citizens, or the security of the United States requires that the American citizens should refrain from traveling as passengers on the vessels of any belligerent nation, he shall so proclaim, and thereafter no citizen of the United States shall travel on any vessel of any belligerent nation except at his own risk...

Congress, the President, and the War Powers

"Day of Infamy Speech" message to Congress from President Franklin Delano Roosevelt concerning the Japanese attack on the United States at Pearl Harbor December 8, 1941

Records of the U.S. Senate, National Archives Building, Washington, D.C.

TO THE CONGRESS OF THE UNITED STATES:

Yesterday, December 7, 1941—a date which will live in infamy—the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan.

The United States was at peace with that Nation and, at the solicitation of Japan, was still in conversation with its Government and its Emperor looking toward the maintenance of peace in the Pacific. Indeed, one hour after Japanese air squadrons had commenced bombing in Oahu, the Japanese Ambassador to the United States and his colleague delivered to the Secretary of State a formal reply to a recent American message. While this reply stated that it seemed useless to continue the existing diplomatic negotiations, it contained no threat or hint of war or of armed attack.

It will be recorded that the distance of Hawaii from Japan makes it obvious that the attack was deliberately planned many days or even weeks ago. During the intervening time the Japanese Government has deliberately sought to deceive the United States by false statements and expressions of hope for continued peace.

The attack yesterday on the Hawaiian Islands has caused severe damage to American naval and military forces. Very many American lives have been lost. In addition American ships have been reported torpedoed on the high seas between San Francisco and Honolulu.

Yesterday the Japanese Government also launched an attack against Malaya.

Last night Japanese forces attacked Hong Kong.

Last night Japanese forces attacked Guam.

Last night Japanese forces attacked the Philippine Islands.

Last night the Japanese attacked Wake Island.

Congress, the President, and the War Powers

This morning the Japanese attacked Midway Island.

Japan has, therefore, undertaken a surprise offensive extending throughout the Pacific area. The facts of yesterday speak for themselves. The people of the United States have already formed their opinions and well understand the implications to the very life and safety of our Nation.

As Commander in Chief of the Army and Navy I have directed that all measures be taken for our defense.

But always will be remembered the character of the onslaught against us.

No matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might will win through to absolute victory.

I believe that I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make very certain that this form of treachery shall never endanger us again.

Hostilities exist. There is no blinking at the fact that our people, our territory, and our interests are in grave danger.

With confidence in our armed forces—with the unbounding determination of our people—we will gain the inevitable triumph—so help us God.

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire.

Franklin D. Roosevelt

The White House,
December 8, 1941

Congress, the President, and the War Powers

Statement by President Harry S. Truman announcing his order to send U.S. air and naval forces to help defend South Korea and explaining the rationale for his decision

June 27, 1950

Papers of George M. Eelsey, Harry S. Truman Presidential Library, Independence, Missouri.

IMMEDIATE RELEASE

June 27, 1950

STATEMENT BY THE PRESIDENT

In Korea the Government forces, which were armed to prevent border raids and to preserve internal security, were attacked by invading forces from North Korea. The Security Council of the United Nations called upon the invading troops to cease hostilities and to withdraw to the 38th parallel. This they have not done, but on the contrary have pressed the attack. The Security Council called upon all members of the United Nations to render every assistance to the United Nations in the execution of this resolution. In these circumstances I have ordered United States air and sea forces to give the Korean Government troops cover and support.

The attack upon Korea makes it plain beyond all doubt that Communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war. It has defied the orders of the Security Council of the United Nations issued to preserve international peace and security. In these circumstances the occupation of Formosa by Communist forces would be a direct threat to the security of the Pacific area and to the United States forces performing their lawful and necessary functions in that area.

Accordingly, I have ordered the Seventh Fleet to prevent any attack on Formosa. As a corollary of this action I am calling upon the Chinese Government on Formosa to cease all air and sea operations against the mainland. The Seventh Fleet will see that this is done. The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.

I have also directed that United States Forces in the Philippines be strengthened and that military assistance to the Philippine Government be accelerated.

I have similarly directed acceleration in the furnishing of military assistance to the forces of French and the Associated States in Indo China and the dispatch of a military mission to provide close working relations with those forces.

I know that all members of the United Nations will consider carefully the consequences of this latent aggression in Korea in defiance of the Charter of the United Nations. A return to the rule of force in international affairs would have far reaching effects. The United States will continue to uphold the rule of law.

I have instructed Ambassador Austin, as the representative of the United States to the Security Council, to report these steps to the Council.

Congress, the President, and the War Powers

Gulf of Tonkin Resolution

(as introduced)

August 5, 1964; Records of the U.S. Senate;
National Archives Building, Washington, DC.

To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in the area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Congress, the President, and the War Powers

President Richard Nixon's Veto of the War Powers Resolution (excerpts)

October 24, 1973

Records of the U.S. Senate, National Archives Building, Washington, D.C.

To the House of Representatives:

I hereby return without my approval House Joint Resolution 542—the War Powers Resolution. While I am in accord with the desire of the Congress to assert its proper role in the conduct of our foreign affairs, the restrictions which this resolution would impose upon the authority of the President are both unconstitutional and dangerous to the best interests of our Nation.

The proper roles of the Congress and the Executive in the conduct of foreign affairs have been debated since the founding of our country. Only recently, however, has there been a serious challenge to the wisdom of the Founding Fathers in choosing not to draw a precise and detailed line of demarcation between the foreign policy powers of the two branches.

The Founding Fathers understood the impossibility of foreseeing every contingency that might arise in this complex area. They acknowledged the need for flexibility in responding to changing circumstances. They recognized that foreign policy decisions must be made through close cooperation between the two branches and not through rigidly codified procedures.

These principles remain as valid today as they were when our Constitution was written. Yet House Joint Resolution 542 would violate those principles by defining the President's powers in ways which would strictly limit his constitutional authority.

CLEARLY UNCONSTITUTIONAL

House Joint Resolution 542 would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. One of its provisions would automatically cut off certain authorities after sixty days unless the Congress extended them. Another would allow the Congress to eliminate certain authorities merely by the passage of a concurrent resolution—an action which does not normally have the force of law, since it denies the President his constitutional role in approving legislation.

I believe that both these provisions are unconstitutional. The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution—and any attempt to make such alterations by legislation alone is clearly without force.

* * *

This Administration is dedicated to strengthening cooperation between the Congress and the President in the conduct of foreign affairs and to preserving the constitutional prerogatives of both branches of our Government. I know that the Congress shares that goal. A commission on the constitutional roles of the Congress and the President would provide a useful opportunity for both branches to work together toward that common objective.

RICHARD NIXON
The White House

NOTE: On November 7, 1973, Congress voted to override the President's veto. H. J. Res. 542 is Public Law 93-148 (87 Stat. 555), which became law without the President's signature.

Congress, the President, and the War Powers

President George Bush's Statement on Signing the Authorization for Use of Military Force Against Iraq Resolution of 2002 October 16, 2002

Today I have signed into law H.J. Res. 114, a resolution "To authorize the use of United States Armed Forces against Iraq." By passing H.J. Res. 114, the Congress has demonstrated that the United States speaks with one voice on the threat to international peace and security posed by Iraq. It has also clearly communicated to the international community, to the United Nations Security Council, and, above all, to Iraq's tyrannical regime a powerful and important message: the days of Iraq flouting the will of the world, brutalizing its own people, and terrorizing its neighbors must—and will—end. Iraq will either comply with all U.N. resolutions, rid itself of weapons of mass destruction, and in its support for terrorists, or it will be compelled to do so. I hope that Iraq will choose compliance and peace, and I believe passage of this resolution makes that choice more likely.

The debate over this resolution in the Congress was in the finest traditions of American democracy. There is no social or political force greater than a free people united in a common and compelling objective. It is for that reason that I sought an additional resolution of support from the Congress to use force against Iraq, should force become necessary. While I appreciate receiving that support, my request for it did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use force to deter, prevent, or respond to aggression or other threats to U.S. interests or on the constitutionality of the War Powers Resolution. On the important question of the threat posed by Iraq, however, the views and goals of the Congress, as expressed in H.J. Res. 114 and previous congressional resolutions and enactments, and those of the President are the same.

Throughout the past months, I have had extensive consultations with the Congress, and I look forward to continuing close consultation in the months ahead. In addition, in accordance with section 4 of H.J. Res. 114, I intend to submit written reports to the Congress on matters relevant to this resolution every 60 days. To the extent possible, I intend to consolidate information in these reports with the information concerning Iraq submitted to the Congress pursuant to previous, related resolutions.

The United States is committed to a world in which the people of all nations can live in freedom, peace, and security. Enactment of H.J. Res. 114 is an important step on the road toward such a world.

GEORGE W. BUSH
The White House
October 16, 2002