

Obama, Bush, and War Powers

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Mr. Steven Thomma, a reporter covering the White House for the McClatchey Newspapers, published an article today called "Obama: The New 'W'". Mr. Thomma recounts the historical facts regarding how Mr. G. W. Bush initiated both wars in Afghanistan and Iraq by first obtaining approval from Congress, whereas Mr. Obama proceeded to conduct warfare against Libya, who did not pose an imminent threat, without even notifying Congress. Mr. Thomma also quoted Mr. Obama from an interview in 2007, prior to his election to the Presidency, in which Mr. Obama confirmed his view that Presidents do not in fact have a unilateral power to initiate war unless an attack upon the U. S. is so imminent as to preclude approval from Congress.

It seems that Mr. Obama understood the importance of gaining Congressional approval while he was a member of Congress; but now that he is President, it seems like he is not so particular about the Constitutional provision. For us, it is important to understand why those powers were divided as they were.

James Madison made a point about the general powers of the federal government in regard to war and peace in *The Federalist No. 41*, without discussing directly how such power was allocated between Congress and the Executive. He first summarizes the six general classes of powers to be granted under the Constitution, the first being "security against foreign danger". He then addresses what particular powers fall in that class:

"The powers falling within the first class are those of declaring war and granting letters of marque; of providing armies and fleets; of regulating and calling out the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils.

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation establishes this power in the most ample form."

This is sufficient for explaining why war power in general exists at the federal level; but why is the particular power lodged with Congress? For that, we have to recount the debates in the Constitutional Convention of 1787. On the 6th of August, a committee had presented a draft of a constitution, one article of which stated that the national legislature (Congress) shall have the power "to make war". Here is the text of the debate on 17 Aug 1787 on this subject, per Madison's notes [1]:

"On the clause "to make war" --

Mr. Pinckney opposed the vesting this power in the legislature. Its proceedings were too slow. It would meet but once a year. The House of Representatives would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the states are equally represented in the Senate, so as to give no advantage to the large states, the power will, notwithstanding, be safe, as the small have their all at stake, in such cases, as well as the large states. It would be singular for one authority to make war, and another peace.

Mr. Butler. The objections against the legislature lie, in a great degree, against the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the nation will support it.

Mr. Madison and Mr. Gerry moved to insert "declare", striking out "make" war, leaving to the executive the power to repel sudden attacks.

Mr. Sherman thought it stood very well. The executive should be able to repel, and not to commence, war. "Make" is better than "declare", the latter narrowing the power too much.

Mr. Gerry never expected to hear, in a republic, a motion to empower the executive alone to declare war.

Mr. Ellsworth. There is a material difference between the cases of making war and making peace. It should be more easy to get out of war than to get into it. War, also, is a simple and overt declaration; peace, attended with intricate and secret negotiations.

Mr. Mason was against giving the power of war to the executive, because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging, rather than facilitating, war; but for facilitating peace. He preferred "declare" to "make".

On the motion to insert "declare", in place of "make", it was agreed to.

Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 8; New Hampshire, no, 1; Massachusetts, absent.

Mr. Pinckney's motion, to strike out the whole clause, was disagreed to, without a call of states.

Mr. Butler moved to give the legislature the power of peace, as they were to have that of war.

Mr. Gerry seconds him. Eight senators may possibly exercise the power, if vested in that body, and fourteen if all should be present, and may, consequently, give up part of the United States. The Senate are more liable to be corrupted by an enemy than the whole legislature.

On the motion for adding "and peace" after "war", it was unanimously negated.

Adjourned."

This was the only debate on the subject in the Convention as a whole. Re-reading Mr. Gerry's comment again, it is shocking, is it not, the degree to which these men distrusted putting too much power in one place? As we all know (or should know) Article I, Section 8 of the U. S. Constitution gives Congress the power to declare war, but Article II, Section 2 grants the President the power to make treaties, with the concurrence of two-thirds of the Senate. This is how the founding fathers wisely distributed the powers of war and peace.

[1] Jonathan Elliot, *Debates on the Adoption of the Federal Constitution, in the Convention Held at Philadelphia in 1787; With a Diary of the Debates of the Congress of the Confederation; As Reported by James Madison*, Philadelphia: J. B. Lippincott & Co., 1881, Vol. 5, pp. 438, 439