

Only Congress Has the Power to Declare War. Just Ask James Madison

Tim Kaine, the 2016 Democratic vice presidential nominee, [said about President Trump's airstrikes](#) on Syria. "The last thing Congress should be doing is giving this president a blank check to wage war against anyone, anywhere."

Of course, Kaine's protests are hypocritical. Undeclared presidential wars are a bi-partisan problem. Despite three years of heaving fighting, and 36,000 American troops killed, Congress [never declared war](#) during the Korean War. There was [no declaration of war](#) during the Vietnam War or, for that matter, any military conflict after World War II, including in Syria where [President Obama dropped](#) 12,000 bombs in 2016.

It's not just "this president;" the Founding Fathers believed no president should have the power to start a war.

James Madison is considered the ["chief architect of the Constitution."](#) How to protect the hard-won freedoms of Americans occupied Madison's mind. The worst impulses in men needed to be checked, if liberty was to survive. Those who served in government were not exempt from the baser desires of humanity.

"If angels were to govern men, neither external nor internal controls on government would be necessary," wrote Madison in [Federalist Paper No. 51](#). And since men are not angels, Madison explained, carefully designed checks and balance must be in place so that the government is "oblige[d] to control itself."

What could be a potentially worse use of power than giving a single individual, the president, the power to start a war? Presidents are not angels; and [in 1795 Madison warned](#), "The

strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honorable or venal love of fame, are all in conspiracy against the desire and duty of peace.”

Madison was a student history, and [he believed](#) the executive was a “branch of power most interested in war.” Thus, unlike European monarchs, the president was to have no power to start a war. [In Article 1, Section 8](#), the power to declare war was granted exclusively to the debating body of the people—the House of Representatives.

In 1793, in a series of essays, Hamilton and Madison debated executive vs. congressional power. The debate was ignited by Washington’s Neutrality Proclamation regarding a European war involving France. Hamilton, signing his essays as Pacificus, [“asserted that](#) the executive had broad constitutional authority over matters of foreign policy.”

Jefferson, alarmed at Hamilton’s assertion of presidential powers, urged Madison to respond to Hamilton: “Nobody answers him, & his doctrine will therefore be taken for confessed. For God’s sake, my dear Sir, take up your pen, select the most striking heresies, and cut him to pieces in the face of the public.”

Madison, responding as Helvidius, did just that—[carefully refuting](#) Hamilton’s “heresies” regarding presidential powers over war and foreign policy.

Regarding war, Madison wrote, the Constitution gives to the president the power to execute laws, but not to make them:

“A declaration that there shall be war, is not an execution of laws: it does not suppose preexisting laws to be executed: it is not in any respect, an act merely executive. It is, on the contrary, one of the most deliberative acts that can be performed; and when performed, has the effect of repealing all the laws operating in a state of peace, so far as they

are inconsistent with a state of war."

Madison explained further, "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."

Since the president is commander-in-chief, doesn't that title come with war-making power? No; preventing tyranny requires that powers are separated. Madison wrote,

"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."

What about cases of "illegitimate despotism"? What do we do in cases such as Syria? Here again, Madison explains, the president is not granted unchecked power to decide for the nation:

"The power of the Legislature to declare war and judge of the causes for declaring it, is one of the most express and explicit parts of the Constitution. To endeavor to abridge or effect it by strained inferences, and by hypothetical or singular occurrences, naturally warns the reader of some lurking fallacy."

It is not denied that there may be cases in which a respect to the general principles of liberty, the essential rights of the people, or the over-ruling sentiments of humanity, might require a government, whether new or old, to be treated as an illegitimate despotism. Such are in fact discussed and admitted by the most approved authorities. But they are great

and extraordinary cases, by no means submitted to so limited an organ of the national will as the Executive of the United States.”

A few years after his debate with Hamilton, [Madison explained in a 1795 letter](#) why war is an enemy of liberty:

“Of all the enemies of true liberty, war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other.

War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few...

War is in fact the true nurse of executive aggrandizement.”

Madison warned, “No nation can preserve its freedom in the midst of continual warfare.”

Since 2001 the United States has been in a perpetual state of undeclared war. We have ignored Madison’s warning for too long.

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