5-1-2011

Presidential power and the law: what are the limitations of the president of the United States of America? A focus on Lyndon B. Johnson and George W. Bush in time of war

Keyla Amil Jackson
Clark Atlanta University

Follow this and additional works at: http://digitalcommons.auctr.edu/dissertations
Part of the Political Science Commons

Recommended Citation
ABSTRACT

POLITICAL SCIENCE

JACKSON, KEYLA AMIL

B.A. SPELMAN COLLEGE, 2004

PRESIDENTIAL POWER AND THE LAW: WHAT ARE THE LIMITATIONS OF
THE PRESIDENT OF THE UNITED STATES OF AMERICA? A FOCUS ON
LYNDON B. JOHNSON AND GEORGE W. BUSH IN TIMES OF WAR

Committee Chair: Dr. William H. Boone

Thesis dated May 2011

This study examined the constitutional limitations placed on the President of the
United States of America during times of war. This study was based on the premise that
presidents exceed Constitutional limitations when in times of crisis and or emergency.

To conduct this study, the war time presidencies of Presidents Johnson during the
Vietnam War and Bush during the Iraq War were examined. This research is both a
qualitative analysis and a comparative case study and was chosen because at least two
cases need to be observed to study the persons and events which pertain to the
substantive issues to be explored.

The researcher found that even though it is clear that the United States
Constitution limits the power of the president to initiate war without congressional
consent, both President Johnson and Bush were able to secure congressional consent, in
part, because they influenced congress to act within a context of uncertainty and often
misinformation. Therefore, they did not exceed their constitutionally granted authority

1
they used the media, influence, public opinion and other factors to expand their presidential powers.

The conclusion drawn from the findings suggest that given the President's control of intelligence that is often uncertain, political scientists need to research the practicality of providing Congress with an independent entity to cross check the intelligence provided by the President. Constitutional scholars should continue to explore presidential decisions to initiate war by authorizing law that force the executive branch to justify decisions to go to war. Also, the focus of research regarding the extra-constitutional use of war authority should shift to an analysis of what makes congress, the media, and the public so complicit when war is initiated.

A THESIS
SUBMITTED TO THE FACULTY OF CLARK ATLANTA UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS

BY

KEYLA AMIL JACKSON

DEPARTMENT OF POLITICAL SCIENCE

ATLANTA, GEORGIA

May 2011
### Table of Contents (continued)

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PRESIDENTIAL WAR AUTHORITY AND THE VIETNAM WAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>....................................................................</td>
</tr>
<tr>
<td>IV.</td>
<td>The Role of Ideology ...........................................</td>
</tr>
<tr>
<td></td>
<td>Congress and the Tonkin Gulf Resolution ...............</td>
</tr>
<tr>
<td></td>
<td>Uncertain Intelligence .........................................</td>
</tr>
<tr>
<td></td>
<td>The Congressional Response ....................................</td>
</tr>
<tr>
<td></td>
<td>Sleeping Giants ..................................................</td>
</tr>
<tr>
<td></td>
<td>The Media in the Initiation of the Vietnam War ..........</td>
</tr>
<tr>
<td></td>
<td>The Media and Democratic Theory ............................</td>
</tr>
<tr>
<td></td>
<td>The Context for Media Influence during the Vietnam War</td>
</tr>
<tr>
<td></td>
<td>Media Access to Information ...................................</td>
</tr>
<tr>
<td></td>
<td>The Media and Public Opinion and the Initiation of the</td>
</tr>
<tr>
<td></td>
<td>Vietnam War ........................................................</td>
</tr>
<tr>
<td></td>
<td>Media Objectivity ................................................</td>
</tr>
<tr>
<td></td>
<td>President Lyndon Johnson and the Media ..................</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>A CASE STUDY OF GEORGE W. BUSH AND THE DECISION TO INITIATE THE IRAQ WAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>........................................................................................</td>
</tr>
<tr>
<td>IV.</td>
<td>The Role of Ideology and Public Policy in Expanding Presidential Power for the Iraq War</td>
</tr>
<tr>
<td></td>
<td>9/11, the War on Terror, and the Spread of Democracy ........................</td>
</tr>
<tr>
<td></td>
<td>The Bush Doctrine and the National Security Strategy of 2002 ..................</td>
</tr>
<tr>
<td></td>
<td>Implementing the Bush Doctrine .....................................................</td>
</tr>
<tr>
<td></td>
<td>The Role of Congress in Initiating the Iraq War and Confirming the Bush Doctrine</td>
</tr>
<tr>
<td></td>
<td>Congressional Response ...................................................................</td>
</tr>
<tr>
<td></td>
<td>Congressional Reaction to the USA Patriot Act ...................................</td>
</tr>
<tr>
<td></td>
<td>Congressional Response to the Initiation of the Iraq War .....................</td>
</tr>
<tr>
<td></td>
<td>Uncertainty of Intelligence .........................................................</td>
</tr>
<tr>
<td></td>
<td>The Con Man Who Caused a War .......................................................</td>
</tr>
<tr>
<td></td>
<td>Uncertain Intelligence and Policy Formulation ...................................</td>
</tr>
<tr>
<td></td>
<td>Assembling Faulty Intelligence .......................................................</td>
</tr>
<tr>
<td></td>
<td>Intelligence and the Policy Apparatus .............................................</td>
</tr>
<tr>
<td></td>
<td>National Intelligence Estimate 2002 ................................................</td>
</tr>
<tr>
<td></td>
<td>The Axis of Evil .............................................................................</td>
</tr>
<tr>
<td></td>
<td>Powell and the UN ..........................................................................</td>
</tr>
<tr>
<td></td>
<td>Congress Reacts .............................................................................</td>
</tr>
<tr>
<td></td>
<td>The Media in the Initiation of the Iraq War .......................................</td>
</tr>
</tbody>
</table>
Table of Contents (continued)

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectivity and Dependence</td>
<td>105</td>
</tr>
<tr>
<td>Media Objectivity</td>
<td>106</td>
</tr>
<tr>
<td>Public Opinion and the Initiation of the Iraq War</td>
<td>112</td>
</tr>
<tr>
<td>V. SUMMARY, FINDINGS, CONCLUSIONS, AND</td>
<td>115</td>
</tr>
<tr>
<td>RECOMMENDATIONS</td>
<td></td>
</tr>
<tr>
<td>Summary</td>
<td>115</td>
</tr>
<tr>
<td>Findings and Conclusions</td>
<td>117</td>
</tr>
<tr>
<td>Conducive Factors Promoting the Vietnam and Iraq Wars</td>
<td>117</td>
</tr>
<tr>
<td>Congress</td>
<td>119</td>
</tr>
<tr>
<td>Media and Public Opinion</td>
<td>120</td>
</tr>
<tr>
<td>Recommendations</td>
<td>121</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>123</td>
</tr>
</tbody>
</table>
LIST OF TABLES

<table>
<thead>
<tr>
<th>TABLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Congressional Action on the USA Patriot Act by Date</td>
<td>88</td>
</tr>
<tr>
<td>2. Public Support for Going to War with Iraq</td>
<td>113</td>
</tr>
<tr>
<td>3. Factors Relative to the Johnson and Bus Administrations</td>
<td>115</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

Statement of the Problem

"I pray heaven to bestow the best of blessings on this house (the White House) and on all those who shall hereafter inhabit it. May none but honest and wise men ever rule under this roof?"1

John Adams

The office of the presidency is one of the most difficult and underappreciated jobs in the world. The person who holds this office has the enormous responsibility of protecting the immediate and long range needs of citizens in a free society. He also has the onus of evaluating and responding to international crises. To enforce national security, the president assumes the role of Commander in Chief of the Armed Forces, and to create policy suited to the political, economic, and social vagaries of an ever more diverse America, he must simultaneously manage a plethora of duties as Administrative Head of State. Although it is necessary to ensure a job well done, the broad authority given to the president by the Constitution to carry out his duties can also be disastrous if abused. As President John Adams stated, the individual who holds this office must be honest, wise, and possess great integrity.

While honesty, wisdom, and integrity are characteristics dear to citizens when electing officials to public office, the individuals who hold the office of the presidency

occasionally exceed legal and moral boundaries and are sometimes a part of clandestine
activities of which the average citizen would not approve. Such pursuits are often
justified by citing the powers given to the president by the Constitution, particularly
during war, when citizens are more apt to ignore abuses of power because of perceived
national security issues or patriotic fervor. It is during war time, then, that public interest
groups, objective guardians of citizen rights, average Americans and the media must ask
the question, What are the constitutional limitations placed on the President of the United
States of America during times of war?

Too often throughout history, American citizens express disdain for and distrust
of the actions of public officials, including the president. Particularly since World War
II, a decline in the respect for legislative and executive bodies on both sides of the
political spectrum is sporadically evidenced in public opinion polls, blogs, radio talk
shows, and a rise in political activism, no matter what presidential era. While these forms
of expression alert officials that their actions are not viewed favorably, if these actions
are not catastrophic, public disdain is seldom met by Congress or the Court with
retribution. Therefore, when exploring presidential limitations, it is important to consider
the concept of presidential prerogative, especially during catastrophic circumstances such
as war or attacks on the homeland.

There are several reasons why this study has importance and efficacy. An inquiry
into the question of presidential limitations or prerogative is pertinent because
presidential actions during war time directly affect the general welfare of the American
people as well as the families whose sons and daughters offer their lives on behalf of their
country. Though wars can be beneficial by solidifying strategic interests, they can also deplete financial and environmental resources, which can be detrimental. Wars also have a direct effect on the nation’s deficit, thus impeding economic growth. With so much at stake, the question again becomes a matter of how much authority and power the President should have to declare war based solely on presidential prerogative. Many believe there should be greater power sharing between the Congress and the President as the Constitution seems to require. Hence, a presidential limitation is an issue of great concern.

To adequately explore the concept of presidential limitations, specifically during times of war, the following factors are operative: the effect of Congress on presidential decisions, the accuracy of intelligence available to the executive branch, the influence of the media, and to a lesser extent, the influence of public opinion. Understanding the foregoing factors helps promote insight into why some presidents exercise a broader range of powers and other presidencies are characterized by a more restrained use of authority. As history has shown, the unrestricted use of power in the wrong hands could potentially destroy a nation or society, so that an examination of the research and a focused delineation of the issue can assist in encouraging a proactive stance against excesses in the form of presidential abuse of power. This discussion is also timely because America is currently at war in two volatile areas of the world, political and economic engagements which have severely drained the American economy and is responsible for the deaths of thousands of people. Is this an example of what can occur when presidential authority runs amok? As a result of this investigation, exploration of
the issue could have broad application in the improvement of lives of all citizens, not just one specific interest group, race, gender, or religion. Preventing unnecessary wars is in the best interest of everyone.

Still another outcome of this study is the interest it should stimulate among political scientists, especially in the areas of study concerned with distribution of power and the allocation of resources as it pertains to politics. Today's scholars write about presidential power and many analyses have been done on the consequences of presidential decision making during times of war. However, there is a gap in the literature specifically related to constitutional limitations on presidential power, especially during times of war. Therefore, this study seeks to expand on available literature and focuses exclusively on the limits to presidential power during times of war. The research presented draws from the areas of constitutional law and politics and the American political process.

To further narrow the focus of the research, Presidents Lyndon B. Johnson and George W. Bush, both of whom made independent decisions which led the United States into two of the most bloody, costly, and unpopular wars in American history, are used as touchstones undergirding certain basic principles of the research question. Since both wars were so deadly and in some instances, even reviled by the American public, these two conflicts can be illustrative of the role certain provisions of the United States Constitution played or should have played in limiting the catastrophic results of the decisions of both presidents. As a result of the choices made, the thesis presented here will further substantiate that the two wars are regarded as mistakes, though in varying
degrees, by many members of the public, scores of congressmen and women, more than a few scholars and various members of the media.

The central legal question for many regarding presidential war-making authority depends on the interpretation of wording in the United States Constitution. Therefore, one must consider, within the context of the Constitution and other extenuating circumstances, how Presidents Johnson and Bush lead the nation into wars that were eventually deemed colossal errors. Focusing on all the constitutional war-making provisions prior to and during the initiation of the Vietnam and Iraq Wars is an efficient approach to studying the actual versus supposed limitations on presidents during times of war.

Objective of Paper and Central Research Question

The paper presented here explores the constraints on the President of the United States of America during times of war, which is accomplished by conducting a comparative and qualitative case study, examining the power of two Commanders in Chief: President Johnson during the Vietnam War and President Bush during the Iraq War. Additionally, this manuscript focuses on whether or not the presidential powers employed by both presidents before entering war were constrained by the United States Constitution and Congress, whether both presidents fell victim to the accuracy or inaccuracy of intelligence, whether media displayed the kind of critical analysis it should have, and whether overt expressions of public opinion influenced presidential or congressional decisions before and during the war. The specific questions to which this study seeks answers are the following: first, what are the effective constitutional
limitations on the U.S President during times of war and are they needed; and second, have U.S. Presidents exceeded their constitutional authority to initiate war? Though legal and political science scholars have demonstrated that politics and law are not always exceptionally clear areas of study, answering these questions will promote a better understanding of presidential authority and allow citizens and other stakeholders a basis for making the executive branch of government more accountable for its actions.

The questions are explored by probing constitutional provisions, which specifically and implicitly give direction to the executive branch of government in times of military emergency. Also, both a critical examination of the original intent of constitutional wording and the lack of consensus concerning certain provisions are discussed. Other decisive factors such as systematic efforts by presidents to influence public opinion and scrutiny of media presence or absence as a purveyor of crucial information are explored to better understand why certain presidencies are subject to significant power constraints and other presidencies are more aggressive in the exercise of executive authority with little or no restrictions in initiating war.

In short, President John Adams’s dream that “none but honest and wise men should ever rule under the White House roof” did not prevail in the above referenced instances of war. This paper sought, therefore, to provide an in-depth analysis of presidential limitations in hopes of suggesting remedies for whatever shortcomings in the way congress and the president operate.
Major Concepts and Theoretical Underpinnings

The theoretical paradigm governing this paper mirrors scholar Arthur Schlesinger’s model in the book, *The Imperial Presidency*, which questions whether in the modern era, 1945 to the present, a strong presidency can exist within an equally strong system of accountability. When the constitutional balance is upset in favor of presidential power and at the expense of presidential accountability, the presidency, according to Schlesinger, becomes “imperial.”

To explore this topic, the major concepts examined are presidential power and presidential limitations. For the purpose of this paper, the operational concepts are also power and limitations. The salient definitions are as follows: presidential war powers are those derived from the Constitution and legislatively through the War Powers Act. Limitations are the constraints implied by congressional war making authority and the influence of the media and public opinion.

In addition to the Imperial Presidency discussed in the next section, several primary and secondary sources were examined to investigate the actions of Presidents Johnson and Bush in order to answer the two research questions posed in this thesis.

Literature Review

Over the years, research has been conducted on the administrations of various presidents and has addressed many areas of interest to researchers and scholars including

---


3. Ibid.

4. Ibid.
the lives of the first family, presidential rhetoric, presidents during peacetime, presidents in crisis, presidential privilege, presidential domestic and foreign policy, presidential fashion, presidential education, the socioeconomic background of presidential candidates and much more. Because of the wide scope of American presidential history, it is appropriate for this paper to narrow the focus to limitations on presidential power during times of war.

While a significant body of literature has evolved on presidents at war, it is difficult to extrapolate a body of scholarly research focused specifically on when an American president has exceeded his constitutional limitations. For that reason, this paper is a qualitative and comparative analysis that explores presidential power and the law. It focuses on the limitations of the presidential prerogative during times of war. The empirical data for this paper were derived from case studies of President Johnson during the Vietnam War and President Bush during the Iraq War. The two wars were chosen because they were two of the longest and most unpopular in American history.

The relevance of the study grows out of the enduring need to strike a critical balance within the machinery of governmental decision making. Congress, with the adoption of the War Powers Act, reasserted its authority in making decisions to go to war. Many in Congress considered the War Powers Act a counterweight to the tendency either to abruptly enter or slowly drift into a war the country cannot win and that is costly in terms of lives and money. In addition, the subject of presidential power and its limitations during times of war is important to political scientists because it relates both to the presidential exercise of power as the Commander in Chief and the understanding
and expectation that the president is authorized to take decisive action, without congressional consultation when required, to protect the nation from foreign enemies. Can Congress hold the president accountable for his actions and the decisions that lead to them during times of war?

Problematic is the fact that the United States Constitution gives both the Congress and the President different degrees of war-making authority. There seems to be no clear consensus on where the ultimate authority to declare war rests. The increasing tendency for foreign military threats to take the form of terrorism has brought the historic tension over war-making authority between the Congress and the President to a new level of vigorous debate.

The paper presented here reviews literature on both sides of the issue regarding the limits of presidential war-making powers. The optimistic expectation is that the case studies of Presidents Johnson and Bush will provide insights on the practical constraints that limit executive discretion to initiate war. Finally, the balance, if any, that has been achieved between legislative and executive branches of government for authorizing and exercising the power to enter war, will be examined.

**Review of the Relevant Literature**

The literature reviewed for this study can be placed into multiple categories. However, the simplest and most useful way to group the works is by their general or specific nature regarding presidential power and its relationship to one of the two presidents under study, Johnson and Bush. Several of the works provide a general overview of presidential power, but most provide specific insight on how presidents
interpret and use their power. Others address the subject at hand in more comprehensive terms and trace the use of war-making authority by the two presidents including their interactions with Congress, the media and the public.

**President Lyndon Johnson and the Vietnam War**

Historian Forest McDonald, along with President Bush, Vice President Cheney, and White House Deputy Counsel John Yoo believed the office of the President is already much too constrained in its efforts to govern. In the book, *The American Presidency: An Intellectual History*, Forest McDonald explains that while the office of the Presidency is the most powerful office in the world, it is also restrained by the power of the United States Congress, the courts, popular opinion, the news media and state and local governments. McDonald's work gets to the core of the subject at hand; however, his conclusions are at odds with those of most who have written about the use of presidential power during the modern presidency.

General H. R. McMaster, U.S. Army Capabilities Integration Center’s Concept Development and Experimentation Directorate in his book, *Dereliction of Duty*, discusses who was responsible for the decisions that led up to the Vietnam War. It details secret meetings, exclusive access to personal diaries, interviews with participants, and oral histories. This book is important to the undertaking of this paper because it places the critical decision to initiate the Vietnam War not with President Johnson, but with his military advisers.5 The important question becomes, based on the McMasters' assessment, to what extent did the Congress, the media, and the public have access to the

information that military advisers provided to the president; and if they had it, was their interpretation of the information used to withhold support or conversely, champion President Johnson in his decision to initiate war against North Vietnam? Other aspects of this thesis further address the issue of constraints on presidential authority posed by the congress, media, and public opinion.

While the formal restraints from the Congress and other constituencies mentioned by McDonald are evident, there is little to show that the President’s powers have been limited between 1945 and the present. Again, the constraints cited by McDonald do exist; however, most often it appears that these controls exist under a magic wand of presidential power. This paper seeks to understand if these efforts to moderate presidential powers truly inhibit the chief executive’s ability to move forward with a war time agenda or if these restraints are simply obstacles that have to be overcome in order for the American President to exert near absolute power to initiate war.

In his seminal work, Imperial Presidency, Schlesinger discusses presidential power as it relates to constitutional power. In relationship to the study presented here, Schlesinger’s work takes an in-depth look at the United States Constitution and discusses how American presidents have broadly interpreted the Constitution to gain power not specifically given to them in the U.S Constitution. Schlesinger looks at presidents from Lincoln to Clinton, examines their presidencies during wartime, and renders examples which illustrate instances during which each president established and influenced the

imperial presidency as it is known today. As one of the leading scholars on the history of the presidency, Schlesinger analyzes original intent as it relates to presidential power.

Within the context of this original intent, Schlesinger provides an exhaustive look at the interaction between President Johnson and the United States Congress surrounding the Gulf of Tonkin Resolution, which essentially gave the president carte blanche to conduct the war in Vietnam as he saw fit. The work of Schlesinger on the Johnson presidency and the Vietnam War is compelling in its analysis because it uses original sources, which in some unique ways would qualify it as a primary source. Ultimately, Schlesinger concludes that modern U.S. Presidents have clearly exceeded their constitutional war-making authority. However, the author does not provide a satisfying answer as to why presidents are allowed to continue to extend the war-making power given to them in the Constitution.

Other scholars, who like Schlesinger were contemporaries of President Johnson, sharply disagree with McDonald’s assessment that practical constraints were in the past and are still now effectively imposed on the President of the United States. For example, Elmer Cornwell, Jr. writing in a 1965 work titled, Presidential Leadership of Public Opinion, concluded that the modern president’s ability to influence public opinion through the media has tremendously strengthened the power of the office and made the presidency the center of the national government.7 Cornwell also points out that his theory as a top-down process allows for the president to control public opinion, which is radically different from the model posed by most democratic theorists, who generally

posit a bottom-up process. Cornwell's study is relevant because as McDonald argues and the researcher postulates, public opinion is generally considered a constraint on presidential power. Further empirical analysis provided in this paper will test the opposing propositions made by both McDonald and Cornwell.

Kathleen Turner, former reporter at the *New York Times*, in her assessment of the relationship between President Johnson and the media titled *Lyndon Johnson's Dual War: Vietnam and the Press*, shows how Lyndon Johnson manipulated the press. She argues and Cornwell concurs that President Johnson mixed a variety of styles for interacting with the press that embodied many of the manipulative behaviors of FDR and JFK and literally kept the press ignorant of important facts related to war. Johnson conducted rather idiosyncratic press conferences known as walking tours. To minimize questions, he held long, exhausting one-on-one sessions with reporters, and employed unannounced press conferences to keep newspapers, radio and televisions stations from sending their most informed experts, thus lessening intelligent exchanges. In the end, Turner concludes President Johnson dominated the press, and once the fourth estate was suitably neutralized, expanded his power to make war time decisions, many of which were first evident during the initial expansion of what was called the Vietnam conflict into a major war of attrition.

8. Ibid.

President George W. Bush and the Iraq War

George W. Bush is the nation’s most recent past president and much has been written about his controversial use of presidential power during a time of war. In 2007, Charlie Savage, a reporter for the Boston Globe, published Takeover: The Return of the Imperial Presidency. The book draws its inspiration from the timeless work of Arthur Schlesinger and uses the Constitution as its context. Savage, however, adds substantially to a general understanding of the use of presidential power and as well as its limits. He analyzes the way that President George W. Bush, along with his confidant, Vice President Dick Chaney, and his Deputy White House Counsel, John Yoo, set out to expand presidential power.

Savage, for example, highlights two aspects of the Bush Administration that have been employed to expand presidential power, which is contrary to the proposition set forth by McDonald. He examines the role of the legal counsel in the Executive Branch, especially the role of John C. Yoo who made a sophisticated, but according to some scholars, flawed argument regarding the expansive use of the presidential prerogative. Savage also explains how President Bush used “signing statements” to interpret and sometimes rewrite laws that were passed by congress. Based on an extensive examination of the interactions between Congress and the President, concludes that with the exception of Harry Truman, George W. Bush exercised more war time

---


11. Ibid.
powers than any other man who has held the Executive office during the era of the modern presidency.\footnote{12}

Another illuminating work is that of Peter Galbraith, former ambassador to Croatia, and political commentator, which is titled, \textit{The End of Iraq: How American Incompetence Created a War without End}. It describes the Bush administration’s strategic miscalculations about the war in Iraq and addresses one of the fundamental issues regarding American intervention in that country.\footnote{13} Given the political, religious, and cultural information from military intelligence and the CIA that the Bush Administration should have had on Iraq, how could the president assume that winning a war in Iraq would be easy? The book goes on to discuss the president’s inability or unwillingness to recognize the various issues that already divided the people in Iraq before the invasion of their homeland.\footnote{14} In raising certain essential issues about the origins of the war and the question of presidential prerogative, Galbraith’s book provides the perfect vehicle for exploration of the Bush administration’s lack of political acuity and foresight as well as the Commander in Chief’s calculated misuse of presidential powers.

Still another respected work is John Keegan’s \textit{The Iraq War}, which re-examines the steps that led to the Iraq War. Keegan’s most significant contribution to the study of presidential power and the launching of the Iraq war is to show the failure of Westerners,

\footnote{12. Ibid.}


\footnote{14. Ibid.}
especially Americans, to more fully understand the Islamic culture to which most Iraqis subscribe. This lack of appreciation for the depth and seriousness of religious beliefs exhibited by the Iraqis combined with a lack of political sensitivity to existing factionalism within the country contributed to the political and military problems that were encountered. Keegan also points out that it was an intelligence failure in the broadest sense that contributed to the decisions to invade Iraq.\textsuperscript{15} Interviews with top military officials give a first-hand account of an overconfident, irresponsible mindset at the highest levels of command, which ultimately led to what many consider a failed war in Iraq. Finally, Keegan's book contributes to the analysis of these events by revealing the mistakes leading up to the invasion and by addressing the dynamics of presidential authority and faulty intelligence.

Thomas Ricks' book, \textit{Fiasco: the American Adventure in Iraq}, speaks directly to the issue of intelligence and the role that it played in President Bush's decision to invade Iraq. Ricks is a Pulitzer Prize winning journalist formerly at the \textit{Wall Street Journal} and \textit{Washington Post}. The most relevant chapter in Ricks' book explains how the Bush administration deliberately used uncertain intelligence to take the country to war. Ricks states emphatically that the administration provided Secretary of State Colin Powell with questionable intelligence that he then presented to the United Nations as a justification for an American invasion of Iraq. Although Ricks admits that his is a journalistic and not a scholarly work, several sources, for example the books Curveball by Drogin of the \textit{Los Angeles Times} and the Plan of attack by Woodward of the \textit{Washington Post} both provide

\textsuperscript{15} Keegan, \textit{The Iraq War}, 63-69.
evidence used for this thesis that substantiate his contentions regarding the use of faulty intelligence.

Bob Woodward who helped to brake the Watergate story and is now an Associate Editor at the Washington Post in his four books reveals the behind-the-scene story of how, after the initial shock of the September 11 attacks, the Bush Administration led the nation to war. Woodward’s work taken as a whole has extensive quotations from secret deliberations of the National Security Council and first hand revelations of private thoughts, concerns, and fears of the President and his war cabinet.16 The trilogy, Bush at War, is a two volume work that touches on the different aspects of this study: the Constitution and presidential power, the congress and its role, the influence of the media, and the impact of public opinion as constraints on the president’s power to initiate war.

Collectively, these books provide generalized information on presidential power; original intent and the various presidencies during wartime, including Presidents Johnson and Bush. However, research has shown that while questions have been asked regarding presidential power and its limitations, numerous studies have not produced specifics on the limitations of presidential powers. Therefore, the books in this review are used to further explore the thesis.

**Methodology**

This paper examines presidential power, the law and the limits of power of the President of the United States of America. To conduct this study, the war time presidencies of Presidents Johnson during the Vietnam War and Bush during the Iraq War will be examined. This research will be both a qualitative analysis and a

---

comparative case study, and were chosen because at least two cases need to be observed to study the persons and events which pertain to the substantive issues to be explored. These methods were also chosen because a detailed and systematic examination of the content of presidential power during wartime is necessary for identifying the patterns and themes which relate to how the presidents of the United States utilized their constitutional powers while in office during times of crisis. This paper postulates that war time presidents have the ability and if not the potential to unlawfully supersede constitutional limitations. Consequently, each observation will belong to its own nominally significant category, either supporting or opposing the proposition.

Analytical Framework

Approach

The writer conducted the research through an analysis of several factors, including but not limited to the following:

- A historical and contemporary examination of Constitutional intent via war-making powers, and Congressional response to executive decisions to go to war within the context of constitutionally granted authority and,

- The political developments, including executive justification and the anemic media and public responses that resulted in the assumption of presidential authority to initiate both the Vietnam and Iraq Wars.

Data Collection

The thesis presented here was conducted with document study. An analysis was done of both primary and secondary sources related to the political and constitutional developments associated with presidential decisions to initiate the Viet Nam and Iraq Wars.
**Secondary Sources**

The secondary sources primarily consulted included journal articles in JSTORE by scholars who have studied the constitutional issues relative to decisions to initiate the Vietnam and Iraq wars. The research is also based on some first-hand observations of government officials whose positions allowed them to write interpretations of events. The most heavily used journalistic sources were books and journal articles by newspaper reporters. For example, a primary journalistic source is an analysis of the coverage of the period of the Vietnam War addressed in this study, which is the summer of 1964 and an entire book explaining the intelligence blunder that contributed to the Iraq War.

**Primary Sources**

The primary sources used to develop this thesis include the original writings of individuals involved with the wars or who were themselves policy makers or had access to policy makers with responsibility to advise the presidents in making decisions to initiate war. The primary sources include the auto biography of President Lyndon Baines Johnson, memoirs by Robert McNamara and Dean Rusk, and *The Secret Johnson White House Tapes, 1964-1965*, by Michael Beschloss.

The author of this thesis was also able to draw on the work of several individuals who were directly involved with government officials during the Vietnam War and have provided first-hand accounts of various aspects of this study. These works were the following:

• *Why the Senate Slept* by Ezra Y. Siff. Siff served as an aide to Senator Wayne Morse, one of the two senators who opposed the Gulf of Tonkin Resolution, and

• The work of James Reston, a journalist who covered and was consulted by Lyndon Johnson and who wrote a piece for the Council on Foreign Relations titled, *The Artillery of the Press: Its Influence on American Foreign Policy.*

Regarding President Bush, two works were found to be critical to the study presented here. The constitutional context for the actions of President Bush was provided by the specific writings of John C. Yoo, who served as Deputy White House Counsel in the Bush administration. Other vital sources employed were the books by Bob Woodward depicting events leading up to the Iraq War, including *The Plan of Attack.* During the writing of this critically acclaimed *New York Times* best seller, Woodward was granted unprecedented access to the Bush Administration, including to all of the key players involved in the decision to go to war in Iraq. Additionally, this thesis used as a primary source the autobiography of former CIA Director George Tenet, *At the Center of the Storm: My Years at the CIA.* One more journalistic resource used in the study is Bob Drogin’s work, *Curveball: Spies, Lies, and the Con Man Who Caused A War.*

Finally, for both case studies the presidents’ original documents were used when they were relevant and available. These included but not limited to presidential speeches, congressional resolutions, and National Intelligence Estimates. Also, historical documents, such as editions of the papers of James Madison and the Federalist papers, were utilized.
Statement of Significance

The goal of this paper is to reexamine the constraints on the use of presidential power to initiate war. In recent years, there has been much debate over the president’s use of power during war, which has also included re-assessments of President Johnson’s policies during the Vietnam War. While researching primary and secondary sources on the limitations of presidential powers during times of war, the author realized that the more interesting question was how presidential power was used to initiate war. Unfortunately, American history makes clear that once the nation is in a war, the president has unfettered power to execute, and if he deems it necessary, to expand the war. Therefore, critical to understanding the use of presidential power during war times is the need to determine how a modern president, within the context of the United States Constitution with its shared decision making and checks and balances, has the power to initiate war with minimal objections from Congress, the media, or the public. Finally, the paper seeks to glean new insights that provide a better understanding of the use of presidential power that leads into conflict and policies which make presidents more accountable for the use of their war-making powers.

Statement on the Structure of the Presentation of Research

The thesis consists of five chapters which are outlined below:

Chapter 1: Introduction: Statement of the Problem, Review of Relevant Literature and Research, and Methodology

Chapter 2: The Historical and Constitutional Context of Executive War-Making Authority

Chapter 3: A Case Study of President Lyndon Johnson and the Decision to Initiate the Vietnam War
Chapter 4: A Case Study of President George W. Bush and the Decision to Initiate the Iraq War

Chapter 5: Findings, Summary, and Conclusions
CHAPTER II
THE HISTORICAL AND CONSTITUTIONAL CONTEXT OF EXECUTIVE WAR-MAKING AUTHORITY

The Historical Context

In the United States, the power lies with the people. An excerpt from the Declaration of Independence states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

The Declaration of Independence was created during a period when the thirteen colonies were attempting to counter the abuses of the Crown and propose political and economic principles that were fairer in the treatment of the colonists. In doing so, they made an effort to gain control of who represented them and the power those individuals would have over their lives. The effort to gain control of American political life led to America’s first Constitution, which was the Articles of Confederation. This document was created in an attempt to establish the structure of the confederation of the thirteen colonies and to ensure that no one person or governing body would be able to reign supreme over the American people. Fearful of repeating the history they lived under the
edicts of King George and the Parliament, the writers of the Articles of Confederation did the following: (1) Gave each state powers not expressly delegated to the federal government, (2) Gave each state one vote in Congress, and (3) Gave state governments increased powers of governance as opposed to emphasis on the authority of a strong, "imperial" government.

While the idea of the Articles of Confederation was a significant step in American history, they were unsuccessful. One area of disagreement among the framers of the document was that the Articles did not provide the administrative cohesiveness and executive decision-making authority the thirteen colonies needed to govern successfully. As a result of this and other concerns, delegates from the thirteen colonies met later in Philadelphia to re-evaluate the document. The finished product was the Constitution of the United States of America, which begins:

We the people of the United States, in Order to form a more perfect Union establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

*The United States Constitution and War-Making Authority*

One of the most glaring weaknesses of the Articles of Confederation was the failure to authorize and centralize war-making authority. The framers of the Constitution sought to clarify the new nation's war-making authority by changing the monarch-centered approach of the British model and dividing war responsibilities between the legislative and executive branches of the new American government.
The framers drew much of their precedents for the Constitution from British constitutional history and tradition. In establishing the Constitution, the framers’ primary concern regarding war-making authority was to remove it solely from the monarch’s discretion.¹ The monarch’s authority to send subjects into war was considered one of the more tyrannical acts that a sovereign could undertake. The desire to avoid granting war-making authority to any one officer of the proposed government was the background against which the Constitution ultimately divided the power to commit the new nation to war.

The Constitution addressed the locus of war-making authority by granting both the legislative and executive branches specific, and what most of the framers considered distinct, war-making responsibilities. On the one hand, Article 1 Section 10 grants Congress the power to declare war. On the other hand, Article 2 Section 2 grants to the Executive branch the authority to make war. The grants of authority regarding war to the legislative and executive branches respectively are supposed to be clear and precise. However, much of American history has been characterized by what one scholar has termed the enduring debate over how war should be declared and made through the authority of the American government. This thesis weighs in on the debate.

The Constitutional Context: A Distinction without a Difference or an Unambiguous Construction

Why does the debate over war-making authority continue in the face of the specific clauses in the Constitution? Do the clauses speak unambiguously to the allocation of the authority to wage war or are there differences in the two clauses that are apparent but fundamentally insignificant? If the latter is true, why have courts, government officials, and scholars viewed this matter with such interest? To answer these questions, we have to think about the human and economic devastation created by war; the political turmoil which grips the nation in the wake of war; and our inability to understand how the nation continues to fight wars, that over the long term, the public does not support. The foregoing concerns are especially relevant with respect to both the Vietnam and Iraq Wars under study here.

Article 1 Section 10 of the Constitution grants to Congress the authority to declare war. Article 2 Section 2 delegates to the President of the United States the authority to use military force in response to threats to national security and foreign policy of the United States. Given that both the executive and legislative branches have grants of authority with respect to different aspects of waging war, the enduring debate can best be characterized as to whether or not the President can commit the nation to war without the consent of Congress. Extrapolating from Article 2 Section 2, the executive branch has claimed, in recent years, that the President can commit to and execute war without congressional consent in spite of Congress’ constitutional authority to declare war.

---

During the modern presidency, not only have presidents argued for their right to initiate and execute war, they have in some instances actually started wars without congressional approval. In general, the executive branch has employed three arguments to initiate war without the consent of the Congress. The first is the President’s obligation to respond to emergency situations, justified by Article 2 Section 2, which several presidents have then used as a pretext to move deeper into military conflict. This was the approach that President Harry Truman used to initiate the Korean conflict. Second, modern presidents have broadly interpreted perceived foreign threats to American interests and have asserted their duty to protect these vital interests. The vital interest argument was one of several claims pressed by President Lyndon Johnson in order to expand what was already a covert action into a full blown war. Third, presidents have cited their obligations to honor treaties to defend other nations that were parties to the treaty in question again, skirting Constitutional restrictions.

In a slightly different but similar vein, presidents have also used United Nations resolutions as justification for initiating military conflict. The elder President Bush, for example, claimed that he could take offensive action against Iraq, after its invasion of Kuwait, without authorization from Congress. The first Bush Administration regarded a UN Security Council resolution adopted November 29, 1990 as sufficient legal basis. While contemplating air strikes in Bosina in 1993, President Clinton looked to the Security Council and NATO for authority, and not Congress.³

It is important to note that the elder President Bush and President Clinton both took steps to initiate war even after Congress had passed the War Powers Act in 1973. Subsequent to securing the Tonkin Gulf resolution from Congress, President Lyndon Johnson argued that in the resolution Congress had authorized him to take the additional steps necessary to protect American interest and to honor the Southeast Asia Defense Treaty. In the 1970s, Congress, dissatisfied with President Johnson’s expansion of the Vietnam War, sought to place tighter constraints on the Presidents’ war-making authority. The result was the War Powers Act passed by Congress in 1973. However, the actions of the first President Bush and President Clinton demonstrate that neither the War Powers Act nor the power of Congress to declare war have been effective constraints on the Executive’s power to initiate war. In a government of checks and balances, how and why does the imbalance in Executive war-making authority continue not only to exist but to grow?

*The Debate: A Distinction without a Difference or an Unambiguous Mandate*

The Constitution clearly delegates to Congress the authority to declare war in Article 1 Section 10 and to the Executive the authority to use military force in response to threats to national security and foreign policy of the United States. Does the Constitution, however, make a sharp distinction between the powers of Congress and those of the President relative to declaring and making war or does the Constitution give an ambiguous war-making mandate to each branch? After careful scrutiny of the United States Constitution, scholars and policy makers alike have arrived at different answers to the foregoing questions, and as shown later in the case studies presented here, have had
dramatic and often devastating consequences resulting from the initiation of wars as instruments of U.S. foreign policy.

A recent federal government official in the debate over the war-making authority of the President of the United States has been John C. Yoo, who is a constitutional scholar, a former appointee of President George W. Bush, and a self-acclaimed beneficiary of the more expansive interpretation of Presidential war-making authority. Yoo is a Korean born Professor of Law at UCLA Berkley and former Deputy White House Counsel in the younger President Bush’s administration. Yoo has indicated that he and his parents benefited directly from President Harry Truman’s use of force, in the absence of Congressional approval, against the communist in South Korea because without aggressive action by the United States. According to Yoo, he and his parents were able to get out of Korea and come to the United States escaping communist domination because of the unauthorized action taken by President Truman. As a supporter of military action in the face of external threat, John Yoo was the author of the memorandum justifying President Bush’s authority to pursue the war against terrorists.  

Yoo’s memorandum is actually a thirty-five page treatise on presidential war-making authority. It outlines and addresses many of the issues essential to understanding why presidents have exceeded their constitutionally granted war-making powers. Yoo’s arguments also provide a constitutional context for examining the views of scholars who object to his interpretation of the war-making powers of the president. The thoughtful

assertions outlined in Yoo’s memorandum to President George W. Bush are certainly worth perusal.

Yoo makes several points essential to an understanding of Presidential war-making authority during modern presidencies and his arguments frame the constitutional debate over executive war-making authority. The major lines of reasoning focus on original intent, the role of the commander in chief, historical practice and precedents, and legislative acts granting war-making authority.\(^5\)

Yoo’s argument supporting the President’s authority to declare and conduct war can be summed up in five points:

1. Yoo states that commentators who argue that vesting the power to declare war gives Congress the sole authority to decide whether to make war misread the constitutional text and misunderstand the nature of a declaration of war.

2. The Founding Fathers understood very well that declarations of war were obsolete. He refers to the fact that in the seventeenth and eighteenth centuries, most nations, including America and Great Britain, were often engaged in hostilities without declaring war. Therefore, Congress had no need to be involved in the declaration of war.

3. The Constitution allocates different powers to both the Congress and the President. The President, as Commander in Chief, has specific hegemony over particular war time activities such as high level negotiation with the leaders of allies or enemies and the Congress asserts itself through control of funding and has the latitude to declare war without following a specific process.

4. The Constitution, as written, requires that any ambiguities in the allocation of a power that is executive in nature—such as the power to declare hostilities—must be resolved in favor of the executive branch.

5. From the very beginning of the Republic, the endowment of the Executive with treaty powers is part of the president’s plenary control over the conduct of foreign relations given by the Constitution.\(^6\)

---

5. Ibid.

6. Ibid.
It would be difficult to categorize or summarize separately the rebuttals to each of Yoo’s points because many of the points are interrelated. For example, original intent is a concept that seems to habitually re-occur in the discussion of most of the positions he takes, mainly because the Founders themselves touched on them in the Constitution, either directly or indirectly. Therefore, this paper highlights original intent and the dilemma it poses when a president declares war as stated in Article 2 Section 2. There are other re-occurring concepts that bear discussion as well and will become apparent as this discussion unfolds and will buttress the rebuttals to Yoo’s argument.

As another case in point, the issue of precedents is linked to most all the issues of contention that are discussed in Yoo’s book. Precedence addresses actions that Commanders in Chief have taken and justified simply because their predecessors took the same or similar action, whether legal or not. In this instance, most presidents rationalize their right to initiate war without Congressional approval because President Harry Truman went to war in Korea based on a unilateral decision. Yet, when studying an issue as serious as war making authority, one must ask if repeating an illegal act makes it legal.

During the research for this thesis, no definitive answer was found to the conundrum of precedence. However, the courts in some cases, while not declaring acts based on precedents unconstitutional, have not prohibited them either. It is therefore difficult to understand how acceptable arguments for the use of precedence actually are and how worthy they are of discussion here. Other salient arguments presented by Yoo regarding the powers of the president to act without congressional authorization during
war time provide a basis for the rebuttals provided by other Constitutional scholars with a different point of view.

**Making Relevant Distinctions: Original Intent and the Authority to Declare War**

Rebuttals to Yoo’s Constitutional points can be characterized in two ways. First, many legal scholars do not find Yoo’s arguments in favor of unitary executive authority during times of war convincing. For example, J. Gregory Sidak in a 1991, seventy-page article in the *Duke Law Review*, summarizes the views of eleven legal scholars he calls the Koh signatories. This is a group of law professors who signed a petition of complaint that was sent to members of Congress designed to stop the elder Bush from taking unilateral executive action in the Persian Gulf. Second, much of Yoo’s argument goes to the specific historical points that constitute the historical refutation of the presidential prerogative to initiate war.

Sidak says both he and the Koh signatories, led by Harold Koh of Yale, believe that the elder President Bush did not have Constitutional authority to order armed forces to make war in Iraq “absent meaningful consultation with and genuine approval by Congress.” Sidak also quotes Professor John Hart Ely, not known as a strict constructionist. Ely states that original understanding and intent of the Constitution’s framers and ratifiers are often unclear; in the case of the War Clause, for which the wording is deemed ambiguous by many, Ely emphasizes that “It [the Constitution] is

---

7. Sidak, "To Declare War," 35.
According to Ely, the Constitution speaks unambiguously on the authority to declare war, and that authority resides solely in Congress.

Sidak concludes his argument by noting that nothing short of a formal declaration of war by Congress meets the standards of a representative government. Further, he points out that Congress' failure to formally declare war allows it to avoid responsibility for its actions as wars become increasingly difficult and costly. As will be revealed, an attempt to claim that a Congressional resolution is the equivalent of a declaration of war generally creates problems for the Congress, the President, and the nation.

Other observations about Congress' authority to declare war emanated from the experience of the Vietnam War. William Alstyne reviewed Congress' war making authority within that context and reached conclusions that support others cited in this paper. Alstyne makes several points counter to Yoo's argument, among them that in the absence of a declaration of war by the Congress, the President may not sustain the engagement of force abroad for any purpose whatever.

Alstyne, unlike most other scholars, believes that the interim use of force solely to repel an invasion of the United States or to relieve citizens from an existing attack is an authorized use of Executive war power granted by the Constitution . . . the constitutional authorization of emergency war power of immediate self-defense terminates upon

8. Ibid.
9. Ibid.

opportunity and failure of Congress to sustain it by express delegation. Alstyne does note, however, that "if the Congress authorizes the initiation of hostilities...in the conduct of those authorized hostilities, the Constitutional initiative belongs to the Executive." This situation, he concludes, a residual review and control is vested in the Congress through its prerogative to modify or repeal its declaration of war.

To help elucidate an alternate interpretation of the Constitution, other scholars have responded to the key areas of contention raised by John Yoo in the September 25, 2001 Memorandum created as a legal justification for the invasion of Iraq. Vigorous and well-reasoned responses to Yoo's interpretation of the Constitution relative to original intent, the role of Commander in Chief, and legislative delegations of war-making authority have been provided by several scholars. Many of the conflicting viewpoints are pertinent to the modern presidency and the action taken by Harry Truman prior to the Korean War.

Charles Lofgren devotes thirty pages to a discussion of the relationship between original intent and war making power. In reading various interpretations of the historical records, it appears that most of the dissent over war making authority stemmed from two concerns: one was whether the power to make war as vested in the Articles of Confederation was transferred to the new Congress under the new Constitution. A second concern related to whether the President could enter war without the approval of Congress. On the matter of Congress' authority to make and enter war, Lofgren

11. Ibid.

examines what some of the Framers had to say. He proposed that, “During the Pennsylvania Convention, James Wilson not only equated declaring war and entering war, but also explicitly foreclosed exercise of the power by the President acting alone.”¹³ Lofgren concludes, “In short, while one cannot pretend that the matter is beyond all doubt, it seems plain that knowledge of the theory and practice of war and reprisal would have helped convince a late-eighteenth Century American that the Constitution vested Congress with control over the commencement of war.”¹⁴

**Congressional Delegation of War Authority**

Alstyne also addresses the issue of Congress’ capacity to delegate its war making authority. As with original intent, the delegation of war making authority by Congress touches on several other constitutional issues. The role of the Commander in Chief and the Senate’s role in the treaty confirmation process are related to the question of whether or not the Congress can delegate its war making authority. Several Presidents have claimed that during a crisis resulting from military hostilities against the United States, the Congress can delegate to the President its war making powers. The delegation of war making authority is most likely to occur when the President has to execute his role as Commander in Chief or he is required to honor a treaty designed to protect the signatories from military attack. President George H. W. Bush made this claim during the Gulf War and President Johnson made the same claim during the Vietnam War.

¹³. Ibid.

¹⁴. Ibid.
One such foreign alliance was the Southeast Asia Common Defense Treaty, which according to Alstyne, declared that "each signatory will act to meet the common danger in accordance with its Constitutional process." The author concludes that rather than empowering the President to undertake the use of military force, the Treaty sets an international contractual obligation—obliging Congress to make a declaration of war if it intends to fulfill the treaty commitment. Alstyne also examines whether the Congress can give to the President its war making authority other than through treaty.

Alstyne finds no definitive conditions, including treaties, under which Congress can give its war making authority to the President. Quoting Professor Bickel of Yale University, the author agrees that the ability to grant war power to the President is within the purview of Congress "provided only (but importantly) that it not be without standards, the absence of which short circuits the lines of responsibility of Congress to resolve the necessity and appropriateness of war as an instrument of national policy at any given time is uniquely not delegable at all."16

In rebuttal to Yoo, it is also essential to consider whether the role of Commander in Chief allows the President to assume war making authority without Congressional approval. The issue is somewhat complicated because the Constitution does give the President the authority to take military action to defend the United States from attack. Most scholars and defenders of congressional prerogatives concede that in military emergencies, the President does have the authority to initiate military action. However, scholars also point out that Yoo and others have failed to adequately perceive the limits


16. Ibid.
of the Commander in Chief's role. Further, it is important to note that the War Powers Act passed by Congress in 1973 was designed to clarify the circumstances under which the President can conduct war, thereby putting to rest the debate between the Congress and the Executive over the latter's authority to declare war. Defenders of presidential authority like President George W. Bush, Vice President Dick Cheney, and John Yoo have claimed that the War Powers Act is unconstitutional.

On the matter of the role of the Commander in Chief, it is evident that the Founders never intended the role to be interpreted as broadly as it has been by modern presidents. The President was named Commander in Chief only to ensure civilian control over the military. In the Federalist papers, according to Savage, Alexander Hamilton, a supporter of a strong presidency, considered the title Commander in Chief to be no more than the "first general" in the military hierarchy. Writing on this notion, Schlesinger describes how President Franklin Roosevelt came to relish the title Commander in Chief and to prefer it over the title President. One result according to Schlesinger "was to charge that once technical office with potential" in an attempt to claim that it had more formal power than it actually did. Even the Supreme Court in 1942 had to remind Roosevelt that "the Constitution invests the Commander in Chief with the ability to wage war that Congress has already declared and to carry into effect all laws passed by


Congress for the conduct of war and for the government and regulation of the Armed Forces.”19

In spite of the directive the Supreme Court gave to President Roosevelt, President Truman proceeded to invest the Commander in Chief with the power that future Presidents would try to exercise. Savage notes that Truman, for the first time in American history, asserted that the title Commander in Chief brought with it the unwritten power to take the country into a major overseas war on his own. It was in the role of Commander in Chief that Truman took control of the steel industry to avert a strike that he said would cripple the nation’s war effort. The Supreme Court struck down Truman’s order as unconstitutional. It noted that “the Founders of this nation entrusted the lawmaking power to Congress alone in both good and bad times.”20


Congress’ most recent effort to reassert its war making power was the War Powers Act of 1973. As previously noted, the Congress passed the War Powers Act to further clarify how the President should exercise authority in time of war. The majority of Congress considered it important to outline a process in order to avoid a recurrence of the kind of legal circumstances under which the Tonkin Gulf Resolution was employed as a pretext to expand the Vietnam War without congressional approval.

However, both supporters and opponents of a more expansive view of presidential war authority agree that the War Powers Act is ineffective. John C. Yoo, speaking

19. Ibid.

generally on behalf of the executive branch and specifically for the Bush administration, makes it clear that the War Powers Act is not an effective constraint on the President. According to Yoo, “The executive branch consistently has taken the position from the very beginning that the . . . War Powers Resolution does not constitute a legally binding definition of Presidential authority to deploy our armed forces.”

Even Arthur Schlesinger acknowledges that the critical element in the War Powers Act that was designed to rein in the President before he committed the nation to war is flawed. The War Powers Resolution “gives presidents blanket legal authority to send troops into battle whenever he found in his own, personal independent, power, and unchecked judgment a “direct and imminent threat” of attack against American forces and citizens.” The 30-day deadline to the War Powers Resolution simply gives presidents 30 days to persuade the media and the American people as to why the United States should participate or support a particular war effort. Research shows that most key facts and data from most wars are interpreted or received much later than 30 days into a war. Therefore, key information would not be ready for Congress to analyze and make such an important decision, such as declaring war into a foreign land. Indeed, there is a pervasive misconception regarding presidential authority within the context of the War Powers Act. Schlesinger re-affirms the following:

The 30 day provision virtually compelling { congress} to support the president is a hoax by empowering the president to keep the war going beyond thirty days if he would only certify in writing that he was doing so because of

21. Yoo, The President’s Constitutional Authority, 23

“unavoidable military necessity” connected with the disengagement of American troops.23

At the time the War Powers Resolution was passed, it was meant to limit presidential discretion in the future, since the U.S. was slowly coming out of the Vietnam War. Ironically, it actually expanded presidential power by granting presidents the ability to enter into war without congressional consent.

In retrospect, the four conditions of the War Powers Act would have permitted President Johnson to enter into Vietnam with congressional approval because the United States was involved in Vietnam to stop the spread of communism. During the Cold War, U.S. foreign policy reflected an imperative born of Cold War anxieties and it was considered crucial to defend American territory, forces, or citizens from sudden attack by communist forces.24 The assumption is that the War Powers Act, had it existed in 1962, would have dispelled doubts about the President’s authority to declare war on North Vietnam.

The War Powers Resolution played a large part in the ability of President Bush to send troops to fight in Iraq after the September 11, 2001 attacks on New York and Washington, DC. The disbursement of troops to Iraq was seen as necessary to defend American territory, forces, and citizens from further attacks on the homeland. The War Powers Resolution, therefore, gives the president the legal wherewithal to do whatever he feels is necessary and proper to protect the American people.

23. Ibid.
24. Ibid.
The analysis of the historical interpretation and constitutional context of presidential war authority makes several points very clear. The Founders intended that Congress has the power to declare war. The President is authorized to make and execute, but not declare war. Most scholars agree that Congress cannot delegate its authority to declare war. Treaties require that the signatories execute their obligations in accordance with their own constitutionally prescribed processes, which in the United States requires congressional approval if the treaty would take the nation to war. Finally, even in the midst of congressional efforts to acknowledge and clarify presidential emergency war authority, modern Presidents have rejected the notion that they must obtain Congressional approval to commit troops to foreign hostilities.

Considering the clarity with which the Constitution speaks regarding both congressional and presidential war authority, how have presidents been able to take the nation into the two most devastating foreign conflicts since World War II? To further examine this question, this study considers the Vietnam War under President Johnson and the Iraq War under President Bush and focuses on those factors that should constrain presidential war authority. In part, comparative case studies are used to try to determine the common factors that allowed presidents to avoid constitutional constraints and other elements in a representative government that insure that the voices of the public are acknowledged in making serious decisions like committing a democratic nation to war.
CHAPTER III

PRESIDENTIAL WAR AUTHORITY AND THE VIETNAM WAR

In addition to Constitutional constraints, this thesis examines three other factors to determine the influence they exerted on President Johnson’s decision to initiate war in Vietnam in August of 1964. The factors examined are ideology, Congress, the media and public opinion. To more sharply focus this study, the thesis will examine how each of the foregoing factors influenced the President’s decision leading up to the passage of the Tonkin Gulf Resolution, which served as a formal declaration of war against North Vietnam.

The anti-Viet Nam protests in the United States from the mid to late 1960s are not considered here because scholars who have studied the Tonkin Gulf Resolution have generally concluded that it gave the President the authority to expand hostilities as he deemed appropriate. It is also important to note that Congress later conceded that it had granted the President broad authority to conduct the war. Therefore, the essence of the inquiry here is how and why, given the long history of fairly covert U.S. involvement in Vietnam that began during the Kennedy administration, did Congress grant the President exceptional authority to initiate a war that was ill conceived and that eventually drew the ire of legislators, the media, and the public?
The Role of Ideology

Especially since the advent of the War on Terror, the Cold War for many Americans is a distant memory and some have no recollection of it at all. The Cold War was characterized by a vehement disgust and fear of communism and found its most virulent expression during the McCarthy trials of the fifties. Although the Soviet Union and the United States were allies during WWII, they never trusted each other. When Stalin divided Berlin following WWII and the Russians became a nuclear power, America and the Soviet Union entered the Cold War. Later in 1949, when the communists took control of mainland China, the latter also became America’s enemy in the Cold War.

Today anticommunism is still a small but less important component of American foreign policy. The only two countries the United States views with distrust because they have communist governments are Cuba and North Korea. Cuba is not considered a military threat and North Korea is viewed as a threat but mainly because it is considered a rogue state. In fact, the United States now has relatively cordial relations with the nations that it once considered complicit in the effort to overthrow the South Vietnamese government. These nations include Russia, China, and of course, North Vietnam.

The change in the nature of the relationship between the United States and Russia, China and North Vietnam respectively shows the powerful role that anti-communist ideology once exerted on American foreign policy. In many ways, the Vietnam conflict served as a proxy war between the United States and its perceived communist adversaries. Anticommunism was once the lens through which the United States viewed
other nations in the world as either friend or foe; and in some cases, it was willing to risk
nuclear war with its communist enemies.

The Cold War was characterized in terms of its objectives as a battle for the
minds of the third world—Latin America, Africa, and Asia. From 1946 to the fall of the
Berlin Wall in 1989, anticommunism was the cornerstone of U.S. foreign policy.

American engagement in Southeast Asia generally and Vietnam in particular was based
on the domino theory.¹ This theory postulated that if one country—Laos, Cambodia,
Thailand, or South Vietnam—came under communist domination, so would the others.

International legal authority for the American military presence in Vietnam was
buttressed by an agreement called the Southeast Asia Collective Defense Treaty, a pact
which required the signatories to come to each others' defense in the event of military
aggression by communist forces against any member state.² The events in the Tonkin
Gulf between July 30 and August 4 of 1964 were deemed sufficient to meet the terms of
the treaty. Subsequent to the events which produced the Tonkin Gulf Resolution and
after a military presence of almost twenty years assisting the South Vietnamese resist
communist domination, the United States officially declared war against North Vietnam
on August 7, 1964.³

¹. Barbara Tuchman, The March of Folly: From Troy to Vietnam (New York: Ballantine Books,
1984), 247.

². Ernest K. Lindley, The Winds of Freedom: Selections of the Speeches and Statements of


Congress and the Tonkin Gulf Resolution

Following several military encounters between North Vietnamese and U.S. Naval forces, President Lyndon Johnson sought and obtained a joint resolution from Congress formally declaring hostilities between the United States and North Vietnam. A better understanding of what actually happened between July 30 and August 4, 1964 will help to illuminate just how the Congress, the media, and the public influenced or failed to influence President Johnson's decision to initiate war against North Vietnam. Most of the criticism and attention on the Vietnam War focuses on what happened after August 1964. But overlooked in those post-August 1964 assessments is any manifestation of congressional, media, or public influence or criticism as is expected in a democracy, especially concerning crucial policy matters. Additionally, some observers have recently concluded that it was the military draft as much as moral disgust over U.S. actions in Vietnam that led to the public outcry.4

Uncertain Intelligence

Scholars from a variety of disciplines have debated about the accuracy of reports regarding what happened in the Tonkin Gulf between July 30 and August 4, 1964. Some have gone so far as to say that the executive branch lied to the Congress or at least embellished the truth to make the situation more serious than it actually was. While there may have been some embellishment, the record of events taken from several sources

4. Nathaniel R. Jackson, Ph.D., Interview by author, Atlanta, GA, November 6, 2008.
indicates that as Mark Lowenthal points out, U.S. intelligence is generally uncertain.\(^5\)

The Gulf of Tonkin incidents incorporated all the features of the uncertainty of intelligence and how uncertainty influences policy decisions. In the Tonkin Gulf, some clouded in uncertainty, led the President to request a joint resolution from the Congress and significantly contributed to congressional interpretation of the events and the adoption of the resolution.

In the summer of 1964, the United States Navy and the South Vietnamese were conducting discrete military operations in the Tonkin Gulf, within proximity of the territorial waters of North Vietnam. At the same time, the United States was conducting an intelligence gathering operation called the De Soto patrol. The Navy Destroyer *Maddox*, a De Soto patrol eventually attacked by the North Vietnamese, was actively engaged in intelligence gathering. The South Vietnamese were conducting A-34 operations in order to spot evidence of Hanoi’s continuing infiltration of men and war supplies into South Vietnam by sea.\(^6\)

The military events that directly led to the Tonkin Gulf Resolution began on July 30, 1964 when the South Vietnamese launched an attack off the shores of North Vietnam. According to President Johnson, U.S. naval forces were 120 miles from the site of South Vietnamese A-34 attacks and were not engaged in supporting the South Vietnamese.\(^7\)

The latter statement is supported by the fact that presidential scholar Michael Beschloos' 

---


7. Ibid.
The edition of the White House Tapes, dated 1963-1964, shows that no reference was made to the July 30 incident by President Johnson or members of his administration. In fact, the administration was preoccupied with the selection of a running mate for Johnson for the upcoming campaign.8

A second South Vietnamese attack took place on August 3, when the De Soto patrol was at least 70 miles away, according to President Johnson.9 More importantly, however, on August 2 and 3, the Johnson administration received reports that two American ships, the Maddox and the C. Turner Joy, had been attacked by North Vietnamese patrol boats in two separate incidents.10 The two American ships were told to assert the right of freedom of the seas and returned fire. In future writings, critics would charge that the Johnson administration provoked the North Vietnamese to attack and then used the second attack as a pretext for war against North Vietnam.

The first attacks on the American destroyers were passed off as the actions of a trigger happy North Vietnamese Commander, and a stiff letter to Hanoi from the Johnson Administration was sent in response to the incident. General Nguyen Dinh Voc, director of the Institute of Military History in Hanoi, affirmed in 1997 that the assault was a local commander’s initiative.11 “We advised the North Vietnamese to be under no misapprehension as to the grave consequences which would inevitably result from any


further unprovoked offensive military action against United States forces."12 With respect to the first attack by the North Vietnamese, there is no doubt about the accuracy of what happened.

However, controversy remains over the accuracy of the second attack that provoked President Johnson to seek the Tonkin Gulf Resolution. It is also on this second attack that precise intelligence is uncertain. To address the accuracy of the intelligence, it is important to review as many of the papers, letters, and testimonies of the sources of the reports as possible. Unfortunately, getting closer to the source, in this instance, does not resolve the debate. Some reports indicate that there was not a second attack on the United States ships in the Tonkin Gulf. For example, in 1967, a former naval officer, John W. White, wrote a letter to the New Haven Register in Connecticut charging that the second attack did not take place. Lieutenant (JG) White was, at the time, aboard a sea plane tender and had access to radio messages on the high command circuit. White wrote, "I recall clearly the confusing radio messages sent at that time by the destroyers, confusing because the destroyers themselves were not certain that they were being attacked.13

Other observers view the incident of the second attack with even more uncertainty. Siff states that the Maddox, if there was an engagement, fired first, based upon the approach of the North Vietnamese vessels. Officers aboard the Turner Joy, he continues, have contended that they saw no attacking boats or firing upon the United

---


States ship. Secretary of Defense Robert McNamara agreed that “the evidence of the first attack is indisputable. The second attack seems probable but not certain.” The uncertainty regarding the second attack was relayed to President Johnson at the time.

The conversion of uncertain intelligence into policy began when McNamara received the information on the second attack and relayed it to the President. President Johnson himself shared McNamara’s uncertainty about the second attack but never received any information that ever changed his mind. However, on August 4, 1964, following a publicly circulated media report that seemed to support the veracity of the incident, foreign policy advisers to President Johnson decided that they had no choice but to confirm the attacks, including the second one.

The next step in the policy formulation process, based on the uncertainty of the intelligence about the attacks, was congressional hearings to authorize funds that were needed for a more aggressive defense of South Vietnam. However, amid the confusion surrounding the incident, two facts are certain: it is clear that the information that the Johnson administration used to request the Tonkin Gulf Resolution was at best uncertain; and that one of the democratic forces that should have served as a check on the executive’s war power itself felt powerless to act. Except for the officially sanctioned version of the pivotal point in the Viet Nam War the media had little access to more objective sources of information. Additionally, many journalists were reluctant to use information provided by North Viet Nam for fear of being labeled not loyal to the United

14. Ibid.

15. Johnson, Vantage Point, 113.

States. Given the President’s control over the intelligence apparatus of the nation, the Congress did not have the independent intelligence at its disposal to effectively question the actions of the President in a perceived military emergency. Therefore, Siff concludes, “So through the late summer and fall of 1964 the Senate slept and took no action at the early stages when the Vietnam tragedy could yet have been aborted.”

**The Congressional Response**

Even though Congress did not have independent intelligence regarding the Tonkin Gulf incident, the documentation shows that Congress, through its leadership, was regularly informed on the course of military events in Vietnam. President Johnson made a conscientious effort, before the adoption of the Tonkin Gulf Resolution, to keep the Chairs of the Committees on Foreign Affairs, Armed Services, and the Speaker of the House informed about the operations of U.S. military forces in Vietnam. Two factors appear to account for President Johnson’s efforts to keep Congress informed. First, as the recent Senate Majority Leader, Johnson did not want to engage in war as President Truman had without the consent of Congress. “Senators and representatives designated to oversee intelligence operations were fully briefed in January 1964, twice in June, and again in early August.” Second, President Johnson was attempting to

---


19. Ibid.

20. Ibid.
develop and retain the votes he needed to pass both his Civil Rights and Great Society legislation, and in the process, was trying to alienate as few Senators as possible.

Even with the information they had received prior to the Tonkin Gulf incident, Senator George McGovern told Siff that “with the exceptions of Senators Morse and Ernest Guering, Senators did believe that the attacks had occurred, as stated by Johnson’s spokesman.” Were there other aspects of the Tonkin Gulf incident that should have raised concerns and led more Senators to be more cautious in passing the Tonkin Gulf Resolution? To answer the foregoing question without attempting to recount the entire debate, we can focus on two factors. One involves the salient points associated with the Tonkin Gulf incident that were critical to making a decision about the attacks. The second is the role and actions of the senatorial leaders in addressing the issues related to the Resolution.

The key issues that were considered by the Senate during the debate on the Tonkin Gulf Resolution included the violation of the territorial boundaries of North Vietnam, the Southeast Asia Collective Defense Treaty, the role of the Commander in Chief, and the proposed Nelson Amendment.

- North Vietnam’s territorial boundaries at sea had been violated by the United States according to the boundaries recognized by that country. In his initial speech on August 5, Senator Morse Republican from Oregon had already termed the United States a provocateur, claiming that U.S. destroyers acted as backups for South Vietnam naval vessels that were bombarding North Vietnam territory within three to five or six miles of the North Vietnam coast, knowing that both Vietnams recognized a 12-mile territorial boundary at

21. Ibid.

22. Ibid.

23. Siff, Why the Senate Slept, 15.
sea. The Johnson administration’s position was that U.S. ships were in international waters, and they were not there to support the South Vietnamese Navy. Secretary of Defense McNamara verified those details in his presentation to the Senate.25

- *The Southeast Asia Collective Defense Treaty*, of which the United States was a part, was depicted in front of Congress as a legal obligation requiring the United States to come to the aid of the South Vietnamese to further resist communist aggression by North Vietnam. The debate about international treaty obligations, in part, was related to the foregoing discussion about which nation had been the aggressor. If the United States or South Vietnam violated North Vietnam’s territorial waters, then the former were the aggressors and the terms of the treaty had not been activated. However, since the administration, in spite of its doubts about the incident, concluded that the United States ships had been attacked, then upon request of assistance from the South Vietnamese, the terms of the treaty did apply.

The Tonkin Gulf affair must be considered not only within the context of the Southeast Asia Collective Defense Treaty, but also within the broader context of communist aggression, against which the treaty defended South Vietnam. Secretary of State Rusk speaking on March 1, 1962 said that “the United States military and economic assistance and technical advice are being extended to the Republic of {Viet-Nam} at its request to assist the Vietnamese people to maintain their independence against this aggression.”26 Rusk also quoted then President John F. Kennedy on the subject of Communist aggression. “... Our primary purpose is to help your people maintain their independence. If the Communist authorities in North {Viet-Nam}, will stop their campaign to destroy the Republic of {Viet-Nam}, the measures we are taking to assist

24. Ibid.


your defense efforts will no longer be necessary."²⁷ It was evident that the executive branch was committed to defending South Vietnam under the terms of the Southeast Collective Defense Treaty the only remaining question for most Senators was how much the administration was willing to risk in defense of South Vietnam. According to Siff:

In an exchange on the floor of the Senate on August 6, 1964, Senator Brewster asked Senator Fulbright, ‘So my question is whether there is anything in the Resolution which would authorize or recommend or approve the landing of large American armies in Vietnam or in China.’ Mr. Fulbright’s response: ‘There is nothing in the resolution, as I read it that contemplates it. I agree with the Senator that that is the last thing we would want to do. However, the language of the resolution would not prevent it. It would authorize whatever the Commander in Chief feels is necessary. It does not restrain the Executive from doing it.’ Thus, Senator Fulbright conceded that the language of S.J. 189 would not prevent the President from waging war under the enormous power of the resolution.²⁸

- The role and power of the Commander in Chief was being confirmed in the resolution, according to Fulbright. He added, ‘We are not giving to the President any powers he has under the Constitution as Commander in Chief. We are in effect approving of his use of powers that he has. That is the way I feel about it.’²⁹ The debate over the Southeast Asia Treaty and the power of the Commander in Chief are linked and both lay the foundation for the post-August 7, 1964 turmoil that erupted in the United States in 1965 and 1966.

It is interesting to note that even senators who had doubts about the Tonkin Gulf Resolution, because they feared it would lead to greater and more costly U.S. involvement in Vietnam, overcame their reluctance by relying on their faith in the constitutionality of the role of the Commander in Chief. For example, Senator Aiken’s lack of support for the resolution bothered Johnson: Aikens and Johnson shared a respectful friendship. In a carefully worded statement, Aikens expressed his position by

²⁷. Ibid.

²⁸. Siff, Why the Senate Slept, 37.

²⁹. Ibid.
stating, “I sincerely hope that the fears I have entertained over the past few months may prove to have been groundless. I sincerely hope that the President’s action, taken evidently in the belief that vigorous action now will save more lives than it will cost, will prove to be correct.” He then added, directing his attention to the Commander in Chief, “Mr. President {President of the Senate}, I shall support the joint resolution even though I still regard the decision of the President with misgivings. It is a very difficult decision to make, but I do not believe that any of us can afford to take a position opposing the President of the United States for exercising the power which we, under our form of government and through our legislative bodies, have delegated to this office.”

- *The Nelson Amendment to the Tonkin Gulf Resolution* was proposed on August 7, 1964. According to Siff, Senator Gaylord Nelson was the only senator during the entire three days of debate to attempt to clarify by amendment precisely what the scope and intent of S.J. 189 was, and to create a legislative history that would eliminate the necessity of reliance on Senator Fulbright’s vague and contradictory answers to question from senators over the past three days. During the debate, several senators seemed to have had different understandings about what the resolution actually meant and authorized the President to do in further defense of South Vietnam. Citing differing interpretations by senators on what the resolution meant for continued U.S. involvement in Vietnam, Senator Nelson concluded “in any event I am most disturbed to see that there is no agreement in the Senate on what the joint resolution means. I would like to see it clarified. I have great confidence in the President. However, my concern is that we in Congress could give the impression to the public that we are prepared at this time to change our mission and substantially expand our commitment. If that is what the sense of Congress is, I am opposed to the resolution. I therefore ask the distinguished Senator from Arkansas if he would consent to accept an amendment… The resolution reads as follows.”

---

30. Ibid.
31. Ibid.
32. Ibid.
33. Ibid.
The Congress also supports and approves the efforts of the President to bring the problem of peace in Southeast Asia to the Security Council of the United Nations, and the President’s declaration that the United States, seeking no extension of the present military conflict, will respond to provocation in a manner that is ‘limited and fitting.’ Our continuing policy is to limit our role to the provision of aid, training assistance, and military advice and it is the sense of Congress that, except when provoked to a greater response, we should continue to attempt to avoid a direct military involvement in the Southeast Asian conflict.

This amendment, Nelson continued, is not an interference with the exercise of the President’s constitutional rights. It is merely an expression of the sense of Congress. Would the Senator accept the amendment? According to Siff, in what he later conceded was one of the greatest mistakes of his career, Fulbright refused to accept the amendment. Nelson stated that “I was urged to withdraw my resolution to avoid the necessity for a conference between the Senate and House on two version of the resolution.

**Sleeping Giants**

If, in the metaphorical words of Ezra Siff, the Senate slept during the pivotal time leading up to the Vietnam War, what stance did the most powerful and more esteemed members of the Congress, such as Speaker of the House Mike Mansfield, William Fulbright, Chair of the Foreign Relations Committee, and Richard Russell, Chair of the Armed Services Committee adopt? Do historical records shed any light on what these distinguished Congressmen thought about American involvement in Vietnam prior to August 7, 1964 and were these and other members supportive of greater involvement in Vietnam as indicated by their support of the Tonkin Gulf Resolution?

The White House Tapes, in the Johnson administration recorded in the years 1963-1964, indicate that prior to August 7, 1964, Mike Mansfield reluctantly supported

---

34. Ibid

35. Ibid., 36.
the war effort. "I do not conclude that our nation's interests are served by deep military involvement in Southeast Asia."\textsuperscript{36} He strongly recommended that the Johnson Administration make a conscientious effort to explain to the American people the purpose and nature of the United States' support for South Vietnam. He added, "If the decision must be for our continuance on the course which is leading to deeper involvement, however, I would most respectfully suggest that the basis for these decisions must be made more clearly and persuasive to the people of this nation than has heretofore been the case."\textsuperscript{37} In spite of his reservations, Mansfield ultimately voted in favor of the Tonkin Gulf Resolution, as did William Fulbright.

Sometime after 1964, Fulbright became closely associated with those opposing American involvement in Vietnam. However, on March 2, 1964, President Johnson explained to the senator exactly what the administration considered its options in Vietnam. Fulbright eventually agreed with the fourth alternative, which was "to continue our present policy of providing training and logistical support for the South Vietnamese forces."\textsuperscript{38} Such must have been the power of Johnson's influence on the senator, however, that on August 7, as mentioned before, Fulbright literally refused to accept any alternative to the Tonkin Gulf Resolution and thus, was instrumental in supporting the President and approving the expansion of the war with a formal declaration.

Perhaps the Congressman who exerted the greatest influence over President Johnson was Senator Richard Russell, a fellow Southern Democrat from Georgia.

\textsuperscript{36} Beschloos, \textit{Taking Charge}, 364.

\textsuperscript{37} Ibid.

\textsuperscript{38} Ibid.
Russell had helped to mentor Johnson when he first came into government, and when Johnson served as a member of the Senate from Texas. Russell had privately opposed U.S. involvement in Vietnam before Johnson became President. The White House Tapes, again from the years 1963-1964, show that Senator Russell wanted to find a way out of Vietnam. He actually made two proposals for withdrawal.

First, he recommended installing a South Vietnamese leader who would be in favor of U.S. withdrawal under the guise of the South Vietnamese right to self-determination, which the United States would honor. Second, he suggested that a public opinion poll be taken in Vietnamese cities on whether American help was wanted and if the results were negative, the United States should withdraw. It appears that Russell was a hawk on Vietnam in public, but he was privately opposed to the war. Russell’s vote, which indicated no opposition to the Tonkin Gulf Resolution, belied his private misgivings. In the end, not even the giants of the Senate who opposed the war tried to stop the Tonkin Gulf Resolution; it passed unanimously in the House and 88-2 in the Senate.

As indicated by historical records, Congress did not exercise its constitutional responsibility regarding the Vietnam War. This thesis next examines the role of the media in the events leading up to the start of the Vietnam War as well as its role during and after what some would say was a costly fiasco. The vehement media opposition to the Vietnam War from 1965 forward is in stark contrast to a much more compliant


attitude in the media prior to August 7, 1964. It is therefore helpful to the main premises
to identify and explain some of the factors that contributed to the media's variety of
perspectives about the power of the executive branch, the Tonkin Gulf crisis and other
aspects of the Vietnam War. While not monolithic, on the whole, the media did not at
first aggressively oppose deeper American involvement in Vietnam, but as time went on,
support dwindled. There never was the overwhelming support for the Tonkin Gulf
Resolution and other aspects of the war anyway within the media—again, in direct
contrast to the tentative but nearly complete support for the war by members of Congress.
However, for a variety of reasons discussed below the media prior to 1964 did not have
the access to information required to intelligently oppose the war and other members of
the media were afraid to do so because they did not want to appear disloyal, which they
knew would have completely cut them off from the official sources of government
information that were available.

The Media in the Initiation of the Vietnam War

The Media and Democratic Theory

Americans are taught that we have established a government for the people, of the
people, and by the people. Consequently, according to American theory of government
and generally accepted democratic principles, the people can exercise significant
influence over government decisions. Additionally, the notion of the media as the Fourth
Estate has also found its way into democratic theory. The Fourth Estate is a broad
concept that refers to any institutional entity within a society that interacts with,
supplements, or serves as a check on government. In some countries, the Fourth Estate is
considered to be the people themselves. However, in the United States, it refers to the media and serves as a watch dog on the United States Government. Supposedly, the media serves as a check on the exercise of government authority. Such notions are widely held throughout American society, even though the most vocal elements of the public consider the media biased toward one end of the political spectrum or the other.

Considering how most Americans view the media and its role vis-à-vis government, did the media, as the fourth estate, play its watch dog role at the beginning of the Vietnam War? Did the media compensate for what the Congress had failed to do in closely scrutinizing the executive branch as the President took more deliberate steps to officially commit the United States to the military support of the South Vietnamese, thus formally entering war with North Vietnam? Finally, what does the historical record say about the ability of the media to constrain the use of presidential power to initiate war?

One of the implicit tenets of democratic theory suggests that institutions closest to the people should exercise the most influence over important decisions that affect the people. Within that context, the Congress, especially the House of Representatives, and the media should be able to influence executive decisions. A close examination of the Congress and its role in the declaration of war shows that Congress only had the information that the executive provided through intelligence briefings or the appearance of administration officials before the Congress. Similarly, our analysis of the media during the early phases of the Vietnam War shows that for official information, the media was also dependent upon the executive branch, especially the President. Therefore, the
President’s control over the venue and agenda for dispensing information on the Vietnam conflict allowed him to shape the views of the media.

**The Context for Media Influence during the Vietnam War**

Scholarly research has yielded valuable insights regarding why the news media reacted as it did to the key events leading to a deeper engagement in Southeast Asia. First, as the Fourth Estate, newspapers, journals, television and radio are considered a major influential set of institutions, acting as a check and balance for all areas of governance. Some question if this is the role the media assumed regarding this conflict. Second, the media on a more realistic level should be challenged about how information concerning the war was dispersed. Sometimes the choices media made or the positions advocated regarding the war were not what the American people always expected or even accepted, based on what the role of media theoretically should have been as a watchdog. A third consideration is true objectivity about the war as portrayed in the various media, especially since, to some degree, the media is subject to government control through regulatory guidelines. Finally, it appears that the media at least during this period did not assume its role as an advocate for constraint regarding expanded presidential powers to declare war.42

Much of the analysis of the role of the Fourth Estate emanated from the many analyses of the Vietnam era. At least some of the close scrutiny of the media about its role, especially during war time, seemed to become more intense as an indirect result of its inaction at the beginning of the Vietnam War. Furthermore, there appears to be a

general consensus that the media did not assume its proper function as an overseer of both the democratic process and the constitutional limits of presidential power.

Journalists and political scientists view as relevant an understanding of the interplay between the government and media. Since the Vietnam War, the role of the media during the early phase of the Viet Nam War has been critically analyzed. Here, by way of example, are cited the works of two individuals. To more clearly conceptualize the analysis the writer adopts several distinct categories that were provided by the sources cited: theory versus practice, the media as an objective institution, the role of presidential power, the role of official sources, the news worthiness of the president, the role of interpretation or analysis, the focus on immediate events rather than the broader context in which they occur.

*Theory versus practice* regarding the role of the media has been addressed by a journalist and a political scientist. After the study of several presidents, Cornwell, political scientist writing generally about the influence of the media and public opinion, concluded that the bottom-up model, that is influence over critical decisions moving from the public up to the president, was not an accurate conception.\(^43\) According to Cornwell, the public has increasingly viewed the government through the actions of the President. The President has become the source and stimulus for action.\(^44\) "He {President} has done so by exploiting his unequaled platform for popular leadership. This fact, with a powerful assist from the burgeoning commercial news media, has virtually transformed

---


\(^44\) Ibid.
the White House occupant into the personification of the national government. As stated earlier, democratic theory holds that the media and public opinion should influence governmental decisions in a democratic society. In a bottom-up model, both the views of the media and the opinion of the public exert some influence over the most important decisions, such as going to war, that presidents make.

**Media Access to Information**

What is known about the media, its role in a democracy, and the way the media obtains and verifies the information upon which it relies is of deep concern to most Americans. It is impossible to divorce the sometimes negative viewpoints about the media by the public from how the media views its own self. The media believes it has the capacity to independently obtain information and objectively evaluate it; others say not. In light of these considerations, the paper presented here will explore and assess whether the media performed its appropriate role or if it thought its duty was fulfilled in constraining the President in the initiation of the Vietnam War.

*The media as an objective institution*, that can and sometimes does exercise influence concerning the issue of presidential war powers, should assiduously check sources and expose itself to enough information to make an informed commentary about key issues. Although in the name of patriotism the media may vacillate, choosing censorship over transparency, through the power of words and the dispersion of accurate, objective information, the media can perform its correct duty—and in spite of government restrictions. The media is as objective as the independent information it

---

45. Ibid.
receives allows it to be. Especially in foreign policy, media today now has access to all the advantages of technology. However, in the mid-sixties, determination and footwork were the watch words. William Dorman, Associate at the Institute of War, Peace, and the Media and quoted in Kathleen Turners book in 1986 analyzing the Viet Nam War, wrote in the Bulletin of Atomic Scientist that "The media have moved further and further away from the watch dog role democratic theory assumed they would play in affairs of state where national defense and foreign policy are concerned.46

To further enhance an understanding of how government in general and the White House, in particular controls the news agenda, it is important to consider several general points regarding government control of and media access to critical information Bill Moyers, who worked in the White House as President Johnson's Press Secretary, as well as in print and broadcast media, emphasized that, "Most of the news on television is, unfortunately, whatever the government says is news."

- The White House occupants have long been adept at dishing out the news.

- The sheer quantity of information churned out by the United States government is a major factor in its ability to set the news agenda. The White House and Pentagon each host two daily press briefings; the State Department holds one. The White House produces 15 to 20 press releases a day. (The Air Force alone issued over 600,000 news releases in 1980---the last year such statistics were made public.) These are supplemented by interviews, off-the-record background briefings, leaks, tips, staged events, photo opportunities, speeches by top officials, and the well-timed release of reports, "white papers" and other documents.

- As many as 13,000 PR people work for the federal government, at a cost of more than $2.5 billion a year in taxpayers' money. Every member of Congress has a PR staff. So does an alphabet soup of government agencies: FDA, EPA,

46. Turner, Lyndon Johnson's Dual War, 85.
DEA, NASA, etc. Dispatched throughout the hallowed halls of officialdom are Washington reporters "whose primary exercise," as Alan Abelson of Barron's put it, "is collecting handouts from those informational soup kitchens.\textsuperscript{47}

- \textit{In an era of expanded presidential power}, such as during the Vietnam War, writes James Reston, a prominent journalist during the Vietnam era, addressing the media’s ability to constrain the President concluded that "the power of the press and even that of the Congress to restrain the Chief Executive has declined proportionately since World War II."\textsuperscript{48} In an article commissioned by the Council on Foreign Relations, Reston wrote the following:

Presidential power in the foreign field is in direct proportion to the size of the issue. The press can irritate and humiliate him personally. It can embarrass him by premature disclosure of his plans, and the Congress can still oppose and even defy him on peripheral issues. But on the great acts of foreign policy, especially those involving the risk or even the act of war, he is more powerful in this age than in any other single, freer to follow his own bent than any other political leader in the world—the larger and more fateful the issue, the greater is his authority to follow his own will.\textsuperscript{49}

\textit{The Media and Public Opinion and the Initiation of the Vietnam War}

Compared to its more aggressive reporting about the war post 1965 and beyond, the news media in the United States was much more muted in its reporting and reticent in its opposition to greater U.S. involvement in Vietnam. "Journalists kept chomping at the government bit, even when it should have been apparent that something was seriously amiss about the official version of the Tonkin Gulf incident in 1964, which served as a pretext for dramatically escalating the war in Vietnam. Early calls for U.S. withdrawal from Vietnam by Senator Ernest Gruening, one of the two dissenting votes against the


\textsuperscript{48} Reston, \textit{The Arillery Press}, 45.

\textsuperscript{49} Ibid.

Kathleen Turner, former journalist at the New York Times in her analysis of Lyndon Johnson and the media, highlights the apparent absence of media opposition to President Johnson’s response to the Tonkin Gulf incident. Staff members for Johnson reported that “the President’s rapid response to North Vietnamese provocation received overwhelming support from the press, Congress, labor, and Veterans organizations.” and they could point to Turner as evidence. Turner reported that from influential politicos such as Harry Truman to the powerful Chicago Tribune to Walter Lippman and the AFL-CIO, diverse and prestigious facets of the American public seemed to approve of Johnson’s course of action. Such reports could only have convinced President Johnson that he had made the right decision about Vietnam.

It was several years later before some members of the media, in retrospect, took a look back at their actions during the Tonkin Gulf incident. Years after the Gulf of Tonkin, for example, the Los Angeles Times’ Jules Witcover complained that “when the government reported in August 1964, that two American destroyers had been attacked in the Gulf of Tonkin . . . there was no sustained effort to ferret out its veracity.” Aroson extended this criticism when he marveled that reporters at McNamara’s press conference on August 5, “refrained from asking any questions that might embarrass the government,

50. Turner, Lyndon Johnson’s Dual War, 85.
51. Ibid.
52. Ibid.
53. Ibid.
although it must have seemed inconceivable to any thoughtful reporter that a few small North Vietnamese gunboats would seek out and challenge the battleships of the United States, knowing that such an action would provoke immediate and massive retaliation."\(^{54}\)

Turner concludes that whatever the reporter's level of incredulity, few questions were raised in August of 1964. Quoting the Pentagon Papers, Turner writes, the handling of the Gulf of Tonkin incident “marked the crossing of an important threshold in the war, and it was accomplished with virtually no criticism, indeed, with an evident increase in public support for the administration.”\(^{55}\) It is clear from an assessment of several sources that document original observations that the American media did not provide either a critical analysis of the Tonkin Gulf incident or vocally oppose the war as it did in 1965 and beyond. However, an important question remains unanswered; why was the media so unquestioning about the Tonkin Gulf reports by the government that served as the formal initiation of the Vietnam War? Answers to this question are found in the seminal work of Daniel Hallin.

**Media Objectivity**

Hallin's book, *The Uncensored War: The Media and Vietnam*, is based on the complete body of the New York Times coverage from 1961-1965. Employing Hallin's framework, which is based on the journalistic integrity of a well-respected newspaper, one can trace the reports on Vietnam leading up to the Tonkin Gulf incident and the passage of the Tonkin Gulf Resolution. Hallin introduced the discussion of journalistic

\(^{54}\) Ibid.

\(^{55}\) Ibid.
objectivity by analyzing an article by Tom Wicker, published on August 5, 1964, that
covered President Johnson’s television statement on the Tonkin Gulf incident.

Hallin writes that Wicker, using the objective language of journalism, reported
only the facts as presented by President Johnson. Wicker conveyed Johnson’s message as
intended, without interpretation, which provided no opportunity for comment that may
have criticized and opposed the administration’s view of the facts surrounding the Tonkin
Gulf incident.56 Such an outcome results from the elements of journalistic objectivity to
which Wicker adhered and include the following:

*The use of official sources*, according to Hallin, and the injunction to present “just
the facts” leaves the journalist in a difficult position, for in politics, the facts are almost
always to some degree in dispute.57 Hallin continues, “Indeed, every Times story on
the Gulf of Tonkin that day was based on official U.S. sources exclusively, with the
exception of a two-paragraph section reporting that Hanoi had said that the attack was a
fabrication.”58

Hallin’s study of the Washington Post and New York Times found not only that
most of the sources in the two papers were based only on the information given by
government press contacts and initiated by government officials rather than journalists.
The preferred vehicle was the carefully controlled press conference format or government
authorized press releases. Each of the Times three front page stories on the Tonkin Gulf

Press, 1986), 70-75.

57. Ibid.

58. Ibid.
incident on this day centered around officially initiated events. Hallin points out that officials sources fill a vacuum of authority left by the rise of “disinterested realism” 59

_The “newsworthiness” of the President_ overrides all other priorities when he makes a public appearance, such as when giving an important speech. Hallin reiterates this point made both by Cornwell and Reston that when an issue is related to a Presidential decision, he not only dominates the news, he is the news. The Executive apparatus of government allows the President to exert almost absolute control over his message, its content, and its delivery. Hallin’s analysis also shows that the Executive apparatus significantly influences the way journalists cover a selected Presidential decision and the way the public perceives it. With the Vietnam War, at least at the start, there was almost absolute control of the message by a very strong-willed and some say, stubborn president.

*There is an Absence of Interpretation or Analysis* that generally precludes editorializing in news columns that are concerned with issues of great importance. “But the status of interpretation, what journalist call news analysis, has been ambiguous since the rise of the ethic of objectivity in the 1960s.”60 Adhering to the ethic of objectivity places the journalist in a dilemma, Hallin notes. Journalists have resolved this dilemma by focusing on only the facts that speak for themselves. According to Wicker, the facts that “spoke for themselves” were what the President conveyed to the press, and in particular, his interpretation of what occurred during the Tonkin Gulf incident. It seemed

59. Ibid.

60. Ibid.
that most journalists allowed the President to present one version of the incident without questioning the alleged facts. There were exceptions, however.

Hallin points out that three of the most prestigious journalists of the period, the two Alsops and James Reston, did analyze and editorialize. However, their analyses were derived from close connections with and reliance upon government officials. Hallin asserts that in reality, they served as semi-official voices of government. He concludes that “analytic reporting generally served as one more channel for the transmission of the official view. Therefore, supposedly analyzing the Tonkin Gulf incident, Reston wrote, “. . . the objective of his {the President’s} policy is not to widen the war but to convince the communist that they cannot win the war, and that their sensible course is to negotiate an honorable peace.”61 Reston’s interpretation mirrored the official purpose of the retaliation: “Washington’s response is limited and fitting and his {Johnson’s} administration seeks no general extension of the guerrilla war in Southeast Asia.”62

David Haberstam in his extensive work on the American media, The Powers That Be,63 also reinforces the existence of the close ties between media executives and government officials during the Vietnam War. In a number of chapters, he analyzes the close connections between CBS, the Los Angeles Times, Time Inc., the Washington Post, and officials in the executive branch of government. Haberstam divulges various episodes in which government officials relayed to journalists how dissatisfied both

61. Ibid.
62. Ibid.
Presidents Kennedy and Johnson, at various times, had been with media coverage of the Vietnam War. Kennedy and Johnson utilized one-on-one sessions with media executives and journalists to influence their coverage of the war.

The tendency of the media to *Focus on Immediate Events* is closely related to the low priority American journalism placed on analysis and interpretation during that period. Hallin, as a part of his analysis of the Tonkin Gulf incident, proposes that *New York Times* journalists failed to use the events of July 23, 30 and August 2, 1964 in the Tonkin Gulf to provide a richer context for understanding the reported attacks on August 4, 1964. The omission, according to Hallin, was tied to notions of what constitutes a relevant event. “By the conventions of objective journalism, none of this {the former events} were news in August 1964.”

**President Lyndon Johnson and the Media**

“The Radio and Television Report to the American People Following Renewed Aggression in the Gulf of Tonkin” constituted President Johnson’s first major speech to the American public specifically addressing the crisis in Vietnam. This type of formal dialogue with the American public about foreign policy did not occur until eight-and-one-half months after he had entered office. The President decided to make a short announcement type speech about the Tonkin Gulf incident before the North Vietnamese or Chinese could interpret the attack in a manner that served their own interests. Since

---

64. Ibid.

Johnson was in office several months before he addressed the American public on Vietnam, how did he communicate through the media during the interim?

The Johnsonian philosophy of press relations was one in which the President showed disrespect for the institution, but not disdain for its practitioners. He sought to interact with the press on his own terms, assuming that his actions were justified because he was the president. Johnson surmised that the media required access, but he provided it on his terms, which were radically different from both his predecessors and successors. Johnson, for example, utilized impromptu press conferences to his advantage.

The unplanned news conferences allowed Johnson to dominate the events by limiting in-depth questions because the media outlets would not have time to assemble their experts on particular policy issues. The absence of the experts meant that the reporters present relied on information and versions of events provided by the President. There was no empirical basis upon which to challenge President Johnson during news conferences.

Other techniques utilized by President Johnson to control information about the war included walking news conferences, which were often used when the news media complained that they had not recently met with the President. While walking through the grounds of the White House, the President would dispense information on the important developments in the war to which the government had to respond. The media felt overwhelmed and exhausted as its members attempted to query because he talked excessively, even when he gave one-on-one interviews, reducing the time for questions about Civil Rights, the Great Society and, especially the Vietnam War. Moreover, the

66. Ibid., 83.
media was always irritated with the President because they never knew when a presidential encounter would occur. As a result, they felt obligated to always be in the press room, which was disruptive to their personal lives. In fact, President Johnson’s attitude toward the media was summed up in the following statement: “Reporters are puppets. They simply respond to the pull of the most powerful strings.”

67. Ibid, 77.
CHAPTER IV

A CASE STUDY OF GEORGE W. BUSH AND THE DECISION TO INITIATE THE IRAQ WAR

If this paper were written in a discipline other than political science or history, it would be acceptable, but incorrect, to state that the Iraq War resulted from the 9/11 attacks and the War on Terror. However, it is much more appropriate to note that the War on Terror is a product of many factors, most of which are connected to Middle East politics and present a serious challenge as the United States struggles to maintain harmonious diplomatic relations with oil rich countries in the region. The countries most involved in the War on Terror include, among others, Somalia, Sudan, Pakistan, Iran, Iraq, and Afghanistan. The theological, political, philosophical, and intellectual traditions of each of these nations has played out against efforts to reconcile a positive but generally theocratic and conservative interpretation of Islam, as expressed in the Quran, with the development and adoption of more modern strategies for organizing societies.¹

Without question, access to oil in the Middle East and the War on Terror contribute to the tension between the United States and many Islamic nations. Nevertheless, whether one accepts the clash of civilization thesis, and some astute observers do not, there are different world views between many in the West and believers


73
in Islam. One of those rejecting the clash of civilization thesis is Robert Fisk who is based in Syria and writes for the *Independent*, a newspaper in London. Fisk argues, in a rather simplistic way, that much of the problem between the two civilizations is more basic: a matter of belief. The “Islamic East” is composed, for the most part, of nations of true believers and the West, which is not called the “Christian West,” is a product of the renaissance and Humanism. Those in the West are, for the most part, individuals who have wedded modernism to the tenets of Christianity.

In contrast, Rutheven, citing many theological and philosophical traditions in Islam, is convinced that the root of the problem between Islam and the West is the absence of an Islamic reformation, a movement that would have allowed Islam to adjust to modernism, as did the Age of Reason that grew out of the scientific revolution in sixteenth and seventeenth century Europe. Nonetheless, rejecting the clash of civilization thesis, as Fisk does, cannot ameliorate the fact that there are fundamental differences between the world views of the West and the majority of Muslims and that difference in viewpoints significantly contributes to tensions between the two cultures.

An example that can assist in understanding the differences in world view is the existence of clearly divergent opinions about the connection between poverty and fundamentalism. In the book, *Pakistan: Eye of the Storm*, Owen Bennett Jones speaks directly to this point, focusing on Pakistan, which is an ally of increasing importance in the efforts to wage the War on Terror, especially in Afghanistan.² First, poverty in Pakistan is a growing concern. Although the middle class has grown in Pakistan, nearly

---

one-quarter of the population is classified as poor as of October 2006. The trend was first observed during the 1970s and 1980s and got worse in the 1990s by poor federal policies and rampant corruption. This phenomenon has been referred to as the poverty bomb.

Second, the rise of poverty in Pakistan has been correlated with the rise of Islamic Fundamentalism in many parts of the country. The Pakistani government’s attempts at proposed reforms have been criticized as “weak” and have been associated with an “expedient brand of romance between the establishment and the religious right.” Madrassa education, which is a type of religion infused, doctrinaire vehicle of exposure to the radical world of “Holy Jihad,” is offered to young students on the pretext that such an approach to learning can provide a more superior learning experience than can be found in other types of schools. The majority of students attending madrassas are in poverty because it is their only access to education. The result is often a cadre of willing young terrorists.

Third, the United States and other western nations fighting in Iraq have also blamed madrassas for producing Islamic radicals. In Northwest Pakistan and Northeast Afghanistan, the inhabitants, the Patshun tribe, does not recognize the border between the two countries and is the locus for the production of Islamic radicals, many of whom are trained in the madrassas because the Pakistani upper-class, that controls the government, has refused to provide adequate education for the poverty-stricken masses. In turn, the poverty stricken masses, which constitute two-thirds of the Pakistani population, supply holy warriors for the Iraq and Afghanistan conflicts.
The nexus between poverty and fundamentalism clearly suggest that when there are significant domestic reforms, there will probably be a shortage of Muslims who can be baited into committing acts of terror. The challenge of understanding the Middle East, a section of the world vital to U.S. interests and a central factor in the investigation of presidential prerogative in the Iraq War, has ultimately tested the strength and resilience of U.S. foreign policy.

In discussing the war in Southeast Asia, the researcher described the roles that the Congress, media, and public opinion played or did not play to constrain the presidential decision to initiate war in Vietnam. The organizational model employed focused on the following: the ideology that undergirded U.S. foreign policy, the policy and Constitutional context, the role of Congress, and the media and public opinion, all within the paradigm of democratic theory. The same model will be utilized to better understand presidential decisions to initiate the Iraq War.

**The Role of Ideology and Public Policy in Expanding Presidential Power for the Iraq War**

Since the bombing of the World Trade Center in 1993, followed by the attack on the Twin Towers in 2001, the United States has found itself on the defensive in an ideological, cultural, and military confrontation designated the War on Terror. The antagonistic, proactive ideology that undergirds the War on Terror seems to have replaced the former balance of power, anti-Communist ideology of the Cold War referred to in the previous chapter. In fact, it is ironic that Afghanistan, the current hot spot in the War on Terror, was also the site of the last proxy war between the United States and the

Soviet Union in the closing battle of the Cold War. Whether or not one has replaced the
other, it is clear that the War on Terror now occupies the place in the American political
imagination once reserved for the cold war. However, the nature of the perceived threat
is considerably different even though both conflicts have assumed military dimensions.

The War on Terror is played out against the religious and economic environment
in Islamic countries that may or may not be allies of the United States. While there were
attacks against the United States and its allies prior to the United States invasion of Iraq,
sometimes it seems that the battle against fundamentalist Islam, which knows no
geographical boundaries and can’t be isolated to any one country may become a
quagmire. In spite of the difficulties in fighting a war against such an enemy, the United
States invaded Iraq to formally initiate the War on Terror and to eliminate weapons of
mass destruction (WMDs) that supposedly would be used by Sadaam Hussein to further
his hegemony in the Middle East.

Regrettably for the sacrifice of the soldiers who gave their lives to prove it, there
were no WMDs, which meant that President Bush found himself as Commander in Chief,
directing a war fought by factionalized Muslims, many of whom were inspired in their
anti-Americanism by devotion to a perverted version of Islam. The President also found
himself fielding expressions of doubt by Americans who were becoming restive about the
war. The enemy, it was soon discovered, was not only located in Iraq but throughout the
Muslim world. This enemy was attracted to Iraq by the United States presence, seen by
many of them as an imperialist invasion based on greed for oil. This realization seemed
to have intensified President Bush’s ideological response, which became a war to make
Iraq and other countries in the Muslim world safe for democracy and not necessarily a repository for WMDs.

9/11, the War on Terror, and the Spread of Democracy

While there were several attacks on U.S. installations prior to 9/11, it was the attack on September of 2001 that galvanized the American public and its government around the need to respond to the threats from Islamic fundamentalism. With the exception of the attack on the World Trade Center, other acts of violence occurred overseas, the attack on the U.S. Cole in Yemen and the Ghanan and Tanzanian embassies. However, the attacks on the Twin Towers were perpetrated on American soil and Americans saw the attacks as they occurred, thus instilling a measure of fear and disgust that the nation had not experienced since the attack on Pearl Harbor on December 7, 1941.

The Bush Doctrine and the National Security Strategy of 2002

The attacks on 9/11 generated two substantive responses from the Bush administration: One response was the establishment of the new government agency of Homeland Security to protect Americans against further invasions and attacks. The second response was to declare the War on Terror, which had three specific objectives. The first objective was to eliminate WMDs that could be used by Saddam Hussein and by other terrorists. The second objective was to eliminate the terrorists and destroy their safe havens. The third objective was to make countries that house or might house and train terrorists more conducive to the development of democracy. Each of the foregoing
objectives was spelled out in the National Security Strategy for 2002. The Security Strategy for 2002 embodied the US foreign policy objectives for that year, and also contained what became known as the Bush Doctrine, including its comprehensive response to the War on Terror.

The Security Strategy was not presented as a holistic document but was explained in increments by President Bush during a series of public speeches and formal statements to Congress during 2002. As previously stated, the Security Strategy set the stage for the approach the US would use to meet the challenge of combating terrorism. The Iraq War, conducted initially to eliminate WMDs, is never mentioned in the Security Statement. The absence of Iraq is notable considering that the Security Statement that was made available to the public is comprised of several different documents prepared and presented over several months. The first presentation of the anti-terrorist strategy was in a speech given by President Bush on June 1, 2002. Another is dated March 22, 2002, and a third is dated May 23, 2002.

In spite of its absence in any of the documents that constitute the Security Strategy, Iraq became the focal point of the War on Terror, while Afghanistan, where the terrorists were actually being housed and trained, was treated with less urgency by the Bush administration. The failure to address the terrorist threat in Afghanistan led many observers and members of the public to believe that President Bush's major reasons for invading Iraq were to take the oil reserves of the country, and/or punish Saddam Hussein

---


5. Ibid.
for the attempted assassination of the elder President George H.W. Bush. Whatever the reason, the US diverted its attention from finding and killing terrorists in Afghanistan to fighting a dangerous land war and trying to promote nation building in Iraq\(^6\).

**Implementing the Bush Doctrine**

To lay the foundation for expanding its power to fight the War on Terror, the Bush administration had to address both constitutional and policy constraints as it moved to implement the Bush Doctrine and initiate the Iraq War. Since 1973, the Congress had sought to limit the President’s war powers through the War Powers Act. Central to the Bush administration’s effort to expand the President’s power was its move to legitimate the concept of the “unitary executive” and to modify federal communications laws, which some thought would lead to infringement on individual privacy. Both the Federal Intelligence and Security Act (FISA) and the Electronics Communications Privacy Act (ECPA) had to be replaced by the USA Patriot Act, according to the administration, to further its fight against terrorism. The Bush administration could not strengthen the executive branch nor pass the USA Patriot Act without either the acquiescence or approval of Congress.

**The Role of Congress in Initiating the Iraq War and Confirming the Bush Doctrine**

Some presidents and vice presidents strongly believe in the need to blunt the authority that congress employs to encroach upon the powers and the responsibilities of the office of the president. The reasoning is simple: so that presidents and their

---

administrations are able to effectively serve the American people. In the book, *The Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy* by Charlie Savage, Savage explains how President George Bush and Vice President Dick Cheney were determined to expand the power of the presidency by attempting to permanently alter the constitutional balance of the American government so that their administration and future presidents would have a greater source of power. In this book, Savage describes Vice President Cheney as a man who was determined to expand the powers of the presidency by reducing the authority of congress and the courts and to expand the ability of the commander in chief and his top officials to govern with maximum flexibility and minimum oversight.

The Bush administration relied not only on the concept of the unitary executive to expand presidential power, but as with other administrations seeking to go beyond constitutional limits, it also used precedent. The major precedent upon which recent presidents have relied to justify expanding their powers has been the Youngstown Sheet and Tube case. In 1952, President Truman made the claim that as President he had the authority to prevent workers at the Youngstown Sheet and Tube factory from going out on strike because it could jeopardize the Korean War effort. The Supreme Court agreed with President Truman and since that time, Presidents have used the case as a precedent for extending their own powers, especially during times of war. During the Iraq War, the

---

8. Ibid.
Bush administration also went back to arguments regarding the unitary executive to further substantiate its authority to expand presidential power.

As a practical matter, the notion of the unitary executive has been addressed by the Supreme Court, citing the restrictions of the Constitution. In other words, cases and issues presented by the executive branch have been judged by the Supreme Court as a separation of powers issue. This means that courts have viewed efforts to extend the powers of the executive beyond the boundaries set by the Constitution with a cautious eye (Morrison V. Olson, 487 U.S. 654 1988). A much more in-depth and exhaustive discussion of the constitutional debate on the unitary executive is found in the Harvard Law Review in an article by Calabresi and Rhodes. The authors conclude that their application of a holistic as opposed to alternate methodologies, i.e., the textural approach, for analyzing the Constitution facilitates “the recapture of the Framers’ vision of three competing, co-equal, and coordinate departments-no single one of which was given the exclusive role of maintaining the constitutional plan.”

The position of the Supreme Court concerning unitary executive was no obstacle for John C. Yoo, who argued on behalf of the Bush administration that the powers of the President extended beyond those stated in the Constitution. John Yoo’s justifications for the extension of presidential power were extensively circulated in the articles of law journals, books, and official White House Counsel memorandums. Yoo’s thinking has already been incorporated and cited in this study in the examination of the historical and

constitutional context of presidential war powers, but needs a few words more of explanation.

Indeed, Yoo's more comprehensive argument for the extension of presidential power focuses not only on the power to make war without congressional consent, but the power to infringe on the privacy of Americans in the fight against terror and the power to ignore international agreements approved by Congress, i.e., agreements to protect prisoners of war. In his own words, Yoo poses a philosophical argument for his position on extending the power of the executive. Contrary to his critics, Yoo posits that terror is an act of war and not a criminal act. He disagrees with the notion that only a nation state can commit and act of war. Therefore, he concludes that the terrorists committed an act of war and were not entitled to the civil protections to which the Bush administrations critics claimed the terrorists were entitled. In turn, President Bush had the war authority to treat the terrorists as he did because he reasoned that they were non-uniformed combatants fighting for no country and, as such, were not entitled to the rights granted prisoners under the Geneva Convention, whether the authority was granted by the Constitution or not.

Staying with his philosophical position, Yoo continued to advise the Bush administration to address terror as war and to move to change the communications laws that would allow the government to collect domestic intelligence to more effectively wage the war on terror, even if it meant infringing on the privacy of American citizens.

In addition to the memorandum cited in the previous chapter, other memorandums were issued by Mr. Yoo for the Department of Justice:

- Constitutionality of Amending Foreign Intelligence Surveillance Act to Change the "Purpose" Standard for Searches, September 25, 2001
- Authority for use of Military Force to Combat Terrorist Activities Within the United States, Oct. 23, 2001
- Memorandum on U.S. Citizens Detention by the Armed Forces, June 27, 2002
- Memo Regarding the Torture and Military Interrogation of Alien Unlawful Combatants Held Outside the United States, Released by the A.C.L.U., April 1, 2008.

Yoo was providing interpretations of the Constitution and the use of executive power at the behest of Vice President Cheney who had long believed that the time had come to reverse the flow of power away from the President in all matters pertaining to the executive branch.

In a recent PBS documentary entitled "Cheney’s Law" on the TV show *Frontline,* the intricacies regarding Cheney’s efforts to expand presidential power were publicly unveiled. It is important to note that much of Cheney’s effort is based on his denial of the role of Congress in checking the authority of the President regarding executive matters, including declarations of war.

- The vice president believes that Congress has very few powers to actually constrain the president and the executive branch, former Justice Department attorney Marty Lederman tells FRONTLINE. "He believes the president should have the final word—indeed the only word—on all matters within the executive branch."
- After September 11, Cheney and Addington were determined to implement their vision—*in secret.* The vice president and his counsel found an ally in John Yoo, a lawyer at the Justice Department’s extraordinarily powerful
Office of Legal Counsel (OLC). In concert with Addington, Yoo wrote memoranda authorizing the president to act with unparalleled authority.

In the documentary, when asked about his review of signing documents used by the Bush administration to further assert the President’s authority, Charlie Savage, one of the authors cited in this study in the previous chapter, noted the following:

It was none of Congress’ business what the government did, how it went about it, what the limits of its conduct were. All these matters were solely for the president to decide. So Congress could make laws for the rest of us, but not for the government. The government existed to do what the president wanted it to do at any given moment.\(^\text{11}\)

Only six weeks after the September 11, 2001 attacks on the World Trade Center and the Pentagon, the administration of U.S. President Bush succeeded in pushing Congress to pass the USA Patriot Act. Critics feared that the passage of the legislation signified a major aggrandizement of executive power at the expense of both Congress and the courts.

**Congressional Response**

The Bush administration’s attempts to expand its powers through its War on Terror established the framework for the congressional response. Congress’ response to Bush’s conceptualization of the unitary executive within the context of the War on Terror required a response on two fronts. First, Congress responded to President Bush’s effort to expand his power to fight terror both on the domestic and international fronts. The clearest manifestation of President Bush’s effort to fight on dual fronts was the passage of the USA Patriot Act. Second, and more specifically, on the international front, President Bush presented his arguments before Congress on the necessity to invade Iraq. On October 11, 2002 the bill entitled, *A Joint Resolution to Authorize the Use of United*

\(^{11}\) Savage, *Takeover: The Return of the Imperial Presidency*, 50-269.
States Armed Forces Against Iraq, passed the Senate with 77 votes for and 23 votes against the resolution. It passed the House on Oct. 10, 2002: 296 for and 133 against.

Congressional Reaction to the USA Patriot Act

The Patriot Act, H.R. 3162, passed the House of Representatives on Oct. 24, 2001; the Senate passed the resolution on Oct. 25, 2001. Some members of the Senate expressed uncertainty regarding the constitutionality of the USA Patriot Act. For example, Senators Daschle and Leahy both expressed reservations about the move to revise FISA to more effectively fight the War on Terror. However, on Oct. 12, 2001, Sen. Russell Feingold was the only Senator who opposed the USA Patriot Act. In a situation reminiscent of the Tonkin Gulf Resolution on August 7, 1964, the Senate accepted the views of the Bush administration regarding the necessity and urgency to strengthen the administration’s hand in fighting terrorism by using federal communications laws to ferret out terrorists at home and abroad.

The proposed bill establishing the Patriot Act contained vast new powers for law enforcement, some seemingly drafted in haste and others that came from the Federal Bureau of Investigation (FBI) wish list that Congress had rejected in the past. Senator Russell Feingold, Democrat from Wisconsin, in opposition to the proposed legislation said, “You may remember that the Attorney General announced his intention to introduce a bill shortly after the September 11 attacks. He provided the text of the bill the following Wednesday, and urged Congress to enact it by the end of the week. That was
plainly impossible, but the pressure to move on this bill quickly, without deliberation and debate, has been relentless ever since."\textsuperscript{12}

Feingold cited several areas that he was in agreement with the administration and the bill it proposed. However, he remained adamant in his opposition to those provisions that threatened constitutionally guaranteed liberties:

\begin{quote}
\ldots my focus on the bill, as Chair of the Constitution Subcommittee of the Judiciary Committee in the Senate, was on those provisions that implicate our constitutional freedoms. And it was in reviewing those provisions that I came to feel that the Administration's demand for haste was inappropriate; indeed, it was dangerous.\textsuperscript{13}
\end{quote}

He ended by emphasizing that some of the more constitutionally offensive provisions of the bill had been changed. Again, Feingold was the only Senator to vote against the original USA Patriot Act in 2001.\textsuperscript{14}

Any student of the Constitution and the legislative process must ask, where did the senatorial sage of the Constitution and the longest serving U.S. Senator, Robert Byrd of West Virginia, stand on the USA Patriot Act in 2001? Senator Byrd voted for the Act. It was only in 2006 that Senator Byrd, during the renewal of the USA Patriot Act, said no. According to Byrd in 2006, "The Congress was stampeded, and the values of freedom, justice and equality received a trampling in the headlong rush." He added, "in essence, this legislation has given the government too much power to pry." Now with a long list of complaints against what he says are the Bush administration's overreaching


\textsuperscript{13} Ibid.

\textsuperscript{14} Ibid.
on the war on terror—including a controversial eavesdropping program by the National Security Agency—Byrd is siding with Feingold against the Patriot Act. Byrd says he regrets Voting for the Patriot Act. Table 1 includes the Congressional action or inaction on the USA Patriot act.

Table 1. Congressional Action on the USA Patriot Act by Date

<table>
<thead>
<tr>
<th>Date</th>
<th>Congressional Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 19, 2001</td>
<td>First Draft of Patriot Act Introduced</td>
</tr>
<tr>
<td>October 2, 2001</td>
<td>Patriot Act is Introduced to Congress</td>
</tr>
<tr>
<td>October 2-4</td>
<td>Senators Daschle and Leahy raise concerns</td>
</tr>
<tr>
<td>October 9, 2001</td>
<td>Senator Feingold blocks vote on Patriot Act</td>
</tr>
<tr>
<td>October 24, 2001</td>
<td>House and Senate pass Act without reading it</td>
</tr>
<tr>
<td>October 26, 2001</td>
<td>Patriot Act becomes Law</td>
</tr>
<tr>
<td>June 13, 2002</td>
<td>Members of Congress ask Attorney General Aschcroft about Patriot Act, are rebuffed</td>
</tr>
</tbody>
</table>

Source: The Center for Grassroots Oversight (http://www.historycommons.org/timeline.jsp?civilliberties_patriot_act=civilliberties_patriot)

The attempt by the Bush administration to monopolize war prerogatives under the guise of unitary executive rights is further documented by the fact that by June 12, 2003, twenty-two cities had passed resolutions criticizing the Patriot and Homeland Securitites Act. Another seventy cities had similar resolutions in the works. Further exacerbating the situation was the fact that by February 7, 2003, still another bill, this one entitled the Domestic Security Enhancement Act of 2003 (DSEA), was designed to complement the USA Patriot Act. The DSEA had been developed in secret, that is, without the
knowledge of any members of Congress except House Speaker Dennis Hastert and President of the Senate, Dick Cheney.¹⁵

Clearly, the Bush administration employed its concept of the unitary executive as a tool to avoid Congress as it moved to fight the War on Terror. During the critical period leading up to the invasion of Iraq, October 11, 2001 through March 21, 2003, and despite the Bush administration’s attempts to thwart the will of Congress, the Congress mounted little opposition to legislation that circumvented the intent of FISA through the USA Patriot Act. Unfortunately, Congress’ opposition to legislation initiating the Iraq War to destroy weapons of mass destruction and terrorist access to them was even more tepid.

Congressional Response to the Initiation of the Iraq War

In the months leading up to the actual start of the Iraq War, the Bush administration laid a strong ideological foundation, as evidenced in the National Security Statement for 2002 and the writings of John Woo, to substantiate its claim that war against Iraq was a necessity in order to fight the terror that had been unleashed on the United States on 9/11. However, the weakest link in the administration’s argument was the claim that Iraq possessed WMDs and was consorting with terrorists. On October 11, 2002, the US Congress authorized President Bush to use force against Iraq. In the Senate, the vote was 77 for and 23 against; in the House the vote was 296 for and 133 against.

There were some members of Congress who questioned the presence of WMDs in Iraq as evidenced by the number in each chamber who voted against the resolution to commit US armed forces to Iraq. In spite of a great deal of confusion at the United Nations and in the US over the existence of WMDs in Iraq, President Bush made the removal of WMDs the cornerstone of his terrorist policy in 2002-03, even though it was evident that terrorist affiliated with 9/11 had been trained in Afghanistan. Aside from the rumors that the younger Bush wanted to avenge the attempt on his father’s life by Saddam and that the US coveted Iraqi oil, what actually accounted for the Bush administration’s assumption that it could build a war policy around the presence of WMDs in Iraq? In a situation also reminiscent of the Tonkin Gulf incident, the answer in large part lies with the quality of intelligence.

**Uncertainty of Intelligence**

Perhaps the most intriguing aspect of the Bush administration’s focus on WMDs in Iraq is the path that led the Administration to believe that the WMDs actually existed. The Bush administration’s insistence that WMDs existed is especially interesting considering the fact that the UN inspection teams never found WMDs. It is important to remember that it was the uncertainty of intelligence and President Johnson’s control over information gathering and dissemination that led many in Congress to overwhelmingly support the Tonkin Gulf Resolution. How then did the Bush administration eventually provide the UN with a convincing argument about the existence of WMDs in Iraq audaciously presented in a speech by Secretary of State Colin Powell on February 5, 2003?
The path that led to Powell’s speech at the UN, though ultimately delivered to and accepted because of Powell’s much vaunted credibility, would be ironic if it were not for the terrible consequences. It all begins with an intelligence asset who was code named Curveball by German intelligence officers. Curveball’s story and his role in facilitating the Bush administrations claim that Iraq possessed WMDs is told in a book by the same name written by journalist Bob Drogin of the Los Angeles Times. Drogin’s interviews with the German intelligence officers first generated interest in Curveball’s story.

The process by which the Bush administration became convinced that Iraq possessed WMDs is divided into two parts. The first part traces the way the intelligence regarding the WMDs was assembled and the second part outlines the way uncertain intelligence, in large part from George Tenet, former CIA Director became an important element in the Bush administration’s Iraq policy. In a scenario reminiscent of the Gulf of Tonkin incident, Congress, in the months before the Iraq War, had little access to independent sources of information that would have allowed it to verify the veracity of the WMD claims made by President Bush.

*The Con Man Who Caused a War*

The full title of Drogin’s book, *Curveball: Spies and Lies and the Con Man Who Caused a War*, speaks directly to the problem that intelligence officers had with Curveball’s description of events and conditions with respect to the existence of WMDs in Iraq. Curveball left Iraq and made his way to Germany where he told the German intelligence agency (BND) that he was an Iraqi engineer who had worked in a facility in Iraq that manufactured chemical and biological weapons. He further claimed that the
facility in which he worked was headed by the individual appointed by Saddam to manage the production of biological weapons. Lastly, he provided specific information regarding mobile labs that were used to move the chemicals to different locations. The latter information convinced some receiving the intelligence that the mobile labs accounted for the UN inspector’s failure to locate WMDs. Drogin provides a chronology of events related to Curveball.\(^\text{16}\)

The information provided to German intelligence officials over the course of several months led them to the conclusion that they could not verify Curveball’s information principally because they believed the information had been altered to make themselves seem more credible.\(^\text{17}\) The Germans also allowed an American doctor to test Curveball’s blood to try to determine if he had been vaccinated to prevent illness from Anthrax exposure or other germs used to make weapons. The medical tests were inconclusive.\(^\text{18}\)

American intelligence officers, who were not permitted by the Germans to interview Curveball, accepted the information without any great suspicion. According to Drogin, the German’s doubts would not have mattered.

By mid-2000, the weapon’s analyst back at the CIA and DIA were enamored with curveball’s gripping account, his direct access to the biological weapons manager, his detailed designs, and his meticulous memory. No one \{Americans\} doubted that Saddam was building germ weapons. Curveball was only giving them the proof they needed.\(^\text{19}\)

---

17. Ibid.
18. Ibid.
19. Ibid.
Uncertain Intelligence and Policy Formulation

Assembling Faulty Intelligence

Although the German’s had closed their file on Curveball by 2001 and tried to push him out of Germany, once his story entered the intelligence apparatus of the US, it became an important element in the justification for the US decision to invade Iraq. On August 26, 2002, Vice President Cheney put the nation on alert, “Simply stated, there is no doubt that Saddam has weapons of mass destruction,” Cheney announced. Without naming Curveball, Cheney praised Iraqi defectors as a more accurate source of information than UN inspectors.20 Drogin writes that Bush, Cheney, and Condolezza Rice, at that time, the Secretary of State, continued to exaggerate what intelligence agencies believed or confirmed far overshadowed Curveball’s claims at that time.21

In contrast to Cheney, the top intelligence officer in the US government has stated that he never confirmed that Curveball had provided the government with accurate information about biological weapons in Iraq. According to George Tenet, Director of the CIA in 2002, he never verified that the US had accurate intelligence on WMDs in Iraq or about Saddam’s link to 9/11. In his memoir, At the Center of the Storm, My Years at the CIA, Tenet gives his version of how the faulty intelligence provided by Curveball found its way into US foreign policy toward Iraq and the War on Terror.

Tenet explains that the use of faulty intelligence resulted from the failure of intelligence officer(s) at the European Desk to indicate to him and his deputy John McLaughlin that the information obtained from an Iraqi source, code named Curveball by

20. Ibid.

21. Ibid.
the Germans, regarding the manufacture of biological weapons of mass destruction was questionable.

The mistakes in faulty intelligence culminated in the speech that Secretary of State Colin Powell made to the UN requesting that they support the United States decision to invade Iraq. According to Tenet, the steps leading to the inclusion of faulty intelligence in the Powell speech are as follows:

- It was a great presentation, but unfortunately the substance didn’t hold up. One by one, the various pillars of the speech, particularly on Iraq’s biological and chemical weapons programs, began to buckle. The Secretary of state was subsequently hung out to dry in front of the world, and our nation’s credibility plummeted.

- The German Federal Intelligence Service, or BND, had an Iraqi source named Curveball. Curveball alleged that Iraqi scientist had a biological weapons program located in mobile laboratories that could be moved to evade UN weapons inspectors.

- The BND pointed out to Drumheller that it was not certain the Curveball was telling them the truth. Drumheller said that he was informed about the doubts at a lunch with a BND officer. Drumheller said that he passed the information on to Langley where it was widely known.

- Tenet said that “the information never reached him or Mclaughlin and Tenet explains the steps that should have been followed to process the information once Drumheller became aware of it.”

- What the German had to say at that lunch in late September or early October 2002 should have been immediately and formally disseminated as a matter of record in a report that would have alerted intelligence and policy official to the potential problems with Curveball.

- A second, corresponding formal report also should have been instantly sent across the intelligence and policy communities to analysts and policy makers who had received previous Curveball reporting. The transmittal of these two reports would have immediately alerted experts doing the work on Iraq WMD issues across the intelligence community to a problem requiring resolution.
No such report was disseminated, nor was the issue ever brought to my attention.  

- In April 26, 2005, an *L.A. Times* story admitted not telling me personally about the doubts. However, he said, "Everyone in the chain of command knew exactly what was happening...Literally inches and inches of documentation," including "dozens and dozens of emails and memos," show that warnings had been sent to John McLaughlin’s office and to WINPAC, and that Curveball’s credibility had been seriously questioned in numerous meetings.

- Our senior officer in Germany at the time says Drumheller never apprised him of the luncheon conversation, nor did the Silberman-Rob Commission ever interview him.

- The German BND representative denied calling Curveball a fabricator. He only warned that he was a "single source" whose information the Germans could not verify.  

- A search of CIA records in 2005 revealed that a cable did come into our headquarters from our representative in Germany on December 20, 2002. The cable went to Drumheller’s office for action.

- As far as I can tell, that cable never left Drumheller’s desk in the European Division at Langley. Our senior officer in Berlin was expecting to get a response from me to my German counterpart, because he cabled and e-mailed our headquarters numerous times seeking one. That, too, would be standard protocol. But none was forthcoming. I had never seen the German letter but had simply been told that the German BND had cleared our use of the Curveball material.

- On January 27, 2003, right before the Powell UN speech, our man in Germany sent another cable, this one expressing his own reservations about the source. He did so because he had received no response to his December 20 cable. Curveball’s reporting was problematic and should be relied on only after most serious consideration. That cable was not properly logged into the European desk and had no impact on the assessment of the veracity and use of Curveball’s intelligence.

22. Ibid.

23. Ibid.

24. Ibid.
• I did not believe that there could be any doubt among senior CIA officials at the time that the Agency was depending heavily on Curveball’s information. Why so many opportunities to sound the alarm were missed is a mystery to me. Powell’s speech was one such moment, but there were many others: preparation of the NIE and preparing Tenet’s testimony before Senate Intelligence, Foreign Relations, and Armed Services Committees. But it was not.

• When Drumheller and Tenet did speak directly, both stated that they did not talk clearly and specifically about Curveball.

Tenet clearly denied responsibility for the Bush administration’s presumption that there was sufficient and unambiguous intelligence for claiming that there were WMDs in Iraq. Unlike the Tonkin Gulf incident, Congress had an alternative source of information, other than that provided by the administration. That alternate source was the UN. However, the Bush administration continued to push its scenario for the existence of WMDs in Iraq. It appears that the majority of the members of Congress were more convinced by how the Bush administration presented its arguments than by the proof available to substantiate the argument.

Intelligence and the Policy Apparatus

The faulty intelligence on which the Bush administration relied became the basis for three critical and authoritative documents that many members of Congress apparently found convincing. The first was the National Intelligence Estimate (NIE) for 2002. The second was President Bush’s state of the union address and the third was Secretary of State Colin Powell’s presentation to the UN on WMDs.

25. Ibid.

26. Ibid.
National Intelligence Estimate 2002

It was clear from the NIE of 2002 that the US intelligence community was less than certain about WMDs in Iraq, both nuclear and biological. Further, the NIE makes some claims that the Director of the CIA said were never substantiated. The NIE for 2002 concluded Confidence Levels for Selected Key Judgments in This Estimate:

High Confidence:

- Iraq is continuing, and in some areas, expanding its chemical, biological, nuclear and missile programs contrary to UN resolutions.
- We are not detecting portions of these weapons programs.
- Iraq possesses proscribed chemical and biological weapons and missiles.
- Iraq could make a nuclear weapon in months to a year once it acquires sufficient weapons-grade fissile material.

Moderate Confidence:

- Iraq does not yet have a nuclear weapon or sufficient material to make one but is likely to have a weapon by 2007 to 2009. (See INR alternative view, page 84).

Low Confidence:

- When Saddam would use weapons of mass destruction.
- Whether Saddam would engage in clandestine attacks against the US Homeland.
- Whether in desperation Saddam would share chemical or biological weapons with Al-Queda.

The Axis of Evil

In his 2002 State of the Union Speech, President Bush made his most compelling and coherent argument for invading Iraq. Bush touched on all of the themes that had
been presented authoritatively, although inaccurately in some instances, in a variety of formats. He drew on the information from the NIE and the themes from the National Security Strategy to provide a response to the gut-wrenching events of 9/11. In such an emotional context, and at a time when the US had been one of the few nations victimized by terrorism, most members of Congress shared the president’s compulsion to invade Iraq.

The aspect of President Bush’s speech that generated the most buzz was his use of the phrase the “axis of evil.” The “axis of evil” referred to North Korea, Iran, and Iraq. According to the President, these nations presented a threat to the US because they were sponsors of terror. In fact, there was no intelligence that any of the three nations was a sponsor of terrorist. Therefore, US policy had to be reconfigured to accommodate the “axis of evil.”

For example, Secretary of State Colin Powell instructed his senior officers that they were to make no attempts to reinterpret what the president had said. According to Powell, the President had said “axis of evil” and it was policy.\textsuperscript{27} Similarly, National Security Adviser Condolezza Rice had her speech writers move quickly to revise a speech she was to present to the Conservative Political Action Committee in order to match President Bush’s pronouncements. All three nations in the Axis of Evil issued strong rebuttals to the characterizations given them by the President. “This statement of President Bush is stupid,” the Iraqi vice president said.\textsuperscript{28} The denials of aggression and warnings against invasion conveyed to the administration by the axis of evil probably

\textsuperscript{27} Ibid.

\textsuperscript{28} Ibid.
made it even more difficult, especially in the context of 9/11, for some members of Congress to question the President, in spite of the faulty and uncertain intelligence upon which the claims were based.

**Powell and the UN**

The most perplexing step in the Bush administration’s march toward the Iraq War was the performance of Secretary of State Colin Powell. The Bush administration thought that it was important that Secretary Powell, as one of the more respected members of the administration, make the case before the UN for war against Iraq. Powell was integral to the Bush strategy because of his high profile in diplomatic circles and his experience as a senior military official. It seems that following 9/11, Powell was solidly behind the Bush administration’s policy to stop terrorists. Apparently, it was only as Powell reviewed the intelligence on Iraq that he questioned whether or not the intelligence was as clear and compelling as some of his colleagues thought including Condolezza Rice and Donald Rumsfeld. As he prepared for his UN presentation, Powell wanted to balance his doubts about the intelligence with his knowledge of what the terrorists actually wanted to accomplish.

George Tenet told Powell that the CIA had vetted every sentence of his presentation and that they had not taken the intelligence further than it should go.29 Powell insisted that Tenet accompany him to the UN, apparently to certify the legitimacy of the information that Powell would present. At the UN, Powell proceeded to explain in excruciating detail each of the major points that he made.

---

29. Ibid.
In one of his strongest charges, Powell referred to witnesses who had seen Saddam’s WMDs. Powell affirmed, “We know Saddam is determined to keep his WMDs, and he is determined to make more.”\textsuperscript{30} According to Woodward, “The important element is that it was Powell who made the case.”\textsuperscript{31} Of course, no WMDs had been found.

Even though Tenet told Powell that the speech had been thoroughly vetted to make statements that could only be substantiated by the intelligence, to the CIA’s credit, the reference to the information provided by Curveball was spotted. After reading a draft of the Powell’s UN speech, Margaret the supervisor to Drumheller, to whom Tenet referred earlier, said to Drumheller, “This is Curveball’s shit.”\textsuperscript{32}

Margaret’s anger had been rekindled. According to Drogin, she had had a heated exchange with other CIA officials about the fact that Curveball’s accounts of biological weapons and mobile labs had not been verified. At some point prior to the vetting of Powell’s UN speech, Margaret asked a CIA analyst how she had verified Curveball’s information and her response was “over the internet.” Margaret retorted: “That is also where he got it.”\textsuperscript{33}

Powell had made a convincing but flawed case for the presence of WMDs in Iraq and the argument had been based on uncertain intelligence. The majority of the members of Congress accepted Powell’s argument. However, even though both houses of

\textsuperscript{30} Ibid.

\textsuperscript{31} Ibid

\textsuperscript{32} Ibid.

\textsuperscript{33} Ibid.
Congress went on to pass the resolution to attack Iraq by overwhelming majorities, some members did voice concerns.

**Congress Reacts**

Behind the scenes, members of Congress were presented with information and given briefings that were designed to enhance their support for the Bush administration’s decision to invade Iraq. Congress had no independent sources of information that would have allowed members to more effectively assess the intelligence provided by the Bush administration. The individuals who doubted President Bush’s claim that WMDs were present in Iraq had to question and rely on the Bush official’s response to their questions.

A brief outline of congressional action by its leadership helps to characterize the way the institution reacted in the days leading up to the passage of the resolution to declare war on Iraq: Senator Graham of Florida had been briefed by Cheney, and the briefing left him very troubled.  

Senator Graham was told that a great deal of military effort would be necessary to achieve the objective of changing the regime in Iraq because diplomatic efforts had failed.

- Graham’s reaction?

- "Well, I am unconvinced that going to Iraq is the appropriate thing to do in the immediate future," he said. "And I’ll define the immediate future as being the next two or three years. I believe pursuing this war on terrorism is a very important goal and this could be the swamp that would keep us from accomplishing that goal."

---

34. Ibid.
35. Ibid.
36. Ibid.
• Graham said that, "He {Cheney} sort of glides over the issue of terrorism and unites it with weapons of mass destruction." 37

• Graham asserted that the Bush administration, or at least Cheney, had changed the definition of the war on terrorism. "Now we are defining terrorist states as those states that might have the ability to provide weapons of mass destruction, even if they themselves are not engaged in terrorist activities or providing sanctuary." 38

• Graham and other Senate Democrats pressed the administration to provide a new NIE to more clearly define the threat that Iraq posed.

• On October 2, some senators focused on the larger questions the CIA had not addressed.

• No senator had enough of the picture—military planning details were not provided to the Hill and the CIA plans were highly classified—to frame an effective critique. 39

• Also on October 2, some senators were floating alternative proposals for a congressional resolution that would give Bush less than a blank check.

• On October 8, at least 47 senators were briefed or shown the entire NIE with its key judgment that Iraq "has chemical and biological weapons." 40

_Senator Collins of Maine_ agreed with Colin Powell that unless Congress passed the authorization to use force, the Security Council would find a way to sidestep the issue. 41

_Senator Kennedy of Massachusetts_ said he "... did not believe the administration had made a convincing case that we face such an imminent threat to our security that a

37. Ibid.
38. Ibid.
39. Ibid.
40. Ibid.
41. Ibid.
unilateral preemptive strike and immediate war are necessary. Nor has the administration laid out the cost in blood and treasure for this operation.\textsuperscript{42}

\textit{Senator Kerry}, also of Massachusetts, gave President Bush rhetorical support by stating that Saddam “. . . has a deadly arsenal of weapons of mass destruction in his hands; a grave threat to our security.”\textsuperscript{43}

\textit{Senators Daschle and Feinstein}, who had been vocal critics along the way, in the end voted for the resolution, which stated that the president could use the military under the “necessary and appropriate standard to defend against “the continuing threat posed by Iraq.” Woodard concluded, “It was a blank check.”\textsuperscript{44}

When the Congress approved the resolution to use military force against Iraq, it is clear that none of the critical actors in the Bush administration or Congress had accurate intelligence upon which to base a sound decision regarding Iraq. It is interesting to note that the Viet Nam War was initiated because of poor intelligence based on technology, and the Iraq War was initiated on the basis of faulty human intelligence. Apparently, going to war in the absence of a direct threat to the homeland, which mitigates guessing about intelligence, will always leave Congress at a disadvantage in exercising its control over the executive war-making power. Since Congress was unable to constrain President Bush’s war making power in Iraq, the media and public opinion should have served as a mitigating influence on the president’s war authority.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{42} Ibid.
\item \textsuperscript{43} Ibid.
\item \textsuperscript{44} Ibid.
\end{itemize}
\end{footnotesize}
The Media in the Initiation of the Iraq War

The media and public opinion, as in the case study of Viet Nam, are considered interdependently because of the public’s reliance on the media for information about the US government’s decisions to initiate war. Additionally, the media’s reaction to the government’s decision to initiate war often reflects the public’s attitude toward these decisions. There was no literature that suggested either theoretically or empirically that public opinion serves as a constraint on presidential decisions to initiate war. However, as with Vietnam, once wars are initiated and the costs become evident, public opinion then becomes a factor in how the president tends to manage the war.

Veteran journalist Bill Moyers, who worked in the Johnson White House during the Vietnam War, also reported on the Iraq War. Moyers, in an article entitled, *Buying the Iraq War*, has offered his picture of the media’s role in reporting or not reporting the events leading up to the Iraq War.\(^4\)\(^5\) Taken as a whole, the articles assembled by Moyers clearly indicate that while there were journalists, as there were members of Congress, who seriously questioned the Bush administration’s claims about WMDs in Iraq, the majority of the media gave the administration the benefit of the doubt. Further, there is no evidence that public opinion in any way made the media more vocal in its opposition to the president, or served as a direct constraint on President Bush’s decision to use force in Iraq. The available polling data shows that the public supported President Bush’s decisions and his actions relative to Iraq.

---

In the Vietnam case study, several contexts for understanding the role of the media were outlined: the media as the Fourth Estate, the media in democratic theory versus practice, the media as an objective, yet dependent institution, and media responses in an era of expanded presidential power. With respect to the media performing any potential role as a constraining force on presidential war power, only two of the foregoing seems to have had any bearing on the initiation of the Iraq War. Furthermore, perusal of media coverage and reporting of the Iraq War during that period indicate that the media did not function as the Fourth Estate, and neither did it serve the role attributed to it by democratic theory. In a slightly more positive sense, some members of the media tried to encourage fellow reporters to function as objective observers. In the final analysis, however, the media functioned only as it could in an era of expanded presidential power.

Objectivity and Dependence

The media is best characterized as slightly objective and very dependent, during the lead-up to the Iraq War. Some members of the media did their best to provide objective reporting regarding the Bush administration’s claims about WMDs in Iraq. However, with the exception of the UN report issued December 19, after the passage of the war resolution, journalists did not have access to independent information upon which to base their reporting. Consequently, most of the editors at newspapers throughout the country refused to challenge the Bush administration and chose not to place anti-administration news reports on Iraq where they could easily be noticed. According to Howard Kurtz, the media critic for the Washington Post and the host of CNN’s Reliable

46. Central Intelligence Agency (CIA), The National Security Strategy Briefing.
Sources, “From August 2002 until the war was launched in March of 2003, there were about 140 front page pieces in the Washington Post making the administration’s case for war. But there were only a handful of stories that ran on the front page that made the opposite case, or, if not making the opposite case, raising questions.”

Media Objectivity

From the inquiry about the media and its role or non-role in the Viet Nam War, an informal model about how to assess the role of the media as a constraint on presidential war power was suggested. Hallin in his work, The Uncensored War: The Media and Viet Nam, suggested that the issue of objectivity and dependence is the most critical issue in the media’s effort to evaluate and report on the President’s claims regarding the need to go to war. Hallin pointed out several factors to consider in analyzing the role of media as a constraint: the use of official sources, the focus on the president (substitute executive branch), and the role of interpretation or analysis compared to factual reporting.

A look at the role of the media in the initiation of the Iraq War revealed that objectivity and reliance on official sources greatly influenced the media’s capacity to challenge what the Bush administration was saying about the presence of WMDs in Iraq, the basis upon which the nation committed to war. Prior to the passage of the October 10 and 11 resolutions authorizing the use of force against Iraq, neither Congress nor the media had any reliable alternative sources of information. Obviously, they realized that

47. Ibid.


49. Ibid.
the intelligence was muddled, but they could only question its veracity and were not prepared to challenge it with independently verified information.

Not only was there a problem regarding the media's capacity to obtain objective information from the executive branch, there was also a problem with the objectivity of some leading journalists who entertained a slightly more ideological interpretation and assessment of the presence of WMDs in Iraq. Hallin pointed out that in the lead-up to the Vietnam War, many of the leading journalists were speaking on behalf of officials in Washington, including the highly respected James Reston and the Alsop brothers. Unfortunately, some of today's most influential journalists are not as dispassionate as their journalistic responsibilities require.\(^{50}\)

The journalist who has been singled out as the most offensive violator of the boundary between commentary and the role of facts in that commentary is William Safire. Safire is a retired journalist who writes a column for the *New York Times* along with his Sunday articles on language. Many American journalists took Safire to task, for example, over his claims that there was a link between Al Qaeda and Saddam Hussein.\(^{51}\)

Andrew Christie wrote a cogent article on Safire's failure to present the facts in his commentary. Safire and his editor responded that commentary did not require facts. On September 24, 2001, Safire wrote, "The clear link between the terrorist in hiding (Osama) and the terrorist in power (Saddam) can be found in Kurdistan, that northern portion of Iraq protected by U.S. and British aircraft. Kurdish sources tell me (and

\(^{50}\) Ibid.

\(^{51}\) Ibid.
anyone else who will listen) that the Iraqi dictator has armed and financed a fifth column of Al Qaeda mullahs and terrorists."

As it became increasingly evident that Safire’s claim about the connection between Al Qaeda and Saddam was false, the *New York Times* acknowledged that there were errors in what Safire had written; however, the paper refused to issue a correction. Safire himself went further claiming that what he had written was his opinion and thus commentary that did not require fact. A debate ensued between Andrew Christie and the editors of the Times over the difference between opinionated reporting versus factual reporting, the same issue that Hallin raised about journalistic ethics during the Viet Nam conflict. The outcomes of both wars were similar in that the media was virtually silent at the start of each war, choosing to not to verify or investigate the alleged facts presented by each president, and thus evaded its role as the watchdog for the people.

Subsequent to the start of the Iraq War, many media outlets looked back on their reporting leading up to the war and admitted that they had made errors, but as Bill Moyers said, what accounted for the mistakes in reporting and judgment by the media? In addition to the absence of independent sources, much of the information that the media had access to was the result of a propaganda war waged by individuals associated with the Bush administration. The Rendon Group, for example, headed by its principal consultant, John Rendon, was an independent contractor to the CIA and the Department


53. Ibid.

54. Ibid.
of Defense and was contracted to help the CIA and DOD to manage information on the Iraq War in the US and internationally. According to James Bradford, author of the article, “The Man Who Sold the War: Meet John Rendon, Bush’s General in the Propaganda War,” this organization was responsible for much of the misinformation that was planted both for domestic and international media consumption.\(^{55}\) The fact that a misinformation campaign existed substantiates the point that the media relied on access to information that the government provided either directly from official sources or indirectly from contracted sources. Regardless of its source, however, much of the information upon which journalists based their reports and commentaries were inaccurate. More disturbing, given the high costs of the Iraq War, is that influential journalists, like William Safire prior to the initiation of the war, refused to acknowledge that there were problems with the Bush administration’s claims.\(^{56}\)

Apart from the details that are provided by James Bradford, refuted by the Rendon Group, then rebutted by Bradford,\(^{57}\) below is a summary of the critical facts regarding the objectivity and independence of the media during the Iraq War: Three weeks after the September 11 attacks, according to documents obtained from defense sources, the Pentagon awarded a large contract to the Rendon Group. Around the same time, Pentagon officials also set up a highly secret organization called the Office of Strategic Influence. Part of the OSI’s mission was to conduct covert disinformation and


\(^{56}\) Ibid.

\(^{57}\) Ibid.
deception operations—planting false news items in the media and hiding their origins.

"It's sometimes valuable from a military standpoint to be able to engage in deception with respect to future anticipated plans," Vice President Dick Cheney said in explaining the operation. Even the military's top brass found the clandestine unit unnerving. "When I get their briefings, it's scary," a senior official said at the time.

• Still another newly formed propaganda operation in which Rendon played a major part was the Office of Global Communications, which operated out of the White House and was charged with spreading the administration's message on the War in Iraq. Every morning at 9:30, Rendon took part in the White House OGC conference call, where officials would discuss the theme of the day and who would deliver it. The office also worked closely with the White House Iraq Group, whose high-level members, including recently indicted Cheney chief of staff Lewis Libby, were responsible for selling the war to the American public.

• Never before in history had such an extensive secret network been established to shape the entire world's perception of a war. "It was not just bad intelligence—it was an orchestrated effort," says Sam Gardner, a retired Air Force colonel who has taught strategy and military operations at the National War College. "It began before the war, was a major effort during the war and continues as post-conflict distortions."

• The Bush administration took everything Rendon had to offer. Between 2000 and 2004, Pentagon documents show, the Rendon Group received at least thirty-five contracts with the Defense Department, worth a total of $50 million to $100 million.

• As the acknowledged general of such propaganda warfare, Rendon insists that the work he does is for the good of all Americans. Rendon states, "For us, it's a question of patriotism," he says. "It's not a question of politics, and that's an important distinction. I feel very strongly about that personally. If brave men and women are going to be put in harm's way, they deserve support.”

• Bradford responds, "But in Iraq, American troops and Iraqi civilians were put in harm's way, in large part, by the false information spread by Rendon and the men he trained in information warfare. And given the rapid growth of what is known as the "security-intelligence complex" in Washington, covert perception managers are likely to play an increasingly influential role in the
Clearly, misinformation and propaganda are tools that are always evident in wartime situations; however, what appears to be somewhat unique about the use of propaganda in this instance is the deliberate employment of an organization with the goal of distorting information to fit presidential goals, in this case, the invasion of a sovereign nation. In addition, neither Congress nor the media were strategically situated to access alternative official information sources, and as we now know from the example of the Rendon Group, any information sources to which Congress, and especially the media had access, were likely tainted by the Bush propaganda machine.

Again, we learn from the lead-up to the Iraq War that in an era of expanded presidential power, it is almost impossible for the media and Congress to act as constraints on presidential war power. George Bush and Dick Cheney set out to expand and strengthen presidential power relative to the other branches of government. Their notions of the unitary executive coupled with the Bush Doctrine provided the Bush administration with the tools it needed to make the case for waging war against Iraq and to offset the influence of both Congress and the media as constraints on presidential war power.

Along with the Congress and the media, democratic theory suggests that public opinion should exercise some influence over critical presidential decisions, especially one as important as going to war. However, our understanding of constraints on presidential

---

war power during the Viet Nam War indicates that public opinion played no role during the initiation of the War. In fact, the public was dependent on the information that the Johnson administration provided about the Tonkin Gulf incident, which formally initiated the war against North Viet Nam. Even though the Iraq War began during what has been designated the Information Age, the constraining influence of democratic forces has been severely mitigated by the absence of accurate information from non-governmental sources. Was the public’s influence also diminished during the initiation of the Iraq War?

**Public Opinion and the Initiation of the Iraq War**

In the lead-up to the Iraq War, there is little empirical data that suggests a positive answer to the foregoing question. The Program on International Policy Attitudes (PIPA) at the University of Maryland and Knowledge Networks published a study of seven polls which relate directly to the issue regarding public opinion raised in this study. The polls were conducted January through September, 2003. The thesis presented here draws on the polls conducted January through March, prior to the invasion of Iraq on March 21, 2003. The size of the sample for the period under consideration, January through March, was 4,044. The margin of error for the sample was +/-2-3.5% (The PIPA/Knowledge Networks Poll). Table 2 includes the PIPA poll findings.

---

59. Ibid.


61. Ibid.
Table 2. Public Support for Going to War with Iraq

<table>
<thead>
<tr>
<th>Topic</th>
<th>Date</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Believed there was a connection between Sadaam and 9/11 terrorist</td>
<td>2/3/03</td>
<td>85% believed the connection</td>
</tr>
<tr>
<td>Favored going to war with Iraq</td>
<td>3/303</td>
<td>66% favored going to war</td>
</tr>
<tr>
<td>Favored invading Iraq and overthrowing Hussein</td>
<td>2/3/03</td>
<td>84% favored invading Iraq and overthrowing Hussein</td>
</tr>
<tr>
<td>Believed there was evidence Iraq played a role in 9/11</td>
<td>1/3/03</td>
<td>55% said no evidence but believe it’s true;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13% said there was conclusive evidence</td>
</tr>
</tbody>
</table>


The polling data show that the majority of the American public never really wavered in either its belief that Saddam was connected with 9/11 or in its desire to overthrow him. In light of the success of the initial invasion and the propaganda effort to mislead the Congress and the media, there is little surprise that Americans were heavily influenced by President George W. Bush to accept his explanations regarding the need to invade Iraq. Furthermore, the public, like the Congress and the media, had no alternate domestic sources of information to challenge President Bush’s position on the need for war with Iraq. Finally, the alternate source of information on WMDs was overshadowed by Secretary of State Colin Powell’s convincing but faulty arguments before the UN about the presence of WMDs in Iraq. It is clear that Congress, the media, and the public, according to democratic theory, should have served as constraints on presidential war
authority to initiate the war with Iraq. These three checks and balances instead seemed at
the mercy of the Bush administration in its march toward war, and in Barbara Tuchman’s
words, march toward folly.
CHAPTER V

SUMMARY, FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Summary

A prima facie understanding of the initiation of the Viet Nam and Iraq Wars has been suggested using an approach that examines the provocation, perception, reaction, and motivations associated with each war. Table 3 summarizes the foregoing factors relative to both the Johnson and Bush administrations and the war that each executed. Both wars were precipitated by perceived threats that had little basis in fact communism did not threaten the United States in 1963, and there were no weapons of mass destruction in 2003. The attacks that led to each war also served as pretexts for retaliation. In both wars, an existing or emerging world view was the most salient factor that contributed to war.

Table 3. Factors Relative to the Johnson and Bush Administrations

<table>
<thead>
<tr>
<th>Administration’s Action</th>
<th>Viet Nam War</th>
<th>Iraq War</th>
<th>Source</th>
</tr>
</thead>
</table>
Table 3 (continued)

<table>
<thead>
<tr>
<th>Administration’s Action</th>
<th>Viet Nam War</th>
<th>Iraq War</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perception</td>
<td>The United States felt that they needed to stop the global spread of communism coming from Moscow and Beijing.</td>
<td>The American homeland needed to be defended against terrorism. Therefore, nations who harbored weapons of mass destruction and terrorist must be reprimanded.</td>
<td>Bornet, Vaughn. The Presidency of Lyndon B. Johnson. Lawrence Kansas. University of Kansas Press (1983)</td>
</tr>
<tr>
<td>Reaction</td>
<td>123 American non-combatant troops were sent to help assist France and the associated states of Indochina to assist with supplies and fight against the communist Viet Minh.</td>
<td>American troops were sent into an undeclared war to find Saddam: Hussein and make a regime change and find Bin Laden and the Taliban.</td>
<td>Bornet, Vaughn. The Presidency of Lyndon B. Johnson. Lawrence Kansas. University of Kansas Press (1983)</td>
</tr>
<tr>
<td>Motivation</td>
<td>The U.S and their allies believed they need to defend against the use of armed violence to affect political change.</td>
<td>The need to find weapons of mass destruction and terrorist groups who may attempt to attack the American homeland again.</td>
<td>Bornet, Vaughn. The Presidency of Lyndon B. Johnson. Lawrence Kansas. University of Kansas Press (1983)</td>
</tr>
</tbody>
</table>

Source: Information assembled from the sources in this thesis

However, in the more critical analysis presented here, the historical background behind the specific political decisions that initiated each war were examined. In so doing, the wars were analyzed within the context of the major research question posed: Presidential Power and the Law: What were the factors that led Presidents to exceed constitutional limitations of their authority?
Findings and Conclusions

In terms of their most immediate causes, the factors precipitating the Viet Nam and Iraq Wars, within the context of the analysis presented here, was unrestrained presidential power. The major constraints on American presidential power, the congress, the media, and public opinion, all failed during the period in which the wars were initiated. A comparative analysis of the Johnson Administration during the Viet Nam War and the Bush Administration during the Iraq War indicates that in neither conflict did Congress exercise its own constitutional authority. In spite of the media clamor after the two wars were started, the initiation of both wars did not engender sharp scrutiny or criticism from the media. Similarly, public opinion in America was not adverse to American involvement in Viet Nam or Iraq when the wars started.

Conducive Factors Promoting the Vietnam and Iraq Wars

- Ideology played a major role in initiating both the Viet Nam and Iraq Wars. After WW II and the emergence of the Soviet Union and Communist China, the erection of the Berlin Wall, and the Cuban Missile crisis, U.S. foreign policy was directed at containing communism no matter what the cost. As a result, any dispute with other countries was influenced by the presumed threat of the spread of Godless communism; such was the case with events in Viet Nam. The foreign policy apparatus of the United States, including the Senate Foreign Relations Committee, and later the entire Senate viewed U.S. response to events in Viet Nam through the lens of anti communism.

The Johnson administration ignored decades of history which indicated that the conflict between North and South Viet Nam was part of the broader struggle for self-determination of Viet Nam from France, with the assistance rather than the control of Communist China. The incidents in the Gulf of Tonkin were considered by many U.S. decision makers as evidence that North Viet Nam was a communist aggressor that had to be repelled and crushed. Therefore, formally introducing U.S. troops into Viet Nam through the Tonkin Gulf Resolution was deemed the appropriate response to communist aggression.
In similar fashion, by 2003, after several terrorist attacks against the United States, including 9/11, the Bush Doctrine had become the cornerstone of U.S. foreign policy. The Bush Doctrine enunciated the view that the United States would seek out and attack terrorists in any part of the world, including any country that allowed terrorists a safe harbor. In effect, the United States would attack terrorist, destroy weapons of mass destruction (WMDs) that terrorist might use, and attack countries from which terrorists both operated and hid. Within the context of the Bush Doctrine, Sadaam Hussein’s anticipated possession of WMDs made Iraq a logical target for attack. Additionally, the notion that Sadaam Hussein was associated with terrorist further supported the Bush administration’s desire to attack Iraq.

• Uncertain Intelligence, unfortunately, served as the basis for the decisions made both by the Johnson and Bush administrations to initiate war. For example, President Johnson himself was uncertain whether or not the USS Maddox had actually been attacked by the North Vietnamese in the Gulf of Tonkin. With respect to Sadaam and WMDs, it is clear that the Bush administration had credible evidence, based on refutation of its major intelligence source, Curveball, that it was highly questionable that there were WMDs in Iraq. Yet, in spite of doubtful evidence in the Gulf of Tonkin incident and regarding Iraq and WMDs, decisions were made to initiate war.

• Precedence and constitutional interpretation as factors contributing to the Viet Nam and Iraq Wars have deep roots in American history. It has been widely accepted that the Constitution places the power to declare war in the hands of the Congress. However, by the time of the Civil War, President Lincoln had begun to assume powers that were based on interpretations of authority vested in the Executive branch. By the twentieth century, the further deterioration of congressional authority to declare war occurred as greater reliance was placed on the role of the president as commander-in-chief.

To avoid political conflict with Congress, President Johnson sought its authorization through the Gulf of Tonkin Resolution, although he postulated that he need not actually need it. Similarly, the Bush administration, through its interpretation of the Unitary Executive, argued that it did not need to secure congressional authorization to take extra-constitutional steps to fight the war on terror. In part, because of the turmoil swirling around the need to combat terror, uncertainty about WMDs in Iraq, and the use of the Patriots Act, President Bush wanted congress to approve the invasion of Iraq. To some extent, the major issue that emerges is why didn’t Congress exert its authority to halt both Presidents Johnson and Bush, since they went to congress for approval even though neither thought the approval necessary?
The comparative analysis presented here revealed that congress supported America’s entrance into both the Viet Nam and Iraq Wars. In the case of Viet Nam, the United States House of Representatives unanimously supported the Gulf of Tonkin Resolution and only two Senators voted against the resolution. In the absence of an independent source of intelligence, the Congress was not endowed with the capacity to more accurately determine whether the reported attacks warranted retaliation. A detailed analysis of the debate on Gulf of Tonkin Resolution in the Senate reveals that most senators trusted what the President conveyed to them about the incident and their world view regarding the dangers of communism proved sufficient to overcome any doubts that the majority may have had regarding the accuracy of the information about the attacks by the North Vietnamese.

Thirty-seven years after the Gulf of Tonkin Resolution was passed initiating the Viet Nam War, the United States Congress remained solely dependent on the executive branch for intelligence on making decisions to go to war. The Bush administration told both congress and the secretary of state what it wanted them to know about WMDs in Iraq, the most direct and immediate reason provided to invade Iraq. Although there were more doubts in the Senate about WMDs in Iraq than there had been about attacks in the Gulf of Tonkin, in the end, the Congress approved the resolution to attack Iraq. While the United States Congress had information from the U.N. that cast doubt on WMDs in Iraq, the Bush’s effort to link Iraq to terrorism was successful and most in congress felt compelled to launch war against Iraq.
**Media and Public Opinion**

In theory and in view of the twenty-four news cycle, it would be easy to conclude that the media serves as an effective watchdog over the affairs of government. However, in 1963 and 2003 regarding the Vietnam and Iraq Wars respectively, the media did not serve as a constraint on the use of presidential power that led the nation to war. During the initiation of the Vietnam War, the President controlled information on U.S. foreign policy and the way it was given to the media through press releases, propaganda ridden misinformation and other strictly controlled means of enlightening the public. The media and the public instead both depended upon the executive branch to provide insights regarding the impact of American policy around the world, especially in areas of conflict. The most influential journalists of the period often served as spokespersons for the government in their commentaries on foreign policy. Only rarely did independent voices challenge the government’s interpretation of events that were leading the United States to war against North Viet Nam.

While there were no independent sources guiding public opinion during the initiation of the Viet Nam War, scholars have concluded that on foreign policy, the American public takes its lead from the President. Therefore, the public’s attitude toward Viet Nam in the early stages was colored by the information provided by the President. Considering that the President was in a position to shape the attitude of congress toward the war, there is little reason to assume that prior to 1965, that the American public was opposed in any significant way to U.S. military involvement in Vietnam. With respect to Iraq, the articles assembled by Moyers clearly indicate that while there were journalists,
as there were members of Congress, who seriously questioned the Bush administration’s
claims about WMDs in Iraq, the majority of the members of the media gave the
administration the benefit of the doubt. Further, there is no evidence that when public
opinion contrary to administration policies was finally expressed in any way, that it made
the media more vocal in its opposition to the president, or served as a direct constraint on
President Bush’s decision to use force in Iraq. The available polling data does show that
the public supported President Bush’s decisions and his actions relative to Iraq, though
eventually, as with many members of Congress, positions regarding the war changed.¹

Recommendations

Even though it is clear that the United States Constitution limits the power of the
President to initiate war without congressional consent, both President Johnson and Bush
were able to secure congressional consent, in part, because they influenced congress to
act within a context of uncertainty and often misinformation. Neither President Johnson
at the initiation of the Viet Nam War nor Bush at the start of the Iraq War was certain that
the enemy had taken actions that would threaten American interest or lives. However, in
an atmosphere of uncertainty, both presidents were able to convince congress that
American interests were in danger.

Given the President’s control of intelligence that is often uncertain, political
scientists need to research the practicality of providing Congress with an independent
entity to cross check the intelligence provided by the President. Constitutional scholars
should continue to explore presidential decisions to initiate war by authorizing law that

Press, 1966), 4-5.
force the executive branch to justify decisions to go to war. Further, the extreme
interpretations of the unitary executive, while serving political ends, should not remain
unchallenged, especially when used to justify the initiation of war. The stakes are too
high and the consequences often devastating.

The inadequate scrutiny of the media during the initiation of the Viet Nam War
and the Iraq War suggests that the media has not served the nation well as the Fourth
Estate and in that role, it has not done a sufficient job in informing public opinion, which
was all but absent during Vietnam and tepid during the Iraq War. With all executive
decisions to go to war, the media and the public that it informs should critically assess
those decisions. The media should devote as much scrutiny to executive decisions to
enter war as it does to the execution of war once initiated.

Finally, the focus of research regarding the extra-constitutional use of war
authority should shift to an analysis of what makes congress, the media, and the public so
complicit when war is initiated. The clamor and outcry against war tends to come after
the commitment to fight has been made. It appears that the media and the public, but
especially the Congress are reluctant to be perceived as unpatriotic during times of crisis.
However, it is during times of military crisis that patriotism needs to be demonstrated
through closer scrutiny to decisions which can plunge America into wars that can be too
costly and also too devastating in terms of loss of human life.
BIBLIOGRAPHY

Books


**Internet Sites**


**Journals**


**Public Documents (Government)**