

The Power to Make War: The War on Terror

Byrd Center Teacher Institute Online Workshop Outline

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Length of Session: 45 Minutes

Guiding Question: How has the War on Terrorism changed war powers in the United States Government?

Topic 1: How does the Constitution assign the powers of war to the government?

Overview: The Constitution is equally specific and ambiguous in its definition of war powers. While Congress is given the authority to declare war and oversee the creation and maintenance of the armed forces, the President is given power as the “Commander in Chief” of those same armed forces. This ambiguity has created a fluid interpretation of war powers throughout American history which continues to define the political arena around our present War on Terrorism.

1. The U.S. Constitution, Article I, Section 8 Excerpt
2. The U.S. Constitution, Article II, Section 2 Excerpt
3. Cartoon by Steve Benson, *The Arizona Republic*, 2011

Topic 2: What reasons should we have for going to war?

Overview: The authorization of use of force passed days after the terrorist attacks of September 11, 2001 provided sweeping power to the Executive Branch which had kept the United States in a constant state of war ever since. The unprecedented nature of this authorization changed the traditional argument and procedure used by the American government to declare and conduct war. A comparison to our entry to World War II demonstrates this dramatic change.

4. Resolution Declaring War on the Imperial Government of Japan, 1941
5. Resolution Authorizing Use of Military Force of 2001

Topic 3: Should Congress be the final arbiter of war powers?

Overview: Of the many conflicts the United States has entered during the War on Terrorism, the decision to go to war in Iraq drew considerable controversy. One of the most outspoken critics of the war was West Virginia Senator Robert C. Byrd who not only questioned the President’s motives for entering the conflict but also the Senate’s lack of debate on the matter. His interactions with constituents demonstrate Senator Byrd’s argument that as the “people’s branch,” the Legislative Branch should reclaim its authority in decisions of war.

6. *Byrd’s Eye-View: West Virginia’s Voice in Iraq Debate*, 2002
7. Constituent Letter to Senator Byrd, 2003
8. *On the Brink of War* Speech by Senator Byrd, 2003

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

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

To provide and maintain a Navy;

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

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

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

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

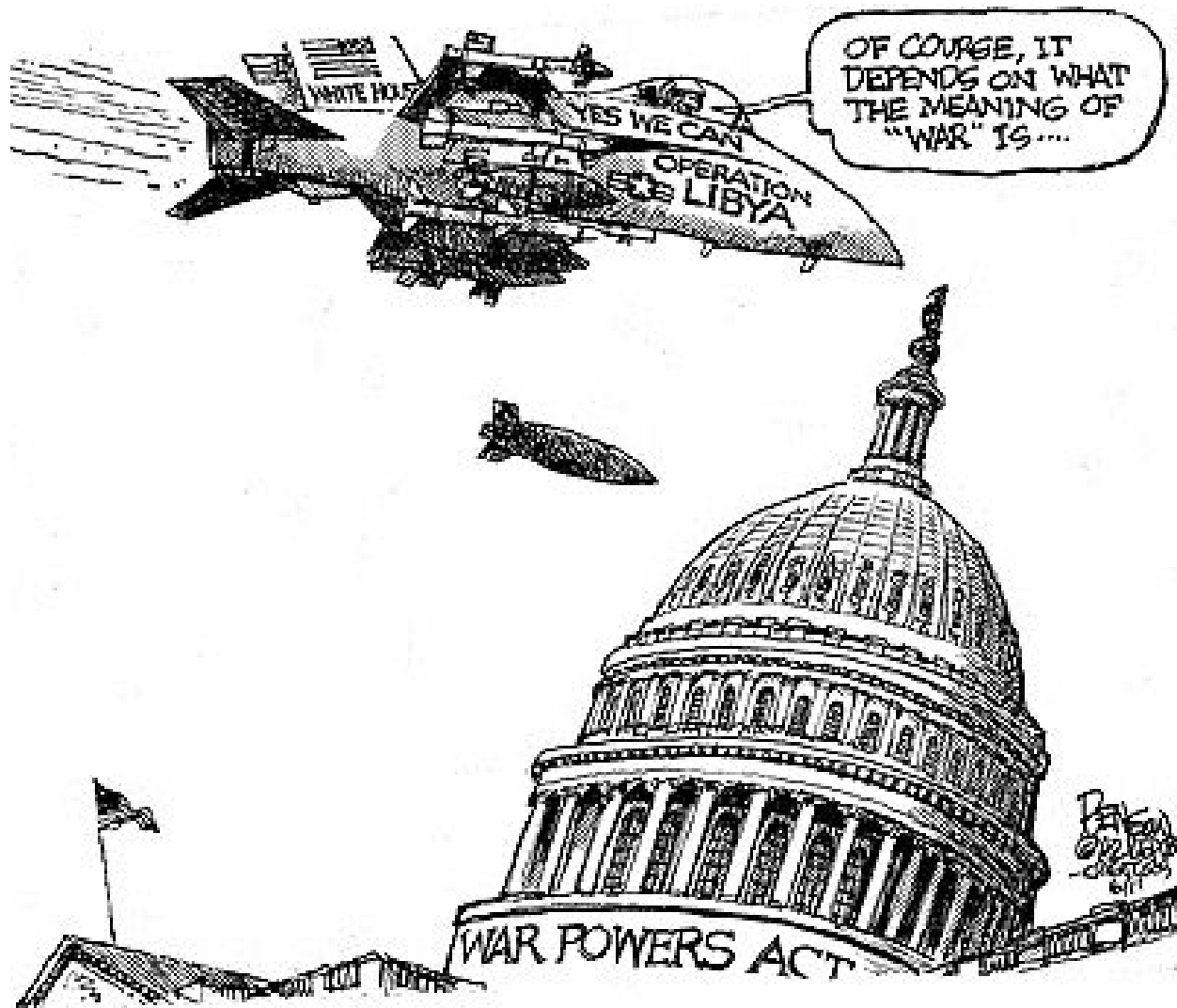
He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Document 3
2011

War in Libya Cartoon by Steve Benson,

Times Educational Supplement Blendspace [[Source](#)]
Originally Published in *The Arizona Republic*



**Seventy-seventh Congress of the United States of America;
At the First Session**

Begun and held at the City of Washington on Friday, the third
day of January, one thousand nine hundred and forty-one

JOINT RESOLUTION

Declaring that a state of war exists between the Imperial Government
of Japan and the Government and the people of the United States
and making provisions to prosecute the same.

Whereas the Imperial Government of Japan has committed unpro-
voked acts of war against the Government and the people of the
United States of America: Therefore be it

*Resolved by the Senate and House of Representatives of the
United States of America in Congress assembled,* That the state of
war between the United States and the Imperial Government of
Japan which has thus been thrust upon the United States is hereby
formally declared; and the President is hereby authorized and
directed to employ the entire naval and military forces of the United
States and the resources of the Government to carry on war against
the Imperial Government of Japan; and, to bring the conflict to a
successful termination, all of the resources of the country are hereby
pledged by the Congress of the United States.

Samuel Rayburn
Speaker of the House of Representatives.

H. A. Wallace
Vice President of the United States and
President of the Senate.

Approved

Dec. 8th 1941 4.10 p.m. E.S.T.

Franklin D. Roosevelt

Public Law 107-40
107th Congress

Joint Resolution

Sept. 18, 2001
[S.J. Res. 23]

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and
Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and
Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and
Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and
Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

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

Authorization for Use of Military Force.
50 USC 1541 note.

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military Force".

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

President.

(a) **IN GENERAL.**—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) **WAR POWERS RESOLUTION REQUIREMENTS.**—

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) **APPLICABILITY OF OTHER REQUIREMENTS.**—Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

Document 6:

Byrd's Eye-View, 2002



Byrd's-Eye View

By U.S. Senator Robert C. Byrd

West Virginians' Voice in the Iraq Debate

In the coming days, Congress, the Bush Administration, and the entire nation will engage in the debate surrounding whether to commit American military forces to battle against Iraq. For a Member of Congress, there is no discussion more somber, no decision more critical as the decision whether to send the nation's sons and daughters to war. It is a decision which should never be left solely to an elite few in Washington. This decision should be studied and discussed by all Americans.

Every West Virginian should play a role in the national debate concerning whether our country should launch an unprovoked attack on Iraq. Consider the crucial questions. Does Saddam Hussein pose an imminent threat to the United States? Should the United States act alone? Should Congress grant the President authority to launch a preemptive attack on Iraq? What would be the repercussions around the globe? These and other questions are not simple to answer.

Without a solid foundation of knowledge upon which to analyze the serious issues involved, Americans will be buffeted this way and that way by spin doctors, by politicians seeking to follow the latest opinion polls, and by talk shows which often have an edito-

rial agenda. Americans should arm themselves with information so that they can cut through the fog, discern the truth, and recognize attempts at manipulation.

The American constitutional system of government has an inherent system of checks and balances which the Framers crafted to keep the American people free and to protect our liberties from being arbitrarily swept aside. The power of the purse, which resides with the Legislative Branch, is the ultimate check on an overreaching Executive and a prime guarantor of the people's freedoms. But there is another power which can serve as a check against abuses by overzealous government officials and that is the power of the informed citizenry -- a citizenry that is well equipped to judge truths from falsehoods. An informed citizenry is essential to preserving a republic such as ours.

This is a nation "of the people, by the people, and for the people." Never in our history has the role of a knowledgeable people been more important than in these turbulent days. An informed citizenry has to participate, ask questions, and demand answers and accountability. It is up to each American to do what he or she can do to provide the all-important check on power -- the wisdom of the people.

September 18, 2002

H PO BOX 215
MIDKIFF, WV 25540

Iraq

5 December 2003

[Redacted]

Charleston, WV 25301

Dear Senator Byrd:

I am writing to commend you for your continued questioning concerning the purpose and consequences of the United States' actions in Iraq during recent months. While many other public representatives supported all-out war, preying on the emotional distress which has plagued the American people since September 11, you instead called for prudence and caution, logic and intelligence.

In the spirit of poet John Milton, I have enclosed a sonnet which I composed addressing your role in recent political debate. I hope you enjoy reading it.

Thank You,

[Redacted]

[Redacted]

MIDKIFF, WV 25540

"He Who Dares to Question"

by [REDACTED] student, Marshall University

Our sons and daughters are deployed to fight
In sandy desert lands far to the east,
DC claims against the terrorist beast
Who threatens our safety. Isn't that our right?
We'll make Iraqi lives more free and bright
Once the fighting and turmoil have all ceased.
Then smug we'll sit and with Iraqis feast,
Our might t'ignite new democracy's light.
But was freedom the sole cause of our war?
Weren't there other factors like oil reserves,
And consequences that were never discussed?
A voice in the wilderness, Senator,
Your outspoken words true freedom preserves.
The important questions to Byrd we trust.

S2268

CONGRESSIONAL RECORD—SENATE

February 12, 2003

playing. Well, he couldn't improve his playing much, but I had plenty of room to improve my own. I always hoped to be as smooth in handling that bow, that fiddle bow as Joe was. He had complete control of that fiddle bow. I don't think I ever got there, but he never stopped trying to help me.

Joe Meadows was not only naturally endowed with a strong and supple bow arm, the good Lord blessed him with a great pair of fiddler hands.

I never have had the pleasure to observe anyone whom I liked to listen to better than I liked Joe Meadows. He had nimble, quick fingers, and he used them beautifully.

The bluegrass and mountain music and old-time fiddling world has lost a great musician. I have lost a good friend. West Virginia has lost a good and gracious son.

My wife Erma and I extend our deepest condolences to Joe Meadows' family and to his many friends.

Let fate do her worst.
There are relics of joy,
Bright dreams of the past
That she cannot destroy.

They come in the nighttime
Of sorrow and care,
And bring back the features
That joy used to wear.

Long, long be my heart
With such memories filled,
Like the vase in which roses
Have once been distilled.

You may break, you may shatter
The vase, if you will,
But the scent of the roses
Will hang, 'round it still.

ON THE BRINK OF WAR

Mr. BYRD. Madam President, to contemplate war is to think about the most horrible of human experience. On this February day, as this Nation stands at the brink of battle, every American on some level must be contemplating the horrors of war.

My wife says to me at night: Do you think we ought to get some of those large bottles, the large jugs, and fill them with water? She says: Go up to the attic and see if we don't have two or three there. I believe we have two or three there.

And so I went up to the attic last evening and came back to report to her that, no, we didn't have any large jugs of water, but we had some small ones, perhaps some gallon jugs filled with water. And she talked about buying up a few things, groceries and canned goods to put away.

I would suspect that kind of conversation is going on in many towns across this great, broad land of ours. And yet this Chamber is for the most part ominously, dreadfully silent. You can hear a pin drop. Listen. You can hear a pin drop. There is no debate. There is no discussion. There is no attempt to lay out for the Nation the pros and cons of this particular war. There is nothing.

What would Gunning Bedford of Delaware think about it? What would John Dickinson of Delaware think about it? What would George Read think about it? What would they say?

We stand passively mute in the Senate today, paralyzed by our own uncertainty, seemingly stunned by the sheer turmoil of events. Only on the editorial pages of some of our newspapers is there much substantive discussion concerning the prudence or the imprudence of engaging in this particular war. I can imagine hearing the walls of this Chamber ring just before the great war between the States, a war that tore this Nation asunder and out of which the great State of West Virginia was born.

But today we hear nothing, almost nothing, by way of debate. This is no small conflagration that we contemplate. It is not going to be a video game. It may last a day or 6 days. God created Earth, and man, the stars, the planets, and the Moon in 6 days. This war may last 6 days. It may last 6 weeks. It could last longer. This is no small conflagration that we contemplate. This is no simple attempt to defang a villain. No, this coming battle, if it materializes, represents a turning point in U.S. foreign policy and possibly a turning point in the recent history of the world.

This Nation is about to embark upon the first test of a revolutionary doctrine applied in an extraordinary way, at an unfortunate time—the doctrine of preemption, no small matter—the idea that the United States or any other nation can legitimately attack a nation that is not imminently threatening but which may be threatening in the future.

The idea that the United States may attack a sovereign government because of a dislike for a particular regime is a radical, new twist on the traditional idea of self-defense. It appears to be in contravention of international law and the U.N. Charter. And it is being tested at a time of worldwide terrorism, making many countries around the globe wonder if they will soon be on our hit list, or some other nation's hit list.

High-level administration figures recently refused to take nuclear weapons off the table when discussing a possible attack on Iraq. What could be more destabilizing? What could be more world shattering? What could be more future shattering? What could be more unwise than this kind of uncertainty, particularly in a world where globalism has tied the vital economic and security interests of so many nations so closely together?

There are huge cracks emerging in our time-honored alliances. One wonders what is going to happen, and about what is happening to the United Nations. One should pause to reflect on what is happening there at the United Nations, formed 54 years ago. And we say: If you are not with us, you are against us. That is a pretty hard rule to lay down to the United Nations. If you are not with us, you are against us. If you don't see it our way, take the highway. We say to Germany and we say to France—both of whom have been around longer than we—if you don't see

it our way, we will just brush you to the side.

Do we fail to think about a possible moment down the road, a bit further on, when we may wish to have Germany and France working with us and thinking with us, standing with us, because there is a larger specter, at least in my mind, looming behind the specter of Saddam Hussein and Iraq. There looms a larger specter, that of North Korea, which has one or two nuclear weapons now, and others within reach within a few weeks. So there are huge cracks, I say, emerging in our time-honored alliances, and U.S. intentions are suddenly subject to damaging worldwide speculation.

Anti-Americanism based on mistrust, misinformation, suspicion, and alarming rhetoric from U.S. leaders is fracturing the once solid alliance against global terrorism which existed after September 11, 2001.

Here at home, people are warned of imminent terrorist attacks, with little guidance as to when or where such attacks might occur. Family members are being called to active duty, with no idea of the duration of their stay away from their hearthside, away from their homes, away from their loved ones, with no idea of the duration of their stay or what horrors they may have to face, perhaps in the near future. Communities are being left with less than adequate police and fire protection, while we are being told that a terrorist attack may be imminent. What about those communities like little Sophia, WV?

Mr. DURBIN. Will the Senator yield for a question?

Mr. BYRD. Yes, I am happy to yield.

Mr. DURBIN. I am happy the Senator has taken the floor today. We have spent most of our time discussing other matters. But this is a critically important matter in West Virginia and Illinois.

I ask the Senator, as a matter of record, if he would kindly recount, since September 11, the efforts he has personally made, as well as speaking on behalf of this side of the aisle in the caucus, to try to bring together the necessary resources and funds so that we can be prepared to deal with acts of terrorism against the United States. We were just alerted this weekend that we were on something called the orange alert. The Senator noted that his wife asked what does this mean in terms of water and protecting our families and our houses.

Would the Senator be kind enough to tell us for the record, as we reflect on whether we are prepared to deal with terrorism, what we have tried to do—unsuccessfully—since September 11 to respond to this challenge?

Mr. BYRD. Madam President, I thank the very able and distinguished Senator from Illinois who is a graduate of the other body where I believe he served on the Appropriations Committee.

He serves on the Senate Appropriations Committee. I need only respond

Additional Resources:

[Congress, the President, and the War Powers](#), a lesson plan from the Center for Legislative Archives at the National Archives and Records Administration

[Nixon and the War Powers Resolution](#), a lesson plan from the Bill of Rights Institute

[Official Declarations of War by Congress](#), primary sources provided by the United States Senate Historical Office