

UNDERSTANDING AMERICA



Who Is Responsible For America's Security?



Edwin Meese III

The *Understanding America* series is founded on the belief that **America is an exceptional nation**. America is exceptional, not for what it has achieved or accomplished, but because, unlike any other nation, it is dedicated to the principles of human liberty, grounded on the truths expressed in the Declaration of Independence that all men are created equal and endowed with equal rights. As Abraham Lincoln once said, these permanent truths are “applicable to all men and all times.” The series explores these principles and explains how they must govern America’s policies, at home and abroad.

About This Cover

The President is responsible for ensuring America’s national security. That includes making the hard decisions of committing American troops and resources to confront threats to our liberty and way of life.

Cover illustration and logo ©2011 by Dennis Auth

Who Is Responsible For America's Security?

The Declaration of Independence announced the sovereignty of the United States and, with it, the “full Power to levy War.” Accordingly, the Constitution’s Framers viewed the security of the nation to be the foremost responsibility of the federal government. That security, history showed, could neither be maintained by committee against pressing and agile threats, nor placed in a single hand. Their solution, as elsewhere, was careful checks and balances involving all three branches of government—but with just one at the fore. Who is responsible for ensuring America’s national security?



Three days after the terrorist attacks of 9/11, President George W. Bush declared to Americans: “I can hear you. The rest of the world hears you. And the people who knocked these buildings down will hear all of us soon.” Ten years later under President Barack Obama, Al Qaeda leader Osama Bin Laden was killed by U.S. Special Forces in Pakistan.



With the memory of the War for Independence still fresh and the fledging nation facing constant threat from foreign powers and Indian tribes, the Framers saw national security as the highest calling of the federal government that they would create.¹ The Articles of Confederation had proved inadequate as they created a weak and ineffectual government. The world’s naval powers were fearsome but despotic, unworthy examples for this great experiment in freedom and democratic self-rule. So the Framers turned to the lessons of history and reason. The balance they struck remains, like our Constitution, unique.

The Constitution vests the President of the United States with the full “executive power” of the federal government. He is named the “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.” So does the Constitution place paramount authority for national security in a single executive.

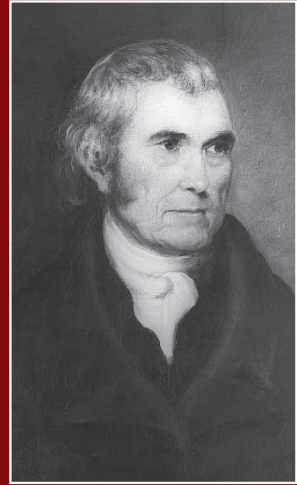
The unbounded delegation of the full executive power stands in sharp relief to the limited and carefully enumerated powers

accorded the Congress. In Article I of the Constitution, its reach is limited to the “legislative powers *herein granted.*” Among them are the powers “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 ... regulation of the land and naval forces”; and to call forth state militias in service of the nation.

In theory, these delegations give rise to a tension between the President and the Congress. The former has ultimate discretion over the deployment of soldiers and nearly all aspects of the conduct of war. The latter holds the power of the purse, by which it may stymie executive initiative. Yet in practice, rather than stand in opposition, the two branches’ respective powers over national security have proved complementary, and rare disputes have been settled in compromise, not duel.

That control of the greatest force ever known to mankind should be governed by compromise for over two centuries would be a miracle if it were not by design.

**“The President is the
sole organ of the nation
in its external
relations,
and its sole
representative
with foreign
nations.”**



© Library of Congress

—John Marshall
March 7, 1800



Soon after American independence, Barbary Pirates began attacking American ships in the Mediterranean Sea. In 1794, President George Washington convinced Congress to build frigates for the U.S. Navy. This enabled President Thomas Jefferson to dispatch American war ships to the Mediterranean in order to end the attacks and protect American commerce abroad.



American Presidents have deployed military force several hundred times in the nation's history. Yet, Congress has declared war only five times, first against the British in 1812 and most recently against the Axis powers in 1941. There is no inconsistency in this.

To “declare war,” as it was understood at the time of the framing of the Constitution and as it has been practiced, is to realign the legal rights and obligations of nations. A declaration of war renders subjects of the enemy power enemies of the United States, who may be forced to choose between departure or capture; it renders enemy property subject to confiscation or seizure; it provides a measure of damages to be paid in any post-war reparations; and it requires American citizens to treat the enemy as such in their affairs.

But to declare war is not to wage war. Placing that power in the legislative branch was an idea that the Framers soundly rejected.

Under the Articles of Confederation, the United States lacked a formal executive, and all war power was vested in the Congress, delegated in some respects to a Department of Foreign Affairs. This arrangement was unworkable. Lacking any unitary executive,

America's foreign policy and defense floundered, as the legislators squabbled and proved unable to reach agreement on equipping a federal army to protect U.S. outposts or to commit the nation to any diplomatic course.

The need for an executive was apparent by the time of the Constitutional Convention in 1787, but the delegates clashed over the necessary powers of the office. James Madison, in particular, turned to the works of political philosophers John Locke and Montesquieu and jurist William Blackstone. All three had, for pragmatic reasons, placed the power to make war and peace, to enter into foreign alliances, and to conduct all other diplomacy, in a single executive. Alexander Hamilton looked to ancient history and the experiences of those states which had attempted to divide the executive power, usually with unfortunate results.

Madison's and Hamilton's views largely prevailed, with but little dissention. One late draft vested in Congress the power to "make war." Madison feared the language too inflexible for the needs of a nation under constant threat of foreign attack to which Congress had proved itself unequal. At his insistence, Congress's power was limited to declaring war; the remainder of the war power would reside in the executive.

This alteration proved contentious in several ratification debates. Patrick Henry accused the Constitution's Framers of all but reinstating a monarchy in America through the centralization of war power in the presidency. George Nicholas, a supporter of the Constitution, explained the fallacy of Henry's claim:

[N]o appropriation of money, to the use of raising or supporting an army, shall be for a longer term than two years. The President is to command. But the regulation of the army and navy is given to Congress. Our Representatives will be a powerful check here.

The President would be nothing less than the full commander in chief of the nation's military, but would be tempered by Congress's exercise of its own powers.

As far back as *Marbury v. Madison*, the Supreme Court recognized that questions of foreign affairs fall within the discretion of the President. Consequently, the only appropriate check on the president's foreign affairs discretion is political and therefore questions of this sort are not to be resolved in the courts. Accordingly, for more than 200 years, the courts properly rebuffed all attempts to seek judgment on the use of force abroad and other overseas

operations. In recent years, however, the Supreme Court has overstepped its constitutional bounds in a series of cases involving detainees in the war on terrorism. The Court's decisions in these cases find support neither in precedent nor in the Constitution.



“That unity is conducive to energy will not be disputed,” Alexander Hamilton observed. “Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number.”

What was true during the founding has proven true in the modern era. At the command of President Ronald Reagan, the first of 7,000 U.S. troops landed on the shores of Grenada on October 25, 1983, to put down a violent coup that threatened to put the country in the Communist bloc and give the Soviet Union a second forward base, after Cuba, in the American vicinity. The invasion was unexpected, and American victory was swift and decisive. It also likely prevented a humanitarian catastrophe, based on reports of mass killing by Communist forces.

“The Founders intended that the President have primary responsibility—along with the necessary power—to protect the national security and to conduct the Nation’s foreign relations.”



© Chris Green

– Justice Clarence Thomas
June 28, 2004



The MQ-1 Predator drone utilizes the latest military technology in service of the President's power, and responsibility, to protect the United States against foreign enemies, be they hostile states or individual terrorists.

Could a deliberative body have acted to protect the nation with similar decision, activity, secrecy, and dispatch? The evidence suggests not. After allowing time for deliberations and debate, the United Nations General Assembly held a vote on the situation in Grenada on November 2, a full week after U.S. forces had landed and days after all resistance had been subdued. By an overwhelming majority, the U.N. expressed its disapproval of the U.S. invasion. Asked his opinion on the vote, President Reagan said, “It didn’t upset my breakfast at all.” The reasons for the President’s calm resolve were obvious. He acted, as he should have, in support of the United States’ interests and to enforce treaty obligations at the request of other party nations.

Though the Framers could never have imagined the events of September 11, 2001, or the terrorist forces that have made America their enemy, they built a republic that could endure and defeat all external threats and prosper. The war on terrorism, being fought against an enemy with few assets and dead aim on soft targets, has only increased the importance of swiftness and secrecy. The President has the power, and bears the responsibility, to make tough decisions at a moment’s notice—whether to trust fresh but uncertain intelligence, bomb an al-Qaeda safe house, target a terrorist for drone

attack, or arrest a terror suspect. These decisions are not subject to legislative check or veto. Nor, in an age where a rogue state or stateless terrorist group may threaten the lives of million of Americans, could they be, if the safety of the nation is to be maintained.

National security comes first; without it, life and liberty are threatened and happiness is an impossibility. Therefore, as James Madison wrote: “Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union.”

Protecting the nation requires a unity of purpose and faculty, and it cannot be devolved to a committee or Congress. The Framers recognized as much, and their wisdom is our strength. The President, first and foremost, is responsible for ensuring America’s national security.



Edwin Meese III is the Ronald Reagan Distinguished Fellow in Public Policy and Chairman of the Center for Legal & Judicial Studies at The Heritage Foundation.

Enduring Truths

For links to these titles, go to heritage.org/UnderstandingAmerica.

- **Alexander Hamilton, *The Federalist Papers*, Essay No. 70, “The Executive Power Further Considered”**

Alexander Hamilton explains the necessity for an energetic, unitary executive to secure republican safety, particularly against foreign aggressors. Vesting the responsibility for America’s national security in a single executive rather than a legislative body best ensures the goals of “decision, activity, security, and dispatch.”

- **Alexander Hamilton, *Pacificus-Helvidius Debates*, Pacificus Number 1, 1793**

The first in a series of debates between Alexander Hamilton and James Madison that discuss the scope of executive power in foreign policy relations. Hamilton argues that while Congress has the right to formally declare war, it is “the duty of the Executive to preserve peace till war is declared.” The President can further the interests of the United States abroad without prior congressional approval.

- **John Yoo, “Energy in the Executive,” April 24, 2006**

American Presidents have deployed military force several hundred times in the nation’s history, yet Congress has declared war on only five occasions. Yoo explains why there is no inconsistency in this. The Framers of the Constitution carefully distinguished a declaration of war from the act of waging war. Congress cannot tell the President how to deploy the military forces it raises and funds, but its control of the purse strings constitutes a powerful check on the President.

Current Issues

For links to these reports, go to heritage.org/UnderstandingAmerica.

- **WAR POWERS. James Jay Carafano, “Libya: How Congress Should Speak to the White House,” June 2, 2011.**

Prior to intervening in Libya, the President did not consult Congress, and his military strategy has since failed to advance U.S. interests. Although the President acted imprudently, he did not violate the Constitution and acted within the powers accorded

to him as commander in chief. In responding, Congress should remain mindful of its obligations to act in America's interest within constitutional bounds.

- **NATIONAL DEFENSE. Senator Jim Talent, “A Constitutional Basis for Defense,” June 1, 2010.**

National defense is one of the paramount responsibilities of the federal government. Former Senator Jim Talent discusses the state of America's defenses and the actions that Congress and the President must take in order to adequately protect America against the ongoing dangers that it faces abroad.

- **SUPREME COURT. Charles D. “Cully” Stimson, “Elena Kagan: Justice Stevens Redux?” May 18, 2010.**

In recent years, the Supreme Court has played an ever increasing role in shaping national security. But it has failed to give proper deference to the commander in chief and has found a constitutionally guaranteed right of *habeas corpus* for terrorists who are under the custody of the United States. Stimson outlines these instances of judicial activism and warns of the threats that such activism poses both to national security and the proper role

of the courts. The Senate must be mindful of these concerns when questioning and confirming a President's appointment to the Supreme Court.

- **INTELLIGENCE. Brian W. Walsh and Todd Gaziano, “Modernize FISA, But Don’t Hobble American Intelligence Operations,” October 16, 2007.**

The highly regarded, bipartisan 9/11 Commission concluded that the failure to detect or prevent the September 11 terrorist attacks was caused in part by major gaps in U.S. intelligence gathering. President George W. Bush exercised the constitutional authority exercised by every American commander in chief and improved intelligence gathering on the activities of foreign terrorists. Congress's attempts to micromanage and thus undermine the commander in chief's constitutional authority to engage in traditional military intelligence gathering activities should be resisted.

Endnotes

- 1 See, for example, *The Federalist Papers*, Essay No. 3, in which John Jay writes, “Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their SAFETY seems to be the first.”

About *Understanding America*

AMERICANS HAVE ALWAYS BELIEVED that this nation, founded on the idea of freedom, has a vital responsibility to the rest of the world. As George Washington first recognized, the “preservation of the sacred fire of liberty” depended on the American people. These words remain true today.

Understanding America explores how the United States’ commitment to the universal truths of human equality and the right to self-government—as proclaimed in the Declaration of Independence—requires a vigilant defense of the cause of liberty, both at home and abroad.

Other volumes in the series:

Why Is America Exceptional?

What Is America’s Role in the World?

Why Does Sovereignty Matter to America?

Why Does Religious Freedom Matter?

Why Provide for the Common Defense?

How Must America Practice Diplomacy?

Why Does Economic Freedom Matter?

Who Makes American Foreign Policy?

How Should Americans Think About Human Rights?

Why Does America Welcome Immigrants?

Read, download, and share the series at
heritage.org/UnderstandingAmerica

Leadership *for* America

Ten Transformational Initiatives

This publication is part of the **American Leadership** and **First Principles Initiatives**, two of 10 Transformational Initiatives making up The Heritage Foundation's Leadership for America campaign. For more products and information related to these Initiatives or to learn more about the Leadership for America campaign, please visit heritage.org.



American Leadership



Education



Energy & Environment



Enterprise & Free Markets



Entitlements



Family & Religion



First Principles



Health Care



Protect America



Rule of Law

Who Is Responsible For America's Security?

“Protecting the nation requires a unity of purpose and faculty, and it cannot be devolved to a committee or Congress. The Framers recognized as much, and their wisdom is our strength.”

Although America's security threats have changed drastically since the nation's founding, the system of government created by the Founders to address them remains relevant. The Constitution creates a careful system of checks and balances between three branches of government, while placing the President at the fore on national security issues. This volume in the *Understanding America* series examines why it matters that the President is primarily responsible for ensuring America's national security.

