

2018

Presidents and War Powers

Matthew C. Waxman
Columbia Law School, mwaxma@law.columbia.edu

Follow this and additional works at: https://scholarship.law.columbia.edu/faculty_scholarship



Part of the [Military, War, and Peace Commons](#), [National Security Law Commons](#), and the [President/Executive Department Commons](#)

Recommended Citation

Matthew C. Waxman, *Presidents and War Powers*, COLUMBIA PUBLIC LAW RESEARCH PAPER NO. 14-610 (2018).

Available at: https://scholarship.law.columbia.edu/faculty_scholarship/2506

This Working Paper is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact scholarshiparchive@law.columbia.edu.

Presidents and War Powers

MATTHEW WAXMAN

Review of Michael Beschloss, *“Presidents of War”* (Crown Books, 2018)

The U.S. Constitution vests the president with “executive power” and provides that “The President shall be Commander in Chief of the Army and Navy,” while it endows Congress with the power “To declare War.” These provisions have given rise to two major questions about presidential war powers: first, what should be the president’s role in taking the country to war, and, second, what are the president’s powers to direct its conduct.

Historian Michael Beschloss’s new book, *“Presidents of War,”* examines how presidents have responded to each of these questions across two hundred years of U.S. history. His account opens dramatically, with President James Madison (something of a tragic figure in the book’s telling) fleeing as a fugitive while British forces proceed to torch the White House in 1814. Beschloss goes on to tell the stories of the seven individuals who have presided over America’s largest wars: James Madison and the War of 1812, James Polk and the Mexican-American War, William McKinley and the Spanish-American War, Woodrow Wilson and World War I, Franklin Roosevelt and World War II, Harry Truman and the Korean War and Lyndon Johnson and the Vietnam War. The book concludes with a brief epilogue relating

those stories to recent and ongoing conflicts, including the war against al-Qaeda and its offshoots which is, after seventeen years of conflict, America’s longest running war.

The major argument of this book is that “the notion of presidential war took hold step by step.” (p. 585) By that Beschloss means that presidents have gradually assumed greater power over decisions to go to war—contrary, in his view, to the constitutional founders’ vision. That is a very familiar story. Although the book does succeed in offering some new insights into how that accretion of power occurred, its more original contribution lies in its depictions of how presidents have handled and managed the tasks of waging war. Those responsibilities for the management and supervision in the conduct of America’s wars have grown more complex as warfare has evolved—and they, too, look nothing like what the founders expected or might even have imagined.

The book also puts an important focus on the interrelationship between these two types of presidential war powers. It highlights the continually shifting relationship between war-initiation powers

and war-waging powers throughout the course of American history.

Taking the Nation to War

That presidents have, since America's founding, asserted and exercised ever wider authority to launch military adventures is a well-known story. Scholars are most likely to associate the general thesis with Arthur Schlesinger's monumental book, "The Imperial Presidency." Beschloss, like Schlesinger, sees this growth in presidential power as gradual and starting very early in the republic's history. This is in contrast to some modern scholars who pin it to the onset of the Cold War and especially Truman's 1950 intervention in Korea without express congressional authorization. Beschloss, too, sees Korea as a significant point in this trajectory, but one that builds on steps taken by previous war presidents like Madison and Polk.

In telling the story of how each figure became a war president, Beschloss avoids sweeping theories. Indeed, the pictures he paints are quite varied. Madison stumbles reluctantly into war, whereas Polk actively and deviously manipulates Congress and the public into it. McKinley is reactive and lacks a clear foreign policy strategy, whereas Franklin Roosevelt adroitly and incrementally moves the United States into World War II, foreseeing grave dangers that the public is not yet willing to confront if he does not. Wilson, though he had theorized as a scholar about the need for presidents to assert broad foreign policy power, showed little appetite to embroil the United States militarily, whereas Truman believed that freedom of military action was important to containing the Soviet bloc. Personal, political, bureaucratic and geostrategic factors all play roles in the stories of "presidential war." This is a phrase that then-Senator Daniel Webster used to characterize the Mexican-American War in 1846 and one that Beschloss adopts to describe prevailing constitutional practice.

Beschloss shows throughout this account that war presidents look to predecessors for lessons—including mistakes to avoid. Most of those lessons seemed to be practical ones rather than reflections about constitutional principle. An implication is that power and constitutional law cannot be meaningfully separated in this area.

Having framed the book in terms of the Constitution, however, I wondered throughout my reading it just how consciously, or conscientiously, these presidents felt obliged to abide by either the founders' design or prior presidents' interpretations of it. Or, for that matter, how consciously they felt constrained by a sense that they were establishing constitutional justifications that would be relied upon by their presidential successors. Because Beschloss is so capable of getting inside the minds of presidents, I would have liked to hear more on this—if, in fact, the war presidents struggled much with these issues.

Take, for example, Beschloss's twist on the usual story of Madison and the War of 1812. Most scholars of war powers, including Schlesinger, characterize Madison as pushed reluctantly into the war by congressional "War Hawks" (thus quickly turning on its head many founders' supposition that presidents would incline toward war while Congress would generally incline against it). Although Beschloss admires Madison as a hero of constitutional drafting, he gives Madison mixed grades in applying the Constitution to war. He is especially tough on Madison's 1812 move to solicit Congress's declaration that war existed with Great Britain. Madison, Beschloss says, designed the Constitution to avoid war except in cases of absolute necessity and with broad public support. By going to Congress for a war declaration in 1812, however, he violated both of those criteria: "By leading his country into a major war that had no absolute necessity or overwhelming support from Congress and the public, Madison, of all people, had opened the door

for later Presidents to seek involvement in future conflicts that suffered from such shortcomings.” (p. 5)

Later in the book, Beschloss reiterates this point, with a distinct emphasis on how actions of a president in a given would almost inevitably create precedents for future presidents and, importantly, thus create over time institutional interpretations of the Constitution:

As one of the chief architects of the American system, Madison knew that the nature of the first major war to be fought under any President would do much to shape how often and how lightly the nation went to war in the future—and that engaging in this conflict would mean relaxing the established standard in Philadelphia. (p. 60)

But we might pause and ask: *did* Madison view it this way, and how exactly did Madison’s actions make it easier for future presidents to lead the country into war?

Madison eases his own conscience about presidential war by asking Congress to declare that a state of war already existed—rather than urging Congress to declare war. Apparently even he—the great constitutionalist Madison—was willing to sidestep constitutional formalities for war when he deemed it expedient. Beschloss’s assessment additionally seems to imply that had Madison resisted the war hawks, the founders’ original vision might have held up better. I question this, though, after reading the book’s later chapters. I doubt, for example, that Polk would have behaved any differently in provoking war with Mexico in 1846, or that McKinley would not still have succumbed to war frenzy against Spain in 1898. It is undoubtedly true that presidents have, over time, engaged in wars for reasons that many founders would have opposed—reasons well short of absolute necessity. But changing thresholds and justifications for war over the very long run of American history

probably had more to do, it seems to me, with expanding national power and broader changes in American foreign policy than with interpretation of constitutional dictates or ethics, including those arising from the supposed weight of precedents.

The two presidents who Beschloss describes as thinking most consciously about the precedents they were setting for successors are Lincoln and Truman. Yet there is more than a bit of irony in both cases. Lincoln, knowing that the Civil War was a unique threat to the Republic, wanted to avoid setting precedent—and, yet, the wartime moves he made have been cited often since then to support presidential war powers. Truman may have been the one most attentive to precedent he was setting—but the precedent he wanted to set ran counter the founders’ vision. Beschloss describes how Truman calculatingly preferred not to get congressional authorization for the Korean War, in part because he believed that the Cold War required less-encumbered presidential agility to use military force. He also describes how Truman, more than other presidents, consulted history to guide him in tough decisions. A predecessor he admired for his presidential initiative was none other than Polk, who stands out as the greatest anti-hero of the book. Truman regarded constitutional architect Madison as weak and indecisive. But he admired Polk because, in his words, he “regularly told Congress to go to hell on foreign policy matters.” (p. 462)

The book’s war presidents agonized about a lot of things in going to war. Constitutional law does not seem to have been one of them.

Directing War

Beschloss laments that the “Founders would probably be thunderstruck” to discover modern presidents’ power to initiate major military conflicts (p. 586). I think they would also be thunderstruck to discover how much power presidents have

wielded in waging war, including vast authority delegated by Congress pursuant to its own expansive war powers. Lincoln wielded wartime powers over the economy, slaves, conscripts and dissenters that would have shocked most founders. Wilson took those types of powers to a new level, and then Roosevelt did so to a greater level still. Although Madison and many founders feared standing armies, Truman built a “permanent war machine.” (p. 434)

This book does a lot to show the many essential elements of the president’s commander-in-chief function. We know generally what the founders did *not* want presidents to do in war—which was to seize tyrannical power. We know relatively little about what they *wanted* presidents to do in conducting war, though.

One virtue that Beschloss emphasizes is some presidents’ ability to maintain control over war strategy, sometimes even against the strong recommendation of military leaders. The chapters on Lincoln stress how that president learned to balance and coordinate Civil War military strategy with political strategy. Beschloss gives significant treatment to Truman’s sacking of General Douglas MacArthur during the Korean War, after the president lost faith in the general’s willingness to follow civilian strategic guidance. And one of the most remarkable, if brief, moments is when President Johnson rejects General William Westmoreland’s planning for possible use of tactical nuclear weapons in Vietnam. These episodes call to mind Eliot Cohen’s terrific book on civil-military relations, “Supreme Command: Soldiers, Statesmen, and Leadership in Wartime,” which argues that the greatest wartime statesmen actively question and even sometimes defy military advice.

Another aspect of waging war in which presidential leadership over time became especially crucial is preparing for and managing the peace that follows. Beschloss astutely highlights this function with the sharply contrasting stories around the

middle of the book: McKinley was caught off guard by the challenges of managing a global empire after deciding to keep the Philippines; Wilson had grand visions for a new international order but failed miserably to build domestic support for it at home; and Franklin Roosevelt laid the military, diplomatic and political groundwork for a postwar order (although that architecture would need to be adapted to the Cold War). As important as they became, these imperative post-conflict aspects of waging war were probably far from the minds of most constitutional founders.

Among the other lessons Beschloss draws is that the best wartime presidents are able to explain effectively war stakes and strategy to the public as well as to match war aims with higher moral imperatives. Here again he points to Lincoln and Roosevelt as models, especially compared to their prior war presidents, Polk and Wilson, respectively. Note, however, that if Beschloss is correct that the founders expected war to be waged only in cases of immediate and grave national danger and only with overwhelming public support, once again, these considerations would not have seemed to them likely priorities for war presidents.

Interlocking War Powers

As these last points suggest, by discussing together both how presidents have taken the nation to war and how they have managed it, Beschloss underscores the ever-shifting relationship between those powers, and how generally the founders intended, or failed to consider adequately, how various constitutional war powers would fit together.

For example, Beschloss emphasizes that a major worry of the constitutional founders was that fame, glory and aggrandizement of power in directing wars might tempt presidents, like “the European despots they abhorred,” to launch them. (p. 586) In other words, power *in* war would affect

proneness to war. This was a weighty argument in lodging the power to declare war—or most would say, more broadly, to initiate war—in Congress. There is some intuitive logic here, although I think many founders under-estimated the problem that wars can result from too little military power or willingness to use it, not just from too much.

Moreover, this arrangement raises another constitutional design question: if the Constitution was designed to ensure that wars would be rare, was it also designed to ensure that the president would nevertheless be an effective wartime leader in those rare instances? The founders seem to have given relatively little thought to that latter question, perhaps because they expected the first president to be George Washington—by far the best wartime leader available. And they did not expect it to matter very much so long as they got the former issue right (that is, by designing the Constitution to help keep the United States out of wars to begin with).

But the United States has engaged in many wars, and Beschloss's book is a reminder that in the most important wars of survival—the Civil War and World War II—the United States had its most superb wartime leaders in Lincoln and Roosevelt. Was that just luck? It is hard for me to give much credit to constitutional design for this, especially given that in neither case was each elected by a public interested in war, Lincoln was a dark horse candidate altogether, and Roosevelt became a war

president while serving longer than many founders likely would have approved.

Finally, although “Presidents of War” argues that many constitutional constraints devised to avoid war have been gutted over the course of American history, the war presidents it depicts are rarely war-mongers like those the founders most feared. With the exception of Polk, none of the featured presidents sought war. Some came out publicly glorified, but all the war presidents of this book were tormented and damaged physically and mentally by the pressures of war. They were almost all reluctant commanders-in-chief.

Does that mean that the constitutional design has somehow succeeded—whether because of or despite accumulating war powers in the presidency? My own intuition—one reinforced by this book—is that the American Constitution generally deserves much credit for the nation's security and prosperity over time, but that the declare war clause and formal powers to initiate war have always been less important to that story than other still more basic constitutional features.

Matthew C. Waxman is the Liviu Librescu Professor of Law and the faculty chair of the National Security Law Program at Columbia Law School.

Cite as: Matthew Waxman, *Presidents and War Powers*, (Nov. 15, 2018) <http://lawfareblog.com/presidents-and-war-powers/>.