



The American President and War Powers: Combatting views

Curriculum Unit 12.03.08, published September 2012

by Sonia Henze

Overview

Every good Civics student knows the U.S. Constitution sets up a system of representative government with three separate branches: legislative, executive and judicial. The intent was to have each branch manage a particular portion of the government. Article II of the constitution gives a brief and limited outline of the powers of the president of the United States. Several powers are clearly enumerated, such as Chief of State, Chief Executive, Commander-in-Chief and Chief Diplomat. Many other duties have been added through the course of 44 presidents and are considered roles of tradition. I wonder if the average American stops to consider how one person takes on so much responsibility? They will when the election nears.

In recent years the American President has become Chief of the Party, Voice of the People, Protector of the Peace, Manager of Prosperity and World Leader. In *The American Presidency*, Clinton Rossiter sees these added roles as in competition or conflict with each other. ¹ According to Rossiter, "he is all these things all the time, and any one of his functions feeds upon and into the others." ² So, the modern American President must balance Commander-in-chief with Protector of the Peace. This task has become much more daunting in the atomic age and throughout the Cold War.

Woodrow Wilson reminded us in 1885, long before he reached the presidency, that "the Constitution in operation is manifestly a different thing from the Constitution of the books." And nowhere is this more visible than in the area of presidential power. ³

As public school teachers, we struggle to cover content and develop life skills in a time equivalent to the average sit-com. Students study the seven roles of the president in Civics and connect the theory to practice in 11th grade United States History. In past years I have led my students through an exercise where they rate the presidents based on criteria they develop. Students consider character, morals, leadership traits, and military experience. One area that seems to carry more weight is "ability to act in a crisis" and ultimately strengthen the executive office. No one event can make a president more popular than war, especially when he wins.

When Americans criticize the government, the president is the one person open to attack since most people closely associate the executive branch with the power of the United States government. The question of power in the American political system is often taught through separation of powers and checks and balances.

The reality is that we have elected 43 men to the highest office in the land and each has conducted the executive branch according to their own interpretation of the Constitution. The White House website lists head of state, head of government and Commander-in-Chief several times before explaining specifics.

"To whom belong the powers of war and peace? The question has divided American from almost the moment the Constitution was ratified." ⁴ There was much debate at the Constitutional Convention regarding the nature of the presidency, but few arguments over who would control the military. Commander-in-Chief was clearly given to the executive. It was colonial custom to endow the governor with commander in chief powers. ⁵ Despite the fear of making the executive too powerful, most Founders agreed the system of checks and balances would keep one man from using the military for his own gain.

This unit will guide students in 11th grade through an examination of the powers of the executive branch with careful analysis of the president's war powers. Primary documents are used to set up arguments for and against the expansion of presidential prerogative. The spirit of the Common Core Standards for Language Arts and Social Studies is conveyed via rigorous document analysis, a close reading of the U.S. Constitution and skill building in line with the Advanced Placement program. The hope is to persuade public school students to gain an interest in the military actions of presidents since the passage of the War Powers Act in 1973. Comparing Barack Obama to other presidents allows students to participate in our democratic traditions while formulating their own opinion about the balance of power in our Republic.

Rationale

This review of American Government content and practice is an attempt to connect the American ideals from ninth grade Civics through eleventh grade U.S. History. Pittsburgh Public students study an introduction to government through a course called Civics: Be The Change. Students have a say in their education by engaging in debates in the classroom. Ninth graders show their knowledge through service projects, volunteer promotions, and roundtable discussions. The PPS Social Studies curricula connects year to year by grouping students and retaining the same teachers for at least two years. This looping program is successful in boosting student achievement through mutual trust and responsibility. This unit reminds students of the separate branches and duties of the federal government in a quick review of the 9th grade Civics topics that are critical for AP U.S. success. The function of the executive branch is a backdrop for a discussion of how power is delegated to the president and how authority is maintained in the federal government. The goal is to interest 11th graders in a more advanced study of American Government and Politics (AP) they can take in 12th grade, with confidence.

This unit fits with the current revisions of the Advanced Placement U.S. History course by the College Board. I will start my class by introducing various interpretations of the modern presidency. By posing questions on the constitutionality of the presidential war powers, students will practice critical thinking skills, develop writing at the AP level, and express their points of view through oral arguments. This unit is also geared toward boosting minority achievement within the class and on the AP U.S. History exam. When students ask questions around documents and seek answers of their peers, they begin to function at a college level. With an understanding of American Constitutional ideals, and the ability to recognize how they are practiced, students are better able to work their way through standardized exams. I have found working with documents promotes student achievement at a faster rate than just sticking to the textbook.

My students will have completed a close examination of the Federalist and Anti-Federalist papers in a prior unit where they explore problems with the Articles of Confederation and debate if the U.S. Constitution should be ratified in 1787 or rewritten to include the Bill of Rights before final acceptance. This unit may review some of the language of Federalist 67, 69, 74 and 75 in limited detail. Students should have a general understanding of the balance of power so they can question how and why it has expanded.

It is often taught that members of the constitutional convention debated whether the U.S. should have a standing army. Some Founders feared that maintaining a large army would drain resources and the new America would have the same problems the British had with the colonies. Others worried that a powerful military could rival civilian governments, and some feared having a standing army would prompt us to use it. What gets little attention in High School American History is the management of the U.S. military and the consequences of these actions on the three branches of government.

When I began this unit, I started with a belief in the presidential prerogative; the president can do what he thinks is best for the nation. After all, he is the president! My research has guided me to a wealth of government documents surrounding the president's decision to send troops to protect Americans domestically and abroad. The rationale behind these decisions is more telling of the American political system than the executive merely exercising his power as commander in chief.

Why Should Students Care About Presidential War Powers?

On March 19, 2011 President Obama acted as Commander in Chief by sending the U.S. Military to engage in Allied air strikes against Libya. Reports said over 100 Tomahawk missiles were fired at targets in Libya while 11 U.S. Navy ships lined the coast. The Pentagon claimed the operation was to enforce the UN no-fly zone and support NATO agreements. The press coverage that followed read like a lesson in Constitutional Law. A reporter for the Boston Globe claimed the president needed Congressional approval before acting, while a team from the Washington Post claimed he could act alone. ⁶

Supporters of President Obama say he was within the realm of the executive duties as prescribed in Article II of the U.S. Constitution by acting as Commander in Chief. Critics argue he unlawfully expanded the executive branch by usurping the power of Congress to "make war" which is clearly delineated to the legislature in Article I. (The Activities section of this unit includes an exercise with president Obama's speech.)

This debate over the use of war powers by the executive has been an important part of American foreign policy in recent years. The understanding of most Social Studies texts is that the presidential power is limited, or necessarily "checked." "The president and the military forces under his command, could employ troops and ships only in cases of emergency, to repel foreign invasion as a defensive measure to protect American citizens and property abroad." ⁷ This unit attempts to clarify the debate concerning presidential power in a way that will allow students to question authority in an academic arena and draw their own conclusions about the American Presidency.

Objectives

After completing this unit, students should be able to discuss the origins of war powers in the Constitution and examine several presidential decisions to use military force abroad. Students will describe the process involved in presidential decision-making by using modern examples. They will write an analysis of events surrounding the Tonkin Gulf incident in 1964 and evaluate the decisions made by President Johnson's Administration that led to their request for the Gulf of Tonkin Resolution. A discussion of the War Powers Act may involve the Senate debate and President Nixon's veto as examples of "checks" in the legislative process.

Analyzing documents across time will allow students to reach their own interpretation of these events and their significance. The goal is to get students to understand the process by which historians use declassified materials to understand how interpretations of events can be modified. Students should gain an appreciation for the historical process throughout this unit.

A Note on the Common Core Standards

Language Arts and Social Studies Standards emphasize analyzing, evaluating, and then critically writing about a historical piece by using evidence and information from the text. This kind of rigorous work aligns with college and work expectations. A great deal of time must be devoted to teaching students how to investigate and analyze historical writing before they can do it successfully on their own.

In a teacher-coach model, students will master the objectives through independent research and group discussion. Students will discover the meaning of a document through the words of its author, the point of view, and the directed audience. Students will examine the vocabulary of the text, discern how its arguments are constructed, and analyze what is or is not said in the document. Students will hone essays to include writing in various styles using information from the documents as evidence.

Essential Questions

Throughout this unit students will be exploring some guiding questions. Why did the founding fathers structure the Presidency in the manner that they did? What did they intend the role of a president to be? What are the formal and informal powers of a President? How does the president use these powers to influence foreign affairs? How has the role, as well as the power, of the Presidency changed over time? Is the president too powerful? What do the American people expect from their President?

Background to War Powers

Conflict is defined by the Oxford English Dictionary as a "prolonged armed struggle, a state of mind in which a person experiences a clash of opposing feelings or needs, and a serious incompatibility of principles or interests." The most recent iteration-the war on terrorism- has stimulated further debate and puzzlement

regarding the sharing of powers among the branches. ⁸

War has been a concern for all American Executives as many presidents assumed office during trouble times and made avoidance of war a key focus. The few who have formally declared war went through the constitutional process of asking Congress for, and obtaining, an official declaration. Some have seen it as their presidential prerogative, while others view it as a mandate from the people.

U.S. Constitution

The Constitution breaks down the war powers by listing what the executive can do in Article II and what the bicameral legislature can do in Article I. "The power to direct war and peace never fit neatly into the tripartite division of the executive, legislative and judicial powers that the framers used to order the political world," according to Richard Ellis. ⁹

Article II - Formal Powers of the President

History tells us the Founders were wary of too much concentration of power in one person since they had just thrown off the rule of a tyrannical king. At the Constitutional Convention it became clear a central leader was needed, so they took care to structure the executive branch in a way that would maintain a balance of power. The function of the president is laid out in Article II, Section 1 of the U.S. Constitution with a simple directive, "the executive power shall be vested in a President of the United States of America." This allows the president to carry out the laws of the land but does not say how he or she should do so. Much of what the American President does evolved from implied powers.

Clarification of executive duties concerning military powers, diplomacy and appointments appears in Article II, Section 2. The section begins, "the president shall be commander in chief of the army and navy of the United States, and of the militia of the several states..." This phrase is commonly perceived as a way to have the military under the control of an elected civilian to prevent a dictatorship. Section 2 also implies that the president may execute or carry out laws as he sees fit since, "he shall have power to grant reprieves and pardons." With regard to foreign policy, "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..." Most presidents now make agreements with foreign countries, which do not need approval from senators.

The Constitution is a guideline for the presidency. Each man who has been elected to the executive office has made the position his own. A closer look at the Constitution reveals a more deliberate intent of the Founders. Article II states, "the executive power shall be vested in a President of the United States of America" while Article I reads, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." This wording insures separation of authority and action in a democracy. One can interpret the vesting of powers to the president to be similar to a monarchy, with the sole individual able to exercise their own discretion. George Washington established the first three Cabinet positions with few complaints, as it seemed logical to have Secretaries of the Treasury, State and War to run the government.

Article I

Louis Fisher, prominent Constitutional author, believes war powers are enumerated in Article I. He shared his position with Congress many times in the past five years. Fisher argues, "Under the Constitution, the ultimate authority to control the deployment of military force lies with Congress. That principle is the bedrock of our

governmental system." ¹⁰ He claims more power to "make war" has shifted to the executive branch and away from the rightful place in the legislative branch in the past sixty years. Fisher has addressed Congress often in the past five years to compel the legislature to take on what he sees as their duty, making war.

Article I, Section 8 of the U.S. Constitution grants Congress the power to "declare war," to "raise and support armies" and to "provide and maintain a Navy." These are often presented to students as the delegated powers of Congress or responsibilities not given to any other branch. In addition, Congress has the power to "make all laws necessary and proper for carrying into execution the foregoing powers..." This elastic clause grants Congress the ability to pass legislation that will further allow them to do their job. Often considered loose construction, this clause was not listed under the powers of the executive. (Art.I:8:18) Article II gives the Senate the ability to ratify treaties and play a part in foreign policy, but it does not give the president elasticity to make laws or change the direction of Article I.

The delegates of the Constitutional Convention had a brief discussion to change one key phrase in the draft. Instead of empowering Congress "to make war," the legislature was given authority a "to declare war." The executive maintained the ability to be commander in chief. Most delegates at the Constitutional Convention agreed that the war powers should stay with the Congress, but they also passed a motion, "leaving to the executive the power to repeal sudden attacks." This wording caused trouble for Barry Goldwater in the 1964 presidential election and remains open to various interpretations since president Truman sent American troops to Korea.

It is clear the war powers are enumerated in both Articles I and II. The Constitution grants Congress the power to "declare war" and raise and support armies yet the president has exclusive power to wage war and command the army in war and peacetime. The Founders must have intended a collective military action with the president and Congress acting in conjunction with one another.

President Washington's Neutrality Proclamation Causes Debate

General George Washington was an obvious choice to be the first president among the members of the Continental Congress. Some scholars even say the office was molded in part by Washington's demeanor and Revolutionary War experience. The Founders looked to him as a natural leader "The absence of any debate in the federal convention over the commander in chief clause is arguably further evidence that the framers did not imagine it to be an expansive grant of power..." ¹¹ They did not expect the first president to be the start of controversy over the roles associated with the executive office. Yet, several Founders found problems with Washington's Proclamation of Neutrality in 1793 and start the first of many debates on the rightful distribution of power. ¹²

In writing a Neutrality Proclamation, Washington acted as Chief Diplomat. He recognized the state of war between Great Britain and France and their allies, then adopted the role of Protector of the Peace with his decree to stay out of the conflict. Washington's goal was "to adopt and pursue a conduct friendly and impartial towards the belligerent powers", but he warned Americans to not aid or abet "hostilities against any of the said powers." ¹³ This neutrality proclamation was official and within the powers of the president, but there was evidence of public talk against neutrality and pressure for politicians to respond. This discourse led a Federalist, Alexander Hamilton, to publicly support Washington's plan. ¹⁴

Hamilton's first letter in support of Washington's proclamation seems a bit paranoid. "The language in the confidential circles is that the constitution of the United States is too complex a system," he states, almost

worried of another convention. Hamilton feared ambitious leaders who think the Constitution, "requires to be simplified in its structure, to be purged of some monarchical and aristocratic ingredients which are said to have found their way into it and to be stripped of some dangerous prerogatives, with which it is pretended to be invested." This talk by Hamilton may have led the Federalist to consider Alien and Sedition Acts while the Anti-Federalists rallied around free speech and individual liberties.

Pacificus

Hamilton wrote a second piece under the pseudonym "Pacificus" to defend, not only the President's policy, but his constitutional right to do so. His belief is in the president as Commander in Chief requires war powers, which "of necessity belong to the executive department to exercise the function in question" ¹⁵ Article II vests significant powers in the president as the executive, which may implied but are still significant.

Pacificus I was written in defense of President Washington's proclamation of neutrality. Hamilton, Secretary of the Treasury, stepped to the president's defense of the policy and the constitutional right to issue a proclamation. He refuted claims that the treaty was without authority, contrary to other treaties and unnecessary. He claimed the power was rightly suited in the executive branch as, "a correct and well informed mind will discern at once that it can belong [neither] to the legislature nor judicial department." Hamilton makes the argument, "It must then of necessity belong to the Executive Department to exercise the function in question—when a proper case for the exercise of it occurs." Hamilton saw the power of "keeping peace" as an executive privilege under the treaty making authority. He quoted Article II, "executive power shall be vested in a president", a line he approved in his Federalist 74.

Hamilton believed "sound construction" would give power to the executive under the general clause as he sees great difficulty in complete enumeration of all executives duties. In other words, Hamilton had no trouble with a loose interpretation of the constitution that gives the president general war powers to be determined at the time of office.

Hamilton used the language of the "mode of expression" to complete his inference. When describing Article I he quoted "all legislative powers herein granted shall be vested in a Congress of the United States." This he compared to, "the executive power shall be vested in a president of the United States." ¹⁶ He called the enumeration "as merely to specify the principal articles implied in the definition of executive power, leaving the rest to flow from the general grant of that power..." Hamilton believed in separation of powers with each branch having separate and unique duties restricted only by what is mentioned in other branches or specifically limited. Believing the executive can be the Protector of the Peace, Hamilton said it was the duty of the executive to preserve peace until war was declared. He thought the executive had a right to make treaties and a treaty was law so the executive must enforce the law. For Hamilton the wisdom of the constitution prevailed. "It is the providence and duty of the executive to preserve to the nation the blessings of peace. The legislature alone can interrupt them by placing the nation in a state of war." ¹⁷

Helvidius

After much encouragement from the Anti-Federalists for someone to counter Hamilton, James Madison wrote five essays under the name "Helvidius." This documented feud between Madison and Hamilton led to the creation of the first political parties. At the center of this fight was the belief in strict constructionist interpretation of the constitution opposed to loose constructionist or implied views. Madison's reply to Hamilton is directed at the role of foreign relations in the executive branch. Madison believes the power to

declare war lies in the legislature, as enumerated in Article I, this exclusive power includes the right to assess the necessity to go to war or to stay at peace. In this line of argument, Madison negates the power of the President to proclaim the nation's neutrality.

Madison attacked the Federalist and supporters of Washington's Neutrality Proclamation by calling them secret monarchists, declaring "several features with the signature of Pacificus were [as of] late published, which have been read with singular pleasure and applause by the foreigners and degenerate citizens among us, who hate our republican government and the French Revolution." He hopes to clarify what he sees are inconsistencies with the wording of the constitution and the actions of the first president. Madison demanded that Congress, not the president, had full authority over all foreign affairs not enumerated in the Constitution. He sees the president without any legislative power, but purely executive, "the two powers to declare war and to make treaties, it will be impossible not to see that they can never fall within a proper definition of executive." He showed his belief in strict constructionist that became a hallmark of the Anti-Federalist Party, recent champions of the Bill of Rights.

James Madison takes a detailed approach to the enumeration of executive authority. He argues here that the power to declare war and make treaties can never fall within the definition of executive powers. The author reminds the reader of separate powers. "The natural province of the executive is to execute laws, as that of the legislature is to make laws. Therefore all executive acts must presuppose the existence of laws to be executed. To say that the making of treaties, being substantially of a legislative nature, belongs to the executive is to say that the executive possesses a legislative power. The power to declare war is subject to the same reasoning." ¹⁸

Madison reminds his readers of what Alexander Hamilton said in Federalist No. 75 about the process of treaty-making: "The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world to the sole disposal of a magistrate, created and circumstanced, as would be a president of the United States." ¹⁹ The great debate over who governs starts with the constitutional convention and heats up with the constitutional test of Washington's Proclamation of Neutrality.

President Lincoln's Use of War Powers

The first three presidents had to consider military action against the Barbary Pirates and James Madison asked Congress for a declaration of war against Great Britain in 1812. The first president to expand the war powers was the 16th, Abraham Lincoln, since he was in office at a time of unprecedented change. Before Lincoln was inaugurated, seven states voted to leave the Union, and four would follow. In 1846 Lincoln criticized president Polk for making war with Mexico, "whenever he shall deem it necessary" which led to a censure of president Polk by Congress in 1848. ²⁰

The American Civil War changed forever the way presidents would view the Constitution, since "it is during this war that the question of executive prerogative became most salient, both then and to generations of historians..." Lincoln knew his presidency was truly extraordinary from the outset as he was not on the ballot in seven southern states and secession had occurred prior to his inauguration. In using prerogative, he did so constitutionally, but only because the situation was, in fact, extraordinary: "The constitution is not its application in all respects the same." It is different "in cases of Rebellion or invasion, involving the public safety" than it is "in times of profound peace and public security." Lincoln thus broadened the habeas corpus clause, claiming that the Constitution allows whatever strong measures are necessary for its preservation.

They are "good medicine for a sick man." ²¹ After some thought, he asked Congress to sanction his actions, and they passed legislation retroactively authorizing his action.

President Lincoln wrote a letter to the Speaker of the House on July 15, 1862 to keep the members in attendance until he finished drafting the Confiscation Act. The members of the House did not adjourn and passed Lincoln's Confiscation Act on July 17, 1862. Without this, the draft of the Emancipation Proclamation would not have followed. In every case, president Lincoln wrote an explanation to justify his actions as what he saw as within the guidelines of the Constitution. ²²

Lyndon B. Johnson and War Powers

President Johnson was sworn into office under unusual circumstances. Kennedy had just died from a fatal gunshot and Americans were spellbound. The Cold War was raging and there were legitimate fears of another great war starting from the Cuban Missile Crisis. President Kennedy considered asking Congress for a declaration of war but resolved the crisis through a strong assertion of executive power as both chief diplomat and commander in chief.

Gulf of Tonkin Incident

The crisis in Southeast Asia was a foreign policy concern of three presidents before Lyndon B. Johnson. His predecessor, JFK, provided American weapons and increased American military advisors from 700 to 16,000 in the previous three years. For six months LBJ dispatched State Department officials and military experts to South Vietnam. Their recommendation was to add 6,000 more advisors to aid the South Vietnamese in their fight against the Communist North to uphold the policy of containment.

On Sunday afternoon, August 2, 1964 three North Vietnamese patrol boats fired upon the USS Maddox which was on routine patrol. The Maddox quickly returned fire. Air support and the destroyer C.Turner Joy were sent to support the Maddox. President Johnson's advisors met and agreed to issue a stern warning to the North Vietnamese of the "grave consequences which would inevitably result from any further unprovoked military action against United States forces." Two days later there appeared to be another attack, but the aircraft disappeared from radar swiftly and no boats were detected in close proximity to the Maddox. Robert McNamara, Secretary of Defense, did not want to wait for the Maddox to do a complete evaluation; he concluded there was sufficient evidence of an attack. ²³

The gulf of Tonkin incident is described in the House of Representatives Committee on Foreign Affairs document as follows:

On Aug 2, 1964, the U.S. Department of Defense reported that three North Vietnamese PT boats had fired at the U.S. Destroyer Maddox while it was on a routine patrol 30 miles off North Vietnam. Three days later it announced that another engagement had been fought between the Maddox, the destroyer C.Turner Joy and North Vietnamese vessels, again in international waters. Both attacks had occurred in the Gulf of Tonkin.

Following the second attack, President Johnson asked for and received the support of Congress in the Vietnam conflict. The congressional approval was formally "A joint resolution to promote the maintenance of international peace and security in Southeast Asia." ²⁴

Gulf of Tonkin Resolution

In August 1964, President Johnson was given reports of attacks on U.S. Vessels in the Gulf of Tonkin, off the coast of North Vietnam. Congress quickly passed legislation to authorize the use of armed forces. This huge grant of authority, what is often called a "blank check", to the president was seen as a key step in LBJ's escalation of the Vietnam War. This overseas conflict eventually drove Johnson from office and prepared the way for the War Powers Resolution of 1973. ²⁵

While President Johnson was taking advice from his Secretary of Defense he lamented privately to a friend, Senator Richard Russell of Georgia, that Vietnam was "the biggest damn mess I ever saw." Johnson did not want to send American men to fight in Vietnam, but he had to uphold the promises of past presidents to not let the dominoes fall. ²⁶ Congress deliberated for one day on a policy to maintain peace and security in Southeast Asia. They developed the following resolution to approve president Johnson's use of force to support the Southeast Asia Collective Defense Treaty in conjunction with the U.N. Charter and the U.S. Constitution: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." ²⁷

Congress Issues a Check -The War Powers Act

The joint resolution that came out of the 91st Congress was "to fulfill the intent of the framers" while checking the power recently bequeathed the executive. The act requires that the President shall in every possible instance consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement is clearly indicated by the circumstances. ²⁸

Section 3 of the act requires the president, in every possible instance, to consult with Congress before introducing United States armed forces into hostilities. The next section sets guidelines for reporting specific cases "in the absence of a declaration of war," the president must continue to report to the top leaders of the House and Senate.

Section 5 is the main section for Congressional action to supersede the executive. It sets further limits on the president's use of troops without a declaration of war to 60 days, unless the Congress declares war, it then extends the time period an exception would occur if Congress is unable to convene.

The next three sections of the resolution list specific ways of reporting, procedures for discrepancies and interpretations of the joint resolution. The last sections show the support of two-thirds of the House and two-thirds of the Senate.

Richard Ellis believes, "the 1973 War Powers Resolution attempted to limit the president's power to send troops abroad, has been drenched in acrimonious controversy. Presidents from Richard Nixon on have refused to comply fully with the law because they see it as an unconstitutional infringement of presidential power." ²⁹

Strategies

Instead of starting the year with Peter Stearns, "Why Study History?" the students will begin a political discussion to guide their thinking throughout the year. The obvious connections between the actions of the president and historical trends will not come easily for my students, but they will start to inquire if the president can do whatever he wants in the post-Watergate era. When they are able to frame their own argument, they will have a better understanding of how historians work and begin their own historical inquiry.

This unit aims to enrich government knowledge for any student willing to challenge themselves with an Advanced Placement (AP) course. The goal is to close the achievement gap by encouraging minority students and other groups to participate in an exciting AP U.S. History course that will bridge the gap from 9th grade Civics and increase enrollment in 12th grade AP US Government & Politics. Students will refresh their knowledge of presidential powers from previous years to stay consistent with a looping model. The class will cover several conflicts which compel the U.S. President to deploy troops along with the conflict around the origin and legitimacy of executive power.

After careful consideration of the documents, students will combine their analytical skills into a forum. By arguing if the president should have taken certain actions, students must exercise high-level critical thinking skills. Hopefully, they will gain study skills for research and summation of complex texts. This practice can be initiated with the teacher providing materials once and then modeling research methods to the class.

The Pittsburgh Public Schools use an inquiry approach for many Social Studies courses. Students are encouraged to discover material on their own, and share their findings both inside a small group and within a larger forum. This student collaboration yields questions for further investigation while encouraging the learner to be responsible for their own education. Recent articles in various media focus on President Obama's achievements with anti-terrorism, support of an equitable healthcare policy and campaign rhetoric. Since war talk often sells newspapers, the president's expansion of executive war powers is a current hot topic but not one of consensus. I plan to encourage students to consider varying viewpoints regarding the presidential use of war powers.

This unit will rely on *The Evolving Presidency* by Michael Nelson as a key resource for teachers. This collection includes a variety of primary sources and important documents for the highest office in the land. Chapter 7 of Richard Ellis' book, *Founding the American Presidency*, has a section on war and peace with readings and questions.

Students may need to practice techniques for reading a document, recording key aspects and drawing conclusions before they get comfortable with this approach. It may be helpful for students to look up words they do not know and try to decipher the meaning from the time they were written. Teachers may want to use the Cornell Notes system with Articles I & II of the Constitution and the selected documents.

This unit will examine the power of the executive to "make war" with or without a formal declaration. Themes from the College Board will be woven into strategies and lessons. American Identity (American Exceptionalism), Globalization and War and Diplomacy are the AP U.S. themes pertinent to this topic. Critical thinking in Social Studies often includes document analysis. This unit will examine many government documents: The Gulf of Tonkin Resolution(1964), The War Powers act (1973), *Pacificus #1* (June 29, 1793) & *Helvidius #1& III* (Aug 24 & Sept 7, 1793) and President Obama's Address on Libya 2011.

http://whitehousetapes.net/clips/1964_0803_4633/index.htm (These Covert Operations: President Johnson and Secretary of Defense McNamara talking after the first attack of U.S. Ships in the Gulf of Tonkin)

Activities

Here are several started questions that may be used as formal assessments upon completion of the unit. Today the president controls much of the American military and foreign policy. Is this contrary to what the Founders believed? Discuss.

If a new constitutional convention were to be called today, how would you rewrite the war powers? Which Articles or Clauses would you change? Would you alter the commander in chief clause to make it clearer? Would you be precise about the scope of executive power as it relates to foreign relations and military policy?

Former Secretary of Defense, Robert S. McNamara wrote a book about what he learned working for presidents Kennedy and Johnson. Director Errol Morris turned McNamara's book into a movie in 2003, *The Fog of War*. The documentary has McNamara in tears as he talks about the destructive force the U.S. levied against several countries under his guidance. I suggest using *The Fog of War* DVD, lesson 6 Get the Data and Lesson 7 Belief and Seeing are Often Wrong. These clips show the struggle to gather information during wartime. They also depict the quick pace at which decisions are made by the men in charge, showing little time to consult Congress.

The Original debate - Pacificus/Helvidius

Students can examine the language of the Pacificus letters and draw their own conclusions. They should highlight and look up words they do not know prior to a class discussion. Working in groups, students can counter Hamilton's arguments with something fitting for the time period, before they read Helvidius. Teachers may want to divide the class with one side reading Hamilton and the other side reading Madison. This will have to be a concise quick read so there is time for collaboration. It may be wise to keep the names and dates off the original work so the students do not go on the internet. They may need to move around the room to avoid the other group, and then the students can decide how to present their replies (perhaps 4 minutes to talk and listen to others and 2 minutes to respond). To involve all students, some can write on the board while others speak, or look for more evidence. Remind students that the Constitution has been ratified and George Washington is in office.

Rigorous Questions

Compare Hamilton's views in the Federalists Papers and Pacificus. Has he changed? How? How do you account for the different arguments?

Is Madison's position as Helvidius consistent with his views at the constitutional convention? Are there inconsistencies between 1787 and 1793?

Current Debates

On exercise is to have students take one of the following quotes and argue from the position of the author. I

like to give students with a conservative point of view a liberal quote and encourage them to defend what they personally do not agree with. This allows all students to put themselves in someone else's shoes. Of course, they may state their own point of view after they give a summation of the key points. Another technique is to read the quote and have students gather in one area of the room if they agree, one area if they do not agree and a middle ground for the indecisive. Students will be excited to move around and interested in seeing who agrees with them. Point of view, an important tool for the AP exam, can be taught this way. Some students may come to class with a quote that was taken out of context. This is a great opportunity to talk about reliable sources and the importance of primary documents.

"President Obama is facing criticism that crosses the political divide for not seeking Congressional authorization before ordering the American military to join in attacks of Libyan air defenses and government forces." ³⁰ New York Times, March 21, 2011

"My request for congressional support did not, and my signing this resolution does not, constitute any change in the longstanding positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution."
President George Bush, The White House 2002

"the time has come to determine whether we continue to place most of our eggs in the sanctions basket...[which] would possibly avoid the risks and costs of war, or whether we raise the pressure on Saddam by pressing ahead on both the military and diplomatic tracks." George H.W. Bush, October 30, 1989

Works Cited

Brewer, Garry D., and Martin Shubik. The war game. Cambridge, Mass.: The Rand Corporation , 1979.

Brinkley, David. "Lyndon Johnson." In Brinkley's beat: people, places, and events that shaped my time. New York: Knopf, 2003. 55-66.

Dallek, Robert. Hail to the chief: the making and unmaking of American presidents. New York: Hyperion, 1996.

Fisher, Louis. Constitutional conflicts between Congress and the President. Princeton, N.J.: Princeton University Press, 1985.

Fisher, Louis. Presidential war power. Lawrence, Kan.: University Press of Kansas, 2004.

Hess, Gary R.. Presidential decisions for war: Korea, Vietnam, the Persian Gulf, and Iraq. 2nd ed. Baltimore: Johns Hopkins University Press, 2009.

Irons, Peter H.. War powers: how the imperial presidency hijacked the Constitution. New York: Metropolitan Books, 2005.

Monk, Linda R.. The words we live by: your annotated guide to the constitution. A Stonesong Press book 1st ed. New York: Hyperion, 2003.

Morris, Errol, and Robert S McNamara. The fog of war. S.I.: Columbia Tristar Home Entertainment, 2004.

Nelson, Michael. The evolving presidency: landmark documents, 1787-2008. 3rd ed. Washington, D.C.: CQ Press, 2008.

Silkenat, James R., and Mark R. Shulman. The imperial presidency and the consequences of 9/11: lawyers react to the global war on terrorism. Westport, CT: Praeger Security International, 2007.

Stern, Gary M., and Morton H. Halperin. "Constitutional Constraints: The War Clause." In The US constitution and the power to go to war: historical and current perspectives. Westport (Conn.): Greenwood, 1994. p.29-54.

Westerfield, Donald L.. War powers: the president, the Congress, and the question of war. Westport, Conn.: Praeger, 1996.

Appendix A

Resources

Simulation: To Intervene or remain isolationist

<http://learning.blogs.nytimes.com/2003/04/07/intervene-or-interfere/?scp=1&sq=intervene%20or%20interfere?&st=cse>

<http://foreignaffairs.house.gov/110/lob041008.htm>

Jules Lobel, University of Pittsburgh Law School

<http://www.teachablemoment.org/high/dronewarfare.html> Obama bombing Libya <http://www.teachablemoment.org/high.html>

<http://www.loc.gov/law/help/war-powers.php> Library of Congress resources

Ackerman, Bruce. The Decline and Fall of the American Republic. Cambridge, Mass. The Belknap Press of Harvard University. 2010. Opinionated essays from the Tanner Lectures on Human Values. Presidential expansion of power is seen as part of a greater constitutional crisis. Explores concerns with the war on terror.

Brinkley, Alan and Davis Dyer, ed. The American Presidency; The Authoritative Reference. New York, NY: Houghton Mifflin, 2004. Print. Enlightening essays on every president through George W. Bush authored by different experts.

<http://teachingamericanhistory.org/ratification/timeline-essfed.html> Essential Federalist Papers

http://avalon.law.yale.edu/sept11/cr_010.asp George W. Bush Congressional approval to carry out war on terror

<http://americanhistory.si.edu/presidency/5a2c.html> Smithsonian interactive

<http://www.gpo.gov/fdsys/pkg/GOVMAN-2009-09-15/pdf/GOVMAN-2009-09-15-Pg5.pdf> US government manual with the Constitution

<http://whitehousetapes.net/content/classroom/> access to actual presidential recordings

Links to all letters and debate <http://teachingamericanhistory.org/library/index.asp?document=429> Constitutional Convention Debates

Endnotes

1. Clinton Rossiter. *The American Presidency*. P. 40
2. Clinton Rossiter. *The American Presidency*. p. 41
3. *The Presidency and the Constitution: Cases and Controversies* p.
4. Richard Ellis, ed. *Founding the American Presidency*. P.154
5. Richard Ellis, ed. *Founding the American Presidency* p. 158
6. David B. Rivkin Jr. and Lee A. Casey, *Why our Libya strikes don't require congressional approval*, *Washington Post* March 24, 2011. *Obama should have obtained Congress' approval on Libya* March 22, 2011
7. Peter Irons. *War Powers*. p. 27
8. Peter Irons. *War Powers*. p. 28
9. Richard Ellis, ed. *Founding the American Presidency* p. 155
10. Louis Fisher "Historical Survey of the War Powers and the Use of Force" 14, chapter 1 in *The U.S. Constitution and the power to go to war*. Gary Stern and Morton Halpern, eds.
11. Richard Ellis, ed. *Founding the American Presidency* p. 159
12. Washington Neutrality Proclamation
http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1910&chapter=112540&layout=html&Itemid=27
13. *ibid*
14. Printer's Proof of Washington Neutrality Proclamation 2 May 1793
<http://www.gilderlehrman.org/collections/34be8efd-b894-4e98-9825-038171444880>
15. Richard Ellis, ed. *Founding the American Presidency* p. 174
16. Richard Ellis, ed. *Founding the American Presidency* p. 174
17. Richard Ellis, ed. *Founding the American Presidency* p. 175
18. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1910&chapter=112550&layout=html&Itemid=27 Helvidius # 1
19. *ederalist* 75 <http://constitution.org/fed/federa75.htm>
20. Gary Stern, Morton Haplerin. *The U.S. Constitution and the Power to go to War*. p. 18
21. B.A. Kleinerman. *Lincoln's Example: Executive Power and the Survival of Constitutionalism*. *Perspectives on Politics*. Dec 2005 Vol 3/ No.4, p.807
22. Lincoln Papers <http://www.lincolnstudies.com/documents/04041864.html>
23. Gary R. Hess *Presidential Decisions for War*. P. 86
24. Donald Westerfield. *War Powers; The President, The Congress and the Question of War*. p. 2
25. Louis Fisher. *Presidential War Power*. 2nd ed.
26. Gary R. Hess. *Presidential Decisions for War*. p . 84
27. <https://www.mtholyoke.edu/acad/intrel/pentagon3/ps12.htm>
28. http://avalon.law.yale.edu/20th_century/warpower.asp
29. Richard Ellis, ed. *The Founding of The American Presidency* p. 155
30. <http://www.nytimes.com/2011/03/22/world/africa/22powers.html>

<https://teachers.yale.edu>

©2023 by the Yale-New Haven Teachers Institute, Yale University, All Rights Reserved. Yale National Initiative®, Yale-New Haven Teachers Institute®, On Common Ground®, and League of Teachers Institutes® are registered trademarks of Yale University.

For terms of use visit https://teachers.yale.edu/terms_of_use