5

War Powers and American Empire

Late nineteenth-century America was more divided than ever over the nation's role in the world. The United States was already a latent superpower; at the century's turn, it had one of the largest populations and the world's largest economy. But militarily, it was, at best, a secondary player.[1] It could afford to be. With the devastation of the Civil War in the past, the country faced no grave and immediate threat to its survival that would test the boundaries of war powers.

For the era's biggest U.S. conflict, the 1898 Spanish–American War, Congress's power to declare war again failed to serve as the brake many Framers expected. More importantly, the central constitutional issue was not entering the war but expanding it. That conflict turned the United States into a Pacific empire, thrusting the military into colonial administration – and raising questions about which branch controlled war strategy and its ultimate ends. The prevailing answer favored the President, but not due to swelling executive ambitions so much as the demands of fast-moving events – on the ground and at sea – far from home.

The turn of the twentieth century is also often remembered by constitutional scholars as an era of creeping presidential unilateralism to intervene abroad, especially in or against much weaker states. In the decade after the war with Spain, presidents did launch some larger military interventions than their predecessors had – an extension of prior practice that might seem to demonstrate American imperial reach growing alongside an imperial presidency. But this conventional account misses that the most novel and lasting exercises of war powers were legislative. To prepare the United States for future conflicts in an age of rival empires, Congress enacted major reforms of the Army and state militias that permanently altered the states' place in the war-powers system. The Executive Branch provided much of the initial drive, but lawmakers were not passive observers. In the long run, these legislative measures laid the foundation for America's new defense and security strategies in the twentieth century.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTÓNOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

GOING TO WAR WITH SPAIN

For three decades after the Civil War, the United States was focused inward. The Navy still patrolled far-flung areas to promote and protect U.S. commerce. The Army's duties were largely internal, and besides Southern Reconstruction until 1877, it was mostly deployed to subdue Native Americans on the Western frontiers and break labor strikes in cities.

The Army was small. To manage those internal challenges and guard borders, about 28,000 soldiers were scattered around the United States. This was about one-twentieth the size of the German Army and significantly smaller than Mexico's.[2] Without overseas colonies like the major European powers held, the United States also lacked military forces trained, equipped, and practiced for large-scale foreign operations.

When tensions with Spain boiled over in the late 1890s, Congress and the President took a nation – divided and uncertain about its international role – into a war for which its Army was unprepared. This moment would test how a Constitution built for continental security would adapt to a more outward-looking and interventionist America. Those constitutional and strategic pressures converged in a long-simmering Cuban crisis.

By 1898, U.S.–Spanish relations had been fraying for years, especially over Cuba. Spain's brutal reconcentration campaign and sensational American reporting fueled public demands for intervention – including from U.S. investors and religious communities. Tensions spiked after the battleship USS *Maine* mysteriously exploded in Havana Harbor, where President William McKinley had dispatched it to protect American citizens and property during violent clashes between Spanish forces and Cuban insurgents.[3] Although journalists and political leaders quickly blamed Spain, later investigations showed that the explosion was almost certainly caused by an internal malfunction.[4]

A chain reaction of legal and military moves resulted in Congress's formal declaration of war – its third in American history, alongside the War of 1812 and the Mexican–American War. At McKinley's request, Congress passed a joint resolution in April 1898, demanding that Spain withdraw from Cuba and authorizing the President to intervene by force, if necessary, to support Cuban independence.[5] Spain broke off diplomatic relations in response to the measure. McKinley quickly imposed a naval blockade of Cuba, prompting Spain to declare war. The President then returned to Congress for a formal declaration – by then a legal formality – which Congress approved by voice vote, backdating it four days to coincide with Spain's proclamation.[6] "CONGRESS DECLARES WAR" splashed the headline across a full third of the front page of William Randolph Hearst's *New York Journal* extra edition for April 25.[7]

In some respects, the conflict – a "splendid little war" in the words of U.S. ambassador to Britain and future Secretary of State John Hay – was a swift success. A U.S. Navy

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

squadron quickly decimated the Spanish fleet in the Philippines, another centuries-long Spanish colony. American Army and volunteer forces in Cuba, including the famous "Rough Riders" led in battle by Theodore Roosevelt, advanced across the island after some initial stalls. The U.S. Navy's destruction of the Spanish Caribbean fleet effectively forced Spain's surrender less than three months after the countries declared war. Beneath those naval triumphs and romanticized battles, however, the conflict exposed major defects in the American system for going to war.

First, Congress's authority to declare war – expected by many Framers to slow the rush to conflict – again failed to operate as a brake. As Madison explained in 1798, the Constitution assumed that the Executive "is most prone" to war and thus vested the decision in Congress.[8] Yet practice sometimes ran the other way. Madison himself was prodded toward conflict by congressional hawks in 1812, and a century later, Congress pushed harder than the hesitant McKinley, this time against Spain. There were even rumblings in Congress about declaring war without the President's blessing.[9] Historians still debate how much McKinley steered the final choice, but Congress undoubtedly nudged him toward war and propelled a military-liberationist strategy that set the conflict's course.

Like the War of 1812, the legislative process of declaring war did little to ensure that the nation was properly equipped and organized for the war it entered. Mobilizing hundreds of thousands of volunteers and state militiamen to augment the tiny regular Army was a dismal failure, as planners botched efforts to move them southward and onto ships. Citizens rushed to enlist, but the War Department struggled to outfit them with uniforms and weapons. "Noticeably good body of men, but not yet well in hand nor instructed in the first practical requirements of campaign and battle, such as marksmanship," reported the Army Inspector General during a tour of mustered troops. "[T]he lack of uniforms, especially underclothing, was everywhere noted."[10] About four times as many American soldiers died of tropical disease in squalid camps waiting for combat than engaging in it.[11] Prewar deliberations between the Executive and Congress had failed to expose basic weaknesses in the nation's capacity for expeditionary war, even just a hundred miles off U.S. shores.

Finally, like the previous wars that Congress formally declared, legislative action failed to resolve some essential questions about what would come after victory (let alone in the event of defeat). To be fair, wars rarely go according to plans. As they unfold, leaders confront a series of unexpected choices and constraints. Contingent outcomes may, in retrospect, seem inevitable. But Congress voted overwhelmingly for this war with little plan beyond dislodging Spain from Cuba and no clear endgame.

That said, Congress was uncharacteristically clear about a few points. Its initial April 1898 resolution – issued before the formal war declaration – not only authorized but directed the President to use force for a specific purpose: "that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters."[12] The resolution

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

authorizing this humanitarian intervention also contained one notable limitation on war aims: the "Teller Amendment," which disclaimed any U.S. intention to assert sovereignty over Cuba and affirmed that the island would be left to the Cuban people. This reassurance was meant to calm skeptics who feared Congress was using its war powers to expand American territory. Such explicit limits on objectives are rare in congressional authorizations – and even this one soon eroded, as the postwar "Platt Amendment" largely nullified it.

At the same time that Congress authorized – and even instructed – the President to use force for certain purposes and not others, however, it gave him wide latitude over how to pursue those ends militarily. Its subsequent war declaration reaffirmed this complete discretion.[13] And although Congress disavowed any intention to annex Cuba, it placed no boundaries on other military or political objectives.

To the extent Congress imposed limits on the war, it focused – in hindsight – on the wrong theater. As the next section shows, there was a striking disconnect between Congress's deliberations about going to war, which centered almost entirely on neighboring Cuba, and the war's ultimate means and ends, which reshaped American foreign policy across the Pacific and helped transform the United States into an imperial power on the far side of the globe.

THE CONSTITUTION AND OVERSEAS EMPIRE

Elihu Root was a brilliant New York corporate lawyer, renowned among elite clients for his rigor and his knack for untangling complex problems.[14] "There was no lawyer practicing at the American Bar in the 1890s who was more sought after than Elihu Root," wrote his biographer, Philip Jessup.[15] He was an unlikely but key renovator of constitutional war powers.

In July 1899, Root got a telephone call. "The President," he was told, "directs me to say to you that he wishes you take the position of Secretary of War." Root was reluctant to accept. "Thank the President for me, but say that it is quite absurd, I know nothing about war. I know nothing about the army," he replied. The emissary told Root to hold the line, and soon came back to report, "President McKinley directs me to say that he is not looking for any one who knows anything about war or for any one who knows anything about the army; he has got to have a lawyer to direct the government of these Spanish islands, and you are the lawyer he wants."[16] The "Spanish islands" that the United States now governed included not just Cuba and Puerto Rico but also the faraway and massive archipelago of the Philippines. After quickly defeating Spanish forces in that Asian colony, the United States had seized the territory for itself. Its seizure came at a high cost: It unleashed what would become a bloody, three-year counterinsurgency campaign against local Filipino forces. Along the way, Congress would weigh in, but the Executive Branch had by then created circumstances – in Hamilton's words, an "antecedent state of things" – that would have been difficult to reverse.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

The nation had gone to war deeply divided about its proper role in the world. So-called imperialists wanted the United States to act like the great European powers. For some, that meant gaining faraway colonies. Imperialists were motivated by a combination of economic interests – the North American frontier was now closed, and businesses needed new markets – alongside a missionary (and racialist) zeal to spread American civilization, together with geopolitical and military calculations. The influential naval theorist of American empire, Captain Alfred Thayer Mahan, called for overseas economic and military expansion and the need to use them in tandem. His seminal book, *The Influence of Sea Power upon History, 1660–1783*, argued that American greatness depended on control of the seas, which in turn required building and dispatching a fleet of warships to take and hold distant territories where they could be protected, fueled, and refurnished. "Anti-imperialists" opposed expansion likewise as a matter of both principle and pragmatism: Distant empire and intervention, they argued, were expensive, immoral, and risked ensnarling the United States in foreign conflict. In their view, expansion also imperiled democracy at home by eroding foundational American ideals – a set of ideals born from revolt against distant foreign rule.

Amid this domestic political clash, McKinley went to war without a public or legislative mandate for overseas empire, especially in Asia. "Before the war there had not been the slightest demand for the acquisition of the Philippine Islands," wrote the great American diplomatic historian Samuel Bemis. "The average American citizen could not have told you whether Filipinos were Far Eastern aborigines or a species of tropical nuts."[17] Yet Congress's initial war authorization, for all its pointedly limited aims with respect to the Cuba flashpoint, did not constrain the President's discretion over how or where to wage the war – or what other war aims he might adopt along the way.

The crucial war-powers feature in this conflict was not how the government went to war but how the President *expanded* the conflict. And that war expansion was less a product of grand theories of executive power or of premeditated designs than a response to a rapid series of events set in motion on the ground (or at sea). Whereas his forerunner, Polk, had entered the Mexican–American War with eyes on a westward conquest from the start, McKinley lacked a long-term plan in the Pacific.[18] Rather, as they constantly monitored troop movements and telegraphic communications from a White House war room, McKinley and his chief subordinates presided over a cascade of major military decisions, each one triggering the next. In the early stages of the conflict, Congress was a distant and largely passive body.

At the war's start, standing war plans called for the U.S. Navy's Asiatic Squadron – part of a modern fleet that Congress had funded decades earlier – to strike Spain's forces in Manila Bay. The squadron raced there not to seize territory but to tie down Spain's military resources and neutralize its ability to project force. Once in the region, however, it faced a practical problem: Under prevailing international law governing war, coal-fired vessels could no longer refuel in neutral ports. Unless it

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

returned home, the squadron needed a harbor – leaving Manila as its only option. After U.S. naval forces overpowered the Spanish fleet, President McKinley dispatched thousands of troops to secure the port for American use. At first, he still viewed the Philippines as leverage rather than a prize.[19] But when Spain abruptly abandoned the archipelago, the Administration worried that another European power might seize it for itself, threatening U.S. trade routes and influence in Asia. Acting on those fears, McKinley ordered the occupation of the entire, sprawling archipelago – and soon resolved to hold it indefinitely. The decision to become a Pacific empire was more an improvised series of smaller decisions than a calculated aim of the war in the first place.

Once the war had begun, each of these fateful executive moves reflected a potent military logic in the moment. But Congress's deliberations about whether and why to wage war had not seriously anticipated or questioned – let alone agreed upon – any of these steps or the final endgame.[20] And with war underway, Congress continued to fund the war while – with the exception of influential and imperialist Senator Henry Cabot Lodge, who pushed the Executive Branch to lay claim to Manila – deferring to the Executive Branch on how to wage it. Even if Congress had formal power to weigh in on fluid decisions, it lacked much time to do so at this stage of the conflict.

The formal peace process with Spain in late 1898 gave the Senate a role – but late in the game. After a rancorous debate over whether the United States should assume a colonial function, the Senate approved McKinley's treaty by a single vote. Under its terms, the United States acquired most of Spain's overseas possessions, including the entire Philippines and several other island territories, while Cuba became an American protectorate.[21] Yet, by then the McKinley Administration's unilateral military moves had converted the prewar hypothetical of whether to seize the Philippines into the postwar dilemma of whether – and, if so, how – to relinquish them.

McKinley's decisions about how to wage war with Spain also unleashed a secondary – more costly and lengthy – war against Filipino guerrillas. When Spanish forces left, independence fighters who had been battling to liberate the Philippines from Spain switched their efforts to ousting the new American occupying forces. For several years, the U.S. Army fought to pacify the countryside, sometimes relying on fair treatment to win hearts and minds, and other times resorting to torture and other cruel methods.[22] What started as a war to compel Spain to end a brutal counterinsurgency campaign in the United States' backyard soon became a brutal American counterinsurgency campaign of its own, thousands of miles away. At least 200,000 Filipino civilians died (perhaps more than twice that) in a collateral conflict that the President had not anticipated and that Congress had not debated in advance.[23]

McKinley tapped Root as Secretary of War, about a year after U.S. forces took Manila, because American expeditionary forces were also slogging through new legal thickets. "We have no precedents," reported Root to Congress in 1901, "save

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

the simple and meager proceedings under the occupation of California and New Mexico, more than half a century ago, and it has been necessary to decide every question upon its own merits and to make our own precedents for the future."[24] While attempting to put down revolts, U.S. military commanders proclaimed and enforced new laws across the Philippines.[25] In the second year of fighting, the United States installed a civilian administrator (future Secretary of War, President, and Chief Justice William Howard Taft), but the entire system of governance was established under presidential war powers. As Root further explained to Congress: "The sole power" that the President was applying in these newly acquired lands "was a military power derived from his authority under the Constitution as Commander-in-Chief of the Army and Navy. The question presented was how, in the exercise of the President's military power under the Constitution, to give the peaceful people of the Philippines the real benefits of civil government."[26]

In carrying out this mission, Root viewed one of his key tasks to be determining how American constitutional principles and rights applied (or did not apply) to colonies that were certainly, in the Philippines case, not destined for statehood. In a series of opinions a few years later, the Supreme Court largely upheld Root's view: The Constitution did not automatically apply in all areas controlled by the United States, but Congress could extend specific parts of U.S. law to annexed territory by legislation.[27] Returning to the War Department after hearing the Supreme Court's ruling, Root quipped to reporters: "as near as I can make out the Constitution follows the flag – but doesn't quite catch up with it."[28] These judicial rulings did little to resolve the surrounding political and strategic disputes, though.

Those unresolved disputes soon shifted to Congress, which had some limited opportunities to shape policy in the secondary war in the Philippines – a lengthy conflict that became a focal point for debates over American imperialism. With the benefit of time, legislators demanded periodic reports on the situation there, and an 1899 Senate committee investigation shined a spotlight on atrocities committed by American military forces.[29] Such congressional inquiries likely contributed to the erosion of public support for distant rule by force. Even if McKinley's 1900 reelection marked a victory for imperialist politics, the Philippine war's scandals and grim endurance sapped enthusiasm for the faraway conflict.[30] Still, Congress did not exert much control over U.S. policy there; it was not until 1902 that it legislated civilian control of the Philippines, and even then, it largely ratified the War Department's actions, by which time most Filipino guerrillas had surrendered. In later protracted conflicts, Congress would deploy these oversight tools more assertively.

A lesson from the formally declared war against Mexico half a century earlier had been that a President could rope Congress into a war and then drive an expansionist endgame by the way he waged it. In that case, Polk set out to capture new lands and was successful in doing so (see Chapter 3). This time, the lesson was that even if Congress led the march to war, the President might still take control of the endgame – whether by original design or strategic improvisation. The President,

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

gradually and through a sequence of decisions, turned a war to clip Spain's overseas empire into a war to create America's.[31] Nonetheless, the Executive soon turned back to Congress – and Congress's Article I powers – to redesign American military forces to match its new global role.

A NAVY FOR EMPIRE, AN ARMY FOR WAR

In most war-powers narratives, the decade after the war with Spain marks a surge in presidential interventionism. True, McKinley and his successor Theodore Roosevelt launched major deployments that stretched past precedents. But the decade's most consequential and ground-breaking developments in constitutional war powers did not concern presidential power vis-à-vis Congress. They concerned national power vis-à-vis the states, as Congress and the Executive overhauled the antiquated militia system.

While still fighting an insurgency in the Philippines, President McKinley in 1900 sent 5,000 troops to China – without congressional authorization – as part of a multinational effort to suppress the Boxer Rebellion. The Boxers were a secret society resisting Western influence and the foreign powers, including the United States, seeking to dictate China's commercial affairs. Six months later, McKinley told Congress, without much protest, that the operation "involved no war against the Chinese nation" and was justified in part by the need to secure "wherever possible the safety of American life and property in China."[32]

After McKinley's assassination in 1901, Roosevelt engaged in gunboat diplomacy, again without congressional approval, to assert hegemony over Latin America. Roosevelt's view was that presidents were duty-bound to exert the full scope of their power – meaning anything not explicitly prohibited by Congress or the Constitution – on behalf of the nation.[33] Acting on his own authority, on several occasions, Roosevelt manipulated political events in Latin America by intervening or threatening to intervene militarily, including sending a force of Marines to show support for Panamanian independence of Colombia and secure the purchase of the Panama Canal Zone.[34]

Roosevelt also sent the newly constructed "Great White Fleet" of American battleships around the world as a show of military strength. Thanks to Congress's funding for it, Roosevelt had at his command a larger and more potent standing Navy than any predecessor, and he used it to pursue a bolder foreign policy. He wrote a few days before his presidential term ended: "The biggest matters," including this battleship tour and the Panama episode, "I managed without consultation with anyone; for when a matter is of capital importance, it is well to have it handled by one man only."[35] When the Senate Naval Affairs Committee tried to block funding for the Great White Fleet's cruise, Roosevelt called their bluff, declaring he already had the money to send the fleet to the Pacific and daring Congress to let it sit there until they relented.[36]

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

Although grander in scale and longer in duration, these early twentieth-century military interventions resembled, in a legal sense, the nineteenth-century unilateral expeditions discussed in Chapter 3. As before, presidential administrations asserted authority to engage in limited military operations to safeguard American nationals and property abroad, especially when local governance was weak. Defending the constitutionality of McKinley's intervention in the Boxer Rebellion a decade afterward, Elihu Root (by then a U.S. Senator) declared that unless Congress forbade it, the Commander in Chief had a duty to protect American citizens overseas where "governments have not the power to maintain order within their jurisdiction." Such discrete and limited actions did not count as "making war," Root emphasized, "which, of course, he cannot do."[37] These were century-old constitutional claims applied to America's growing arsenal and expanding global role.

The novel and transformative war powers development of this time centered not on actions abroad but organization at home. In the first years of the twentieth century, Congress passed a series of acts to reorganize the Army and state militias, which were soon to be known as "National Guards." While championed by executive officials, these reforms required Congress to exercise its Article I powers in new ways, fundamentally reshaping the regular Army, state militias, and their relationship for the first time since the Washington Administration. This sweeping reengineering is often overlooked in war-powers narratives because it seems bureaucratic and occurred between wars, not during one.

"[T]he real object of having an army is to provide for war," Secretary of War Root reported to Congress in 1899. That statement, he continued, "seems like a truism, and it will probably be received everywhere without conscious denial. Yet the precise contrary is really the theory upon which the entire treatment of our army proceeded for the thirty-three years between the Civil War and the war with Spain."[38] The truth, he explained, was that the United States had a military establishment built for policing, not war with strong states. No wonder that when called upon for war in 1898, many American units could barely make it to Cuba.

To defend territories overseas and compete internationally with Japan and the great European powers, for several years, Root diligently lobbied for Army modernization – which would require legislation – including the formation of a general staff that would replace the fragmented system of administration and supply. Under his proposed organizational system, an Army "Chief of Staff," working with civilian War Department leaders, could set long-term strategy, plan for contingencies, and better manage procurement and logistics. The disastrous mobilization for the war with Spain had revealed how deeply dysfunctional the existing structure was: Separate bureaus – responsible for transportation, supply, and other functions – operated in isolated silos with little coordination. The system Root inherited might have sufficed for basic continental defense, especially with time to mobilize, but the more pressing strategic priority had become projecting American power abroad. This was also the Progressive Era, a moment when reforms across public policy emphasized

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

efficiency and scientific management. Root brought those same values to his military redesign, setting them against traditions – deep in American history and constitutional structure – that deliberately dispersed power.[39]

At the forefront of the opposition stood the Army's Commanding General, Nelson Miles. Some resistance from the famed and old-breed Indian fighter was unsurprising, for the Commanding General would lose authority under the new arrangement. So would many members of Congress who, besides attachment to longstanding custom, wielded considerable patronage under the old system. Bedecked in medals, General Miles testified dramatically to Congress in 1902 that "[Root's] plan is but an effort to adopt and foster in a republican form of government a system peculiarly adapted to monarchies having massive standing armies. It would seem to Russianize and Germanize the small army of the United States." The Germanization charge had some truth to it: Root's organizational plans were heavily inspired by the Prussian Army's renowned general staff. Miles also sought to make a deeper charge, however, linking European-style military restructuring with the European-style militarism, autocracy, and war that American patriots originally rebelled against. The scheme was not, he concluded, "in accordance with the principle and theory of democratic government."[40] Miles appealed to the original constitutional design in defending the original Army design.

Miles's testimony caused a political stir, but after considering both sides, Congress went with Root. In 1903, it legislated a new Army Chief of Staff position, charged with executing the President's and Secretary of War's directives, and it created a general staff to better manage planning and mobilization. Owing to Root's deft handling of congressional politics and procedure, this modernizing rearrangement would before long – although hardly imaginable at the time – enable successful participation in the World War. The gears of reform were also still turning. That same year, Congress passed another statute pushed by Root that forever revamped individual states' war powers.

"Remember always that great principle of the Constitution," Senator Daniel Webster warned in 1840, "that the militia is the militia of the States, and not of the general government; and being thus the militia of the States, there is no part of the Constitution worded with greater care, and with a more scrupulous jealousy, than that which grants and limits the power of Congress over it."[41] Chapter 1 traced how the Framers crafted the Militia Clauses to preserve state control over their own forces. Chapter 2 explained how the first congresses enacted statutes delegating to the President certain authority to call out those state militias.

A century later, when the United States went to war with Spain in 1898, state militias remained governed by those same statutes – outdated laws that, for example, called on able-bodied men to have a musket and powder-horn at the ready.[42] The war exposed deep flaws of a heavily decentralized system, in which unit quality and training varied widely from state to state. "It is really absurd that a nation which maintains but a small regular army and depends upon unprofessional citizen

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

soldiery for its defense should run along as we have done for one hundred and ten years under a militia law which never worked satisfactorily in the beginning," Secretary Root told Congress in 1902. National Guards, he noted, had "grown up in default of any national system and to meet local requirements." The resulting "confusion, controversy, and a bad feeling" were "painfully apparent at the beginning of the war with Spain," he warned, and would persist "until Congress shall exercise its constitutional power over the subject."[43]

The 1903 Militia Act (or Dick Act) was an extraordinary use of Congress's Article I powers to remake the Army.[44] Named for Congressman Charles Dick – an Ohio National Guard major general and Spanish–American War veteran – the law struck a new bargain between the national government and the states: greater federal support in exchange for greater federal control. Washington would now fund state training and equipment on a much larger scale but impose strict, uniform standards so that state units (at this point, all officially named National Guards) mirrored the regular Army. Conditional support ensured that the large reserve of state forces could more reliably and quickly augment the standing military when needed.

Five years later, Congress refined the system again. It authorized Guard units called into federal service to remain for periods set by the national government and to serve abroad for missions beyond those enumerated in Article I – an issue that had first vexed operations along the Canadian border during the War of 1812.[45]

These acts did more than reorganize militias; they redrew the constitutional balance between state and federal power. Political scientist Samuel Huntington captured the shift this way: "From 1792 to 1903, the militia was under state control in times of peace and dual control in time of war. After 1903 the militia was under dual control in time of peace and national control in time of war."[46] The original federal–state compromise had never been efficient, but for those wary of centralized power, inefficiency was a virtue. Since the Founding, Americans had prized a decentralized military system as a safeguard against tyranny.[47] But the Spanish–American War exposed how that framework imperiled the nation's great-power ambitions, spurring Congress to craft a new balance through its Article I powers.

Each institutional player brought leverage to that bargain. The President and his subordinates managed the armed forces; Congress held the purse and legislative pen; the states controlled manpower and officer appointments; and the Army wielded influence through a dense web of statutes and regulations dating to the Founding. The Dick Act and its amendments reflected a federal–state compromise ratified by Congress – but not one simply dictated by the Executive. Many governors and guardsmen continually resisted the War Department's expanding authority over standards and training, and Congress – responding to strong Guard lobbying – rejected additional War Department proposals for a separate national reserve that critics denounced as militaristic and unnecessary.[48]

Less than a decade after the Dick Act, legal reengineering of the Army and state militias hit a glitch requiring yet another legislative fix. In 1912, Secretary of War

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

Henry Stimson sought advice on whether National Guard units could cross the Mexican border to protect American citizens and property during the violent unrest there. The Attorney General warned that such action would be unconstitutional. Citing Article I's Militia Clauses and centuries-old British precedent, he reverted to the view that militia forces could be called into federal service to enforce federal law, quell uprisings, or meet invasions – not to operate abroad.[49] The Army Judge Advocate General agreed. Under that strict, inflexible reading, National Guard units could not cross into Mexico, leaving the United States constitutionally hobbled despite its new system of expandable forces.[50]

Congress's National Defense Act of 1916 offered a constitutional workaround. Guardsmen would now swear dual oaths – to their governor and to the President. The National Guard thus remained a state militia, yet once federalized, it became part of the U.S. Army, including for overseas service. The former status rested on Congress's militia powers; the latter on its separate authority to "raise and support Armies." By broadening the statutory definition of the Army to encompass federalized Guardsmen – and by providing that they ceased to be militia once called into federal service – Congress effectively solved the constitutional problem of the militia's territorial limits.

To eighteenth-century Framers who treated state militias as safeguards against centralized military power, these maneuvers would have looked like constitutional sophistry. Chapter 6 shows that the Supreme Court would soon confront related issues.[51] In the early twentieth century, however, strategic imperatives had overtaken original constitutional bargains.

CONCLUSION

The United States was still no military peer to the great European empires or Japan at the century's turn, and the country remained deeply divided over whether to mimic those players by seizing overseas territories. In that period, even so, the United States took some bold steps out into the imperial world.

Conventional accounts of war powers brush past the Spanish–American War, dismissing it as a tidy episode with little to teach. This stems from a narrow methodological focus on the Declare War Clause, since in 1898, Congress did in fact invoke it. On that view, the episode appears uncontroversial – a textbook instance of constitutional procedure working as designed. But that perspective obscures the far more complex and consequential dynamics that the conflict set in motion.

Congress debated extensively before declaring war, even setting explicit and limited aims against Spain. Yet once hostilities began, the President unilaterally widened those aims – most dramatically in Asia, a theater Congress had barely considered. The war against Spain quickly became a protracted counterinsurgency in the Philippines. Unlike Polk in the 1840s, McKinley did not seek territorial aggrandizement from the outset; expansion flowed instead from external

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B

pressures: the swift victory at Manila Bay, rivalries in the Pacific, and the dangers of abandoning the archipelago. The result was a long and bloody occupation – never expressly authorized by Congress, yet not clearly beyond its open-ended mandate. The Executive largely controlled where, how, and to what end the United States waged war – but this was less a story of ambitious power-grabbing than of practical necessity.

Equally important, yet also often overlooked, were the institutional reforms born of the war's organizational fiascos. The Spanish–American War exposed the nineteenth-century military system's fragility. In response, the Executive Branch secured far-reaching reforms: a professional general staff and the integration of state militias into the national Army. Far from executive unilateralism, these measures were debated, enacted, and funded by Congress. In doing so, Congress not only patched the defects revealed in 1898 but also reshaped the balance of war powers between the nation and the states and laid the military foundations for America's global role in the twentieth century. Soon, worldwide conflict on a new scale would test the Constitution's flexibility in far greater ways.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 14:38:17, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
https://www.cambridge.org/core/product/227BCCF768DAE8FB5BCDFE385D2DA91B