8

War Powers for Cold War

The early Cold War transformed America's global strategy and, with it, the constitutional machinery of war. Strategy and constitutional practice evolved together: New strategic imperatives demanded new institutions, which enabled new presidential and congressional behaviors – and those behaviors, in turn, further entrenched emerging Cold War strategy.

Before 1945, American wars were typically followed by rapid, wholesale demobilization. The Cold War broke that pattern. Emerging from World War II as a superpower with global commitments, the United States – led by President Harry Truman and a like-minded Congress – judged that retrenchment would invite Soviet advances. Containment therefore required, for the first time in American history, a permanently large standing force. By underwriting a global military presence, Congress put ready forces at the President's disposal, weakening one of its own traditional checks on when and where the nation would fight.

When North Korea invaded the South in 1950, Truman sent U.S. forces without explicit authorization, vastly widening precedents for unilateral war-making. Yet his bid to extend wartime authority to domestic industry met a sharp Supreme Court rebuke in the *Steel Seizure Case*, which articulated limits on presidential emergency power and reaffirmed the judiciary's role in enforcing them. However, a close read of the case's many opinions reveals that, more than a century and a half into the nation's history, the Court still struggled with foundational questions about how the Constitution operates in wartime.

Although the Korean War dominates most war-powers narratives, Truman was simultaneously forging an equally far-reaching constitutional precedent in Europe. In a dramatic strategic pivot, the United States built a global network of alliances and assumed the role of principal security guarantor. As commander in chief, Truman stationed U.S. forces in Western Europe to deter Soviet aggression. Congressional critics protested that he was usurping their war powers, but they could not muster the votes to stop him. This peacetime precedent – often overlooked precisely because it lacked a shooting war – proved no less consequential than Korea.

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The grand-strategic turn – *from hemispheric defense to global containment, from temporary to permanent forces, and from shunning to anchoring alliances* – further blurred lines between war and peace and retooled the Constitution's war powers. Much of that transformation occurred not in crisis but in peacetime: through statutes, budgets, alliances, and forward deployments that made perpetual global readiness the new normal.

PERPETUAL EMERGENCY AND THE WARFARE STATE

America's strategy to contain the Soviet Union required a reengineered military establishment – one that the elected branches built together.

World War II had devastated and depleted most of the world's great powers, while the United States had emerged militarily and economically dominant. In 1945, its economy was three times the size of the next competitor, and its military expenditures were nearly three times those of the other major powers combined. It was the only country with atomic weapons.

The end of the war, however, also brought a new and profound sense of American insecurity. Despite its strength, America had twice already in that century been pulled into global wars with authoritarian aggressors. In Pearl Harbor, it had suffered a surprise attack. As air power and other technological advances reduced its geographic remoteness from global flashpoints, the country now squared off against another empire bent on expanding its dominion.[1]

Up to this point, America's distrust of large standing armies and the buffer of two oceans had produced a consistent pattern: rapid wartime mobilization followed by rapid postwar drawdown. Congress would declare war and have time to dramatically expand the army's headcount (at first with mobilized militias, then volunteers, then also with draftees). Upon restoration of peace, the legislature would disband most of those troops.

That pattern ended after World War II. Although the United States rapidly demobilized much of its wartime military, five years later it still maintained a force several times larger than it had before the war. The active-duty Army numbered almost 600,000 – far below the World War II peak of more than eight million, but roughly four times the Army's 1920s–1930s strength.[2] At the time of the Korean War in 1950, total active-duty armed forces totaled nearly 1.5 million, with plans to expand.[3]

World War II transformed American grand strategy, and the new standing forces reflected that shift. Policymakers came to believe that security rested on maintaining military superiority rather than on retreating behind natural geographic defenses.[4] That view hardened after the Soviet Union successfully tested an atomic bomb in 1949 – and hardened still further when Mao Zedong soon emerged victorious in the Communist revolution in China. A key Truman Administration policy document from early 1950 summarized many officials' sense of the nation's precarious position: "When our military strength is related to the world situation and balanced

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against the likely exigencies of such a situation, it is clear that our military strength is becoming dangerously inadequate."[5]

Congress was instrumental in the strategic shift. The Executive Branch pressed for a military buildup to counter Soviet power, but it was Congress that appropriated billions of dollars to do so. When Truman and Army leaders pushed for a new Universal Military Training program – compulsory basic training for all eighteen-year-old males to prepare for future wars – Congress rejected it in favor of extending the Selective Service system, now a peacetime draft, to meet wartime needs.[6] Contests between funding the warfare state and the welfare state, and between a new ideology of national security and traditional commitments to dispersed power, were fought repeatedly in legislative and budget battles on Capitol Hill.[7] Most of the time, Congress sided with national security.

Congress's role was not limited to creating and equipping standing forces. It also significantly reorganized them for new global responsibilities.[8] Structures had been established in World War II to coordinate the Army and Navy and connect them with civilian agencies. But those arrangements were temporary. Permanent military readiness required new and lasting structures of command and coordination. As the boundary between peace and war eroded, the United States could not, in the words of Secretary of War Robert Patterson, entrust the nation's security to "one organization in peace and another in war."[9]

The result, after intense debate, was the National Security Act of 1947 – one of the most consequential organizational statutes in American history. It overhauled the Executive Branch to meet the demands of a newly expansive postwar national security policy.[10] To ensure unified planning and operations, the Act joined the Army and Navy Departments under a permanent Defense Department overseen by a Secretary of Defense, and it established the Air Force. It also created the Joint Chiefs of Staff to counsel the President and Secretary of Defense on military matters, along with a National Security Council within the White House to coordinate policy across departments and agencies. To advise policymakers, it created the Central Intelligence Agency (CIA), the nation's first major peacetime intelligence agency independent of the military departments. In Article I terms, far beyond raising and supporting an Army and providing and maintaining a Navy, Congress rewired the whole machinery of war and peace to sustain an ambitious and worldwide American security role. The push for these reforms came from the Executive Branch, but Congress also deliberated on the important and often contentious details.

The legislative reforms after the War of 1812 had updated the military establishment in limited but important ways for continental defense. Those after the Spanish–American War had enhanced it for great-power roles. The 1947 Act now overhauled it for superpower status.

That development had domestic constitutional dimensions alongside foreign-policy ones. Like previous military reform moments, the postwar changes pitted the imperatives of military effectiveness against deeply rooted American traditions

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of dispersed power. The 1940s legislative debates over creating a unified Defense Department and a powerful joint military staff, for example, echoed earlier Progressive Era debates over Secretary Root's plans to establish a general staff and standardize state militias. As standing forces grew to meet these global threats, critics on both the Right and Left argued that the foundations of American republicanism were at risk; opponents of change appealed to traditional fears of concentrated power, while proponents worked to tamp down concerns about a lack of checks on the centralized defense establishment. Many prominent theorists wondered if the constitutional system would mutate into a "garrison state."[11]

Turned outward, the sheer size of America's postwar standing forces loosened traditional constitutional restraints on presidential war-making by placing massive capabilities in the Commander in Chief's hands at all times. He would not need to ask Congress to create them prior to intervening.[12] Earlier in history, the absence of large standing armies checked presidential unilateralism and buttressed constitutional limitations on the President's power to use force. President Polk could not make war against Mexico without Congress's approval because he needed Congress to create an army to wage it. President McKinley could not make war against Spain without Congress's cooperation for the same reason. But from the 1940s on, the President had the ready means to go to war without Congress.

A crisis in Korea would soon show how by using some of its war powers to strengthen the armed forces, Congress was weakening one of its own checks on presidential war-making.

MAKING WAR IN KOREA

The Korean War marked the moment Cold War containment became a shooting war. To this day, it also stands as the largest and most intense U.S. military conflict ever launched by a president without express legislative approval or a formal war declaration. The war would eventually last three years and kill more than 2.5 million people, including more than 36,000 U.S. military personnel. American leaders even considered using atomic weapons to bring an end to the conflict before reaching an armistice that reestablished prewar boundaries.[13] Small wonder this bold assertion of presidential initiative continues to loom so large in war-powers debates.

Following World War II, the Korean peninsula had been divided at the 38th Parallel into two zones that soon hardened into two states: The South aligned with the United States, and the North with the Soviet Union and Communist China. On June 25, 1950, while at home in Missouri, President Truman learned that North Korea had invaded the South, quickly overrunning its army and capital. Within a week, Truman approved air and naval support for South Korean forces and sent in ground combat troops – all without congressional authorization.

To the Truman Administration, the North Korean invasion confirmed its assumptions that the Soviet-led bloc sought aggressive expansion and could only be

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contained by American hard power. Truman also viewed the invasion as a profound challenge to the new postwar international legal order. He promptly convened an emergency UN Security Council session, and on June 27, the Council blessed member states' provision of military assistance to South Korea. The Security Council was able to act only by accident of timing: The Soviet Union, usually armed with a veto, was boycotting the Council in protest of the West's refusal to seat Communist China instead of the Nationalist regime on Formosa (Taiwan).

The President could commit forces immediately because he commanded a large standing force. Many of those forces were already stationed nearby as part of the postwar occupation of Japan and were thus able to quickly mobilize to the Korean peninsula.

Having secured international legal backing for intervention, the President still needed a domestic legal foundation. On June 27, when Truman briefed key legislators on his decision to send American air and naval forces to support retreating South Korean forces, participants voiced near-unanimous support. Congressional leaders publicly endorsed the President's move to back South Korea and the UN Security Council's decision.

On June 30, Truman committed American ground troops as well. This time, congressional reaction was more mixed. Many members supported the move, a few opposed it, and some backed it but argued that the President should have sought formal approval from lawmakers. Republican Senate Minority Leader – and partisan rival – Kenneth Wherry urged Truman to consult Congress before undertaking a large-scale intervention. His Senate Republican colleague Robert Taft, while not opposing the decision itself, denounced it as an executive usurpation of congressional authority. When Truman asked advisers and legislative allies whether he should address a joint session and seek a resolution authorizing the use of force, the prevailing view was that doing so was unnecessary. Some administration officials saw a chance to demonstrate presidential power, but most were guided more by political calculation than constitutional principle. Truman almost certainly would have secured congressional authorization had he requested it, but Capitol Hill allies warned that doing so risked provoking a divisive debate.[14]

Although Congress did not explicitly approve the Korea intervention, within days it rallied behind the President by extending the military draft and passing a special appropriation to fund the operations. Congress would continue to fund and support the war in the coming months.

Perhaps to strengthen his constitutional footing, and certainly his political one, the plain-spoken Truman stated at a news conference: "We are not at war." He readily agreed with a reporter's labeling of the intervention as "a police action under the United Nations."[15] These statements are now commonly mocked, but at the time, Truman optimistically expected a quick end to hostilities even as some top military leaders proposed massive escalation. Moreover, just years after the signing of the UN Charter, the idea of "police action" short of war to address breaches of

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international peace was very much part of constitutional discourse, as explained in the previous chapter. And, when measured against the recent global war and the lurking threat of nuclear-armed superpower war, it was reasonable to argue that the initial Korea action was something less than full "war."

Secretary of State Dean Acheson, an architect of containment and a formidable lawyer, strongly influenced Truman's choice to forgo explicit congressional authorization. He viewed the situation as a chance to solidify a more expansive understanding of presidential power – one he believed essential to countering Soviet influence through agile and vigorous application of American military strength.[16] In the first week of the Korean conflict, his department prepared and sent to Congress a memorandum laying out the case that Truman's military actions were a valid exercise of the President's authority.[17]

The memo noted that presidents had used military force without congressional authorization eighty-five times throughout American history to protect U.S. interests. In Acheson's view, the intervention in Korea fell squarely within that established constitutional pattern. Subsequent administrations have embraced this historical-practice argument. It was and remains, however, a methodologically sloppy one.

Earlier chapters have shown that presidents throughout American history have, in fact, used military force without Congress's blessing. But the memo was unclear about the nature of its claim: Was it offering an originalist argument – that the Constitution always permitted unilateral presidential force – or suggesting that constitutional law had evolved through practice? Its selective tally of unilateral actions also overlooked occasions when Congress objected to presidential assertions of power, as well as instances in which presidents held back because of legislative resistance or their own constitutional doubts.[18]

Moreover, none of the prior instances of presidential intervention approached the scale or intensity of Truman's massive commitment in Korea. Most of the cited precedents involved narrowly limited uses of force, such as the discrete nineteenth-century naval engagements discussed in Chapter 3. The intervention in Korea was a far greater departure from prior practice than the memo acknowledged.

Beyond reciting a long historical record, the memo portrayed past presidential interventions as police actions to preserve international order. That set up an argument that, although Truman's Korea action was greater in scale than prior ones, it was justified because it addressed the types of threats that presidents had customarily responded to unilaterally. The U.S. role in upholding the international order – including the UN Charter – was greater than ever; naturally, the memo implied, presidential responses to breaches would have to be greater as well. The fact of UN Security Council Resolutions on Korea also allowed the Executive Branch to portray the intervention as defending a treaty that the Senate recently and overwhelmingly approved: "The continued defiance of the United Nations by the North Korean authorities would have meant that the United Nations would have ceased to exist as a serious instrumentality for the maintenance of international peace."[19]

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The Truman Administration's legal justification provided a template for future administrations, combining appeals to past constitutional practice with arguments that the new Cold War strategic context required constitutional adaptation. But, as discussed in later chapters, the Korean War's precedential value has been mixed. For many years afterward, the Executive Branch cited Truman's intervention to support wide presidential power to use force abroad. In recent decades, though, many executive branch lawyers have suggested that Truman exceeded his constitutional authority – or would have exceeded it had Congress not implicitly endorsed the conflict once underway.[20] In *The Imperial Presidency*, Arthur Schlesinger writes that Truman "dramatically and dangerously enlarged the power of future Presidents to take the nation into war."[21] This book's opening paragraph highlights that many scholars today criticize Truman's Korea intervention for eroding Congress's authority to decide when the nation goes to war.

That judgment, however, is colored by hindsight of the war's three grueling years. Forces under General Douglas MacArthur first pushed North Korean troops back to the original dividing line, then advanced all the way to the Chinese border. China responded with a massive intervention, as hundreds of thousands of troops swept over U.S. and coalition lines. Had MacArthur stopped at the 38th Parallel – and had the conflict remained short and less costly – Truman's unilateral intervention might now be viewed in a different constitutional light. Confronted instead with a grinding, expensive war, the Truman Administration continued to resist seeking a formal war declaration or authorization from Congress.

In addition to shaping the war's constitutional legacy for presidential intervention, MacArthur's conduct ultimately reinforced another bedrock principle: civilian supremacy over the military. As the conflict dragged on, MacArthur – still a national hero from World War II – pressed to strike targets inside China, while Truman feared such escalation could ignite a wider war with China or even the Soviet Union. When MacArthur, in a calculated bid to constrain the President, publicly attacked Truman's limited-war strategy and appealed to Congress and the public, Truman relieved him of command. The decision was straightforward on the merits but politically fraught.[22] In dismissing MacArthur, Truman reaffirmed the constitutional rule – rooted in Article II's designation of the President as commander in chief – that the military remains subordinate to civilian authority, a principle all the more vital in a moment when Cold War pressures threatened to tilt the nation's democratic system toward greater military influence.

Although the Truman Administration's actions and legal justifications for taking the country to war have been widely criticized for aggrandizing presidential power, their practical effect on later practice has been less dire than predicted. As later chapters show, Truman's legal arguments notwithstanding, his successors would generally view his unilateralism – and failure to share political risk with lawmakers – as a mistake. The fact is, no subsequent president has undertaken a large-scale ground war without obtaining congressional authorization in advance.

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Truman may have regretted foregoing congressional authorization – and denying that the Korean conflict was a "war" – for another reason, this one on the home front. Without Congress's full backing, his attempts to conscript U.S. industry for the conflict would run aground at the Supreme Court.

STEEL SEIZURE

In 1952, Truman faced a dilemma. The U.S. defense establishment needed cheap steel to sustain the war in Korea, support Western Europe's rearmament, fuel America's military buildup, and supply its nuclear weapons program. The Executive therefore had both an interest in – and some responsibility for – ensuring a steady supply of a critical strategic material. But protracted labor negotiations between steelworkers and company leadership had reached a stalemate, raising the prospect of a production shutdown.

As a steelworker strike drew closer, the President issued an executive order directing the Commerce Secretary to seize and operate the nation's steel mills for the national defense. Having strained presidential power abroad, Truman tested its boundaries at home.

After a wartime labor statute expired at the end of World War II, Congress had enacted the Labor Management Relations Act, or Taft-Hartley Act, of 1947. The new law did not authorize the government to seize industry; at most, it allowed the President to seek an injunction delaying a strike for up to eighty days if certain conditions were met. Truman's order therefore cited no specific statutory authority. Instead, he invoked vague "inherent" constitutional powers, directing the seizure by virtue of his roles as chief executive and commander in chief. In a dramatic legal battle between the Executive Branch and the steel companies, the Supreme Court held that the President had exceeded his authority. Truman was forced to stand down.

The *Steel Seizure Case* is today regarded as a seminal case limiting presidential claims of emergency power. It remains a rare instance in which the Supreme Court curtailed presidential authority during wartime. However, its actual holding was narrow, and the fractured opinions exposed the difficulty of defining clear limits to presidential war powers.

Truman's executive order never used the word "war." It opened, though, by noting that "American fighting men and fighting men of other nations of the United Nations are now engaged in deadly combat with the forces of aggression in Korea," and that U.S. forces "are stationed elsewhere overseas" to defend "the Atlantic Community against aggression."[23] In a radio address to the nation, Truman stressed that the steady supply of steel was essential not only to the fighting in Korea but also to the broader containment strategy, including the rearmament of allies and the build-up and maintenance of the atomic arsenal. "These are not normal times," he declared. "These are times of crisis."[24]

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The major steel companies sued, challenging the legality of the seizure. In defending the government's action, Justice Department lawyers argued that the President possessed inherent emergency authority to act for the nation's protection, drawing on the combined force of his Article II powers: the executive power, the commander in chief designation, and the duty to faithfully execute laws governing defense mobilization, economic stabilization, and allied rearmament. This argument closely resembled the expansive theory advanced by the Justice Department – but never resolved by the courts – in the Montgomery Ward episode during World War II (Chapter 7). As before, the high-profile litigation stoked public unease about unbounded executive power.

Despite a sharp rebuke in the district court, the Truman Administration had reason for optimism on appeal. The 1952 Supreme Court consisted of five Roosevelt appointees and four Truman appointees, and during the New Deal and World War II it had shown little appetite for restricting presidential emergency power.[25] Yet even as the Administration warned that failure to seize the mills would endanger national security and jeopardize ongoing operations in Korea, the Court – by a 6-3 vote – ordered the government to desist.

Remarkably, the Justices could not agree on a basic framework for deciding the case. All six members of the majority wrote separately, and several acknowledged that in some emergencies the President might possess inherent authority to take actions like Truman's. After more than a century and a half – and many large and small wars – fundamental questions about war and constitutional power remained unresolved. Not only were the doctrinal rules unclear; the very analytic framework for evaluating presidential emergency authority was still unsettled. Open questions included whether the nation was constitutionally at "war," whether that designation mattered; and how prior understandings of presidential power should adapt to new forms of conflict and strategic context.

Writing for the Court, Justice Hugo Black took a rigidly formalistic approach that was unconcerned with Cold War circumstances or the nature of modern warfare. For Black, the fact that the "theater of war" was an expanding concept did not justify expanding basic limits on presidential powers.[26] The Executive, in his view, was making law, not carrying it out.

Writing for the three dissenters, Chief Justice Frederick Vinson took issue with Black's formalism. Vinson had served during World War II as director of the wartime Office of Economic Stabilization and had advised the Attorney General on the Montgomery Ward seizure. Whereas Black dismissed claims that emergencies warranted exceptional authority, Vinson began by urging: "Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times."[27] And whereas Black viewed the President's plant seizure as making national labor policy on his own, Vinson viewed it as carrying out an overall national defense policy that Congress had legislated. More broadly, in the long-running contest between constitutional rigidity and flexibility, the dissenters leaned

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toward the latter: "History bears out the genius of the Founding Fathers, who created a Government subject to law but not left subject to inertia when vigor and initiative are required."[28]

That enduring contest over the risks of too much wartime flexibility or rigidity also coursed through Justice Felix Frankfurter's concurrence. Ever cautious about judicial power in such matters, Frankfurter agreed with the dissenters that the war-powers framework could evolve over time to meet changing needs, particularly when the elected branches jointly endorsed such evolution through practice. But he also emphasized the risks of making the Constitution too pliable. The rise of fascism before World War II, he argued, showed not the need for boundless executive authority to confront foreign threats, but the dangers of unchecked power at home.[29] Frankfurter punctuated the point with Justice Louis Brandeis's famous admonition from a quarter-century earlier: The Framers adopted separation of powers "not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among three departments, to save the people from autocracy."[30] Justice William Douglas likewise stressed that the Constitution was designed to tolerate – even require – some inefficiency, even in wartime.[31] The United States might pay a price for its checks and balances, and some strategic options might be constrained, but that cost was deliberately built into the constitutional design.

Of the seven opinions, Justice Robert Jackson's concurrence has had the most lasting doctrinal influence. Jackson resolved the case by offering a framework for assessing presidential power in relation to Congress's. At one end of a spectrum, zone 1, the President acts pursuant to express or implied authorization from Congress, and his power is therefore at its maximum. In zone 2, Congress has neither granted nor denied authority, leaving the President to rely solely on his independent Article II powers. In such situations, "any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law." And in zone 3, "[w]hen the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb." In those circumstances, courts "can sustain exclusive presidential control … only by disabling the Congress from acting upon the subject."[32]

The Justice Department portrayed the steel seizure as somewhere between Jackson's zones 1 and 2. Congress had not expressly barred such action, and it had authorized a wide array of defense programs that the President was obliged to carry out. Jackson disagreed and placed the President's action squarely in zone 3. Like some other members of the majority, he concluded that legislators intended to withhold seizure authority when they passed the Taft-Hartley Act.

Later chapters return to Jackson's framework, showing both its enduring influence and its limits for resolving the hardest war-powers disputes. But beyond that doctrinal contribution, Jackson's opinion reads as a broader meditation on the Constitution

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and war. His rhetoric draws on searing personal experience: the strains of serving as Attorney General in the tense months before U.S. entry into World War II, when he grappled with the scope of presidential emergency powers – including defending Roosevelt's own plant seizures; and his more recent role as chief prosecutor at Nuremberg, where he confronted the horrors of fascism.[33] The experience left him acutely alert to the dangers of concentrated power. Where Vinson's dissent stressed the risks of executive weakness, Jackson emphasized those of executive excess.

Jackson also linked Truman's unilateral intervention in the steel industry with his unilateral intervention in Korea. Constitutional questions about whether to go to war are often treated as separate from questions about how to wage it. Jackson tied those two strands together. "[N]o doctrine that the Court could promulgate would seem to me more sinister and alarming," he wrote, "than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture."[34] In other words, vast, inherent presidential emergency powers over domestic matters were especially dangerous when paired with unchecked power to take the nation to war (or something akin to war). That combination would allow, and possibly incentivize, a president to create the very conditions that enlarged his own authority. Although Jackson referenced the modern Cold-War context, his opinion harkened to Framers' concerns that presidential power to launch wars carried risks beyond foreign policy; as discussed in Chapter 1, such power might erode republicanism at home.

The *Steel Seizure Case* delivered a sharp rebuke to Truman – and a warning about constitutional flexibility – but its holding was actually quite narrow. Although a 6-3 majority ruled against the President, most justices acknowledged some presidential emergency power or implied that they might have ruled differently if Congress had not deliberately withheld seizure authority. They disagreed about what conditions would trigger presidential emergency power.[35] The decision was a stinging defeat for Truman, but it stopped short of repudiating the Administration's entire legal theory.

The *Steel Seizure Case* is really about limited powers to wage limited war. For the government and the Supreme Court dissenters, the Korea conflict, while itself confined, was part of a broader and protracted superpower struggle that was still in many ways "total" like World War II. Some risks, like nuclear war, were even more pronounced than before. Viewing the situation from that perspective, the Truman Administration expected to be able to draw on the powers of full-scale war, even if it resisted nationwide mobilization and avoided calling the conflict a "war" at all.[36] But as constitutional scholar Maeva Marcus puts it in her study of the case, the Court majority "did not disregard the crisis; it just did not believe that one existed."[37] We now know that the steel production stoppage did not in fact cause catastrophic harm. Immediately after the Supreme Court ruled, a fifty-three-day steelworker

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strike complicated military programs, but it did not halt them. Of course, the government could not have known with certainty the ultimate effects of a steel supply disruption on the war effort or its broader defense posture. But because most members of the Court saw Korea as a limited conflict, they were unwilling to accept the Executive Branch's claim to powers reserved for unlimited ones.

WAR POWERS FOR ALLIANCES

In most accounts of constitutional war powers, the Korean War figures prominently for good reason. It is the largest U.S. military conflict initiated without express congressional authorization, and it generated one of the most significant Supreme Court decisions about presidential powers in war. Yet at almost the same moment as these events were unfolding, another war-powers debate took place over events halfway around the world – in Western Europe. That second debate concerned the President's asserted power to station large numbers of troops in the territory of distant allies. Executive branch officials argued that doing so might avert World War III, while congressional critics worried that it would drag the United States into such a war.

Truman ultimately prevailed in what many called the "Great Debate" over U.S. troop deployments and command arrangements for the new North Atlantic Treaty Organization (NATO). In doing so, he established a lasting executive practice: the peacetime stationing of American forces abroad. What was constitutionally novel then – because it was strategically novel – soon became a cornerstone of U.S. foreign policy, cementing America's security commitments across administrations and helping preserve stability in Europe and beyond for decades. That precedent, though less dramatic than those set during the Korean War, remains no less consequential.

Early in the Cold War, the United States abandoned its long-standing aversion to "entangling alliances" and built a network of mutual defense treaties. Besides the global collective security arrangement enshrined in the UN Charter, the United States entered into defense pacts with groupings of states in Western Europe (NATO), Asia (the Southeast Asia Treaty Organization [SEATO]), and the Western Hemisphere (the Rio Treaty). It also made bilateral defense agreements with South Korea, Japan, and the Republic of China, among others. These commitments were part of an effort to "extend" deterrence of Communist bloc aggression far beyond America's own borders. Extended deterrence was essential to reassuring U.S. allies that their security needs would be met – in some cases to dissuade them from pursuing destabilizing rearmament of their own.

Just at the moment that the United States was overturning its customary aversion to large standing armies, in other words, it was also inverting its traditional strategic dogma on alliances. "Why," President Washington had asked in his 1796 Farewell Address, "by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor,

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or caprice?"[38] Successive presidential administrations had held his caution as gospel for a century and a half. For many American strategists, World War II toppled Washington's advice.[39] Since the Founding, alliances were generally viewed as likely to drag the United States needlessly and dangerously into foreign wars. Now alliances were widely viewed as critical to averting foreign wars that would otherwise pull the United States in.

The first major piece of this project was the North Atlantic Treaty. Aimed at the Soviet threat from the east, it tied together a dozen states including the United States, Canada, and West European allies from World War II. Prospective European members, still reeling from the war, looked to Washington for a firm guarantee that the United States would defend them, up to and including going to war. The core of the draft agreement was a shared pledge to regard an attack on any member as an attack on all and to respond in collective defense. By 1949, Congress was widely supportive of such a pact. But ratifying any mutual-defense treaty required a two-thirds Senate vote, and the proposal met stiff resistance from lawmakers who critics dubbed "isolationists."

Consultations between the Executive Branch and the Senate revived an old war-powers dilemma from the League of Nations and UN debates: how to reconcile standing security commitments with Congress's authority to decide whether the nation goes to war. As lawmakers began to inspect the draft treaty, even some Senate supporters worried that such commitments could let the Executive – or foreign allies, for that matter – dictate when the nation goes to war. The more U.S. negotiators sought to reassure anxious allies of an American defense pledge, the more Congress's war-making authority seemed to recede. Secretary of State Acheson, one of the treaty's chief architects, wrote in his memoirs that negotiations "became a contest between our allies, seeking to impale the Senate on the specific, and the senators, attempting to wriggle free."[40]

The Senate Foreign Relations Committee insisted that the treaty be reworked to exclude any automatic military commitment. Although the final text still treated an attack on one member as an attack on all, it included language that reassured most senators by leaving open the form of assistance the United States was obligated to provide. The treaty also stated that its provisions would be carried out by parties "in accordance with their respective constitutional processes." During Senate hearings on the treaty, Acheson assured Senators that the treaty "does not mean that the United States would automatically be at war if one of the other signatory nations were the victim of an armed attack." He went on to say that "[u]nder our Constitution, the Congress alone has the power to declare war." When asked whether anything in the treaty would lead automatically to a declaration of war, Acheson stated "unequivocally 'No.'"[41] Following weeks of exhaustive hearings, the Senate approved the treaty 82-13.

Over the next decade, additional U.S. regional and bilateral defense pacts drew far less constitutional debate, largely because the North Atlantic Treaty, and the

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Executive Branch's accompanying assurances, had set a workable template. The 1953 defense pact with South Korea and the 1954 SEATO pact, for example, included similar language, leaving each state to respond to attacks on others according to its own "constitutional processes."

In getting these defense pacts through the Senate, the Executive Branch appeared to concede that the President could not unilaterally take the nation to war to defend a treaty ally. Later chapters, however, show that the treaty language and Senate hearing exchanges left space for a lurking claim of presidential power to do so. In the meantime, the North Atlantic Treaty's ratification set the stage for another immediate war-power controversy.

After North Korea's invasion of the South in Summer 1950, policymakers on both sides of the Atlantic grew worried that West European allies might also be vulnerable to Communist aggression. NATO forces in Europe were greatly overmatched by larger conventional forces of the Soviet Union and its East European satellites. Building up West European military strength was essential, especially now that the Soviets had nuclear weapons of their own – which, according to the logic of "mutually assured destruction," made the United States' promise to defend NATO allies less credible.[42] Would the United States really step in if doing so risked nuclear warfare?

Truman's answer was to station substantial U.S. forces along NATO's eastern flank and create new command arrangements with allied partners, bolstering the pact's credibility in the eyes of both Moscow and anxious Western European capitals. He planned to deploy six Army combat divisions – more than 100,000 troops – to West Germany, reinforcing the largely noncombat U.S. occupation forces still stationed there after World War II.[43] The Administration and NATO allies would also create a unified command structure headed by an American supreme commander (General Dwight D. Eisenhower would be the first one) and staffed by officers from across the alliance.

The "Great Debate," as it came to be called, erupted with a measure sponsored by Senate Minority Leader Wherry. The Republican, deeply skeptical of NATO, introduced a resolution stating "[t]hat it is the sense of the Senate, that no ground forces of the United States should be assigned to duty in the European area for the purposes of the North Atlantic Treaty pending the formulation of a policy with respect thereto by the Congress." Republican Representative Frederic Coudert Jr. likewise sponsored a House resolution requiring that "no additional military forces be sent or maintained outside of the United States … without the prior authorization of the Congress in each instance."[44]

Some opposition lawmakers clung to prewar isolationist tendencies, while others sought to preserve American freedom of action abroad or extract greater defense commitments from European allies. Senator Taft, who quickly emerged as leader of the Republican dissenters, argued – along with some military leaders – that air power and atomic weapons offered an effective and economical way to protect core

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security interests. Taft and his allies also felt that Congress had failed to protect legislative prerogatives when it allowed Truman to intervene unilaterally in Korea; they were determined to avoid a repeat.[45]

Embedded in the strategic and political debate over NATO was a constitutional question the Framers never imagined: Were there limits on the President's power to station U.S. forces in peacetime on an ally's territory? Nothing in the world of 1787 could have prompted such a concern. The question arose only after the United States abandoned its aversion to entangling alliances and large standing forces and assumed the role of a major security guarantor.

The Truman Administration argued that stationing troops in Europe fell squarely within the President's core commander-in-chief and foreign-affairs powers. On this view, deciding where to position military forces – including on foreign soil – was quintessentially an executive function. When Truman was asked in a January 1951 press conference whether he thought he needed congressional authorization to send troops to Europe, he succinctly responded: "No, I do not."[46]

As the debate went on, Congress circulated a State Department document titled "Powers of the President to Send the Armed Forces Outside the United States." Like the previous year's Korea memorandum, it justified the President's military deployments to Europe by appealing to historical practice. The Korea memo had listed eighty-five instances of unilateral executive military action; this new one put the number at 125. The new memo also appealed to present geopolitical realities: "Sending armed forces to Europe may be as necessary to national defense in these days of the airplane and the atomic bomb as sending troops to Florida was in the days of President Monroe."[47] This modernized John Quincy Adams's constitutional arguments discussed in Chapter 3: If the President always had constitutional power to repel sudden attacks, he should now also have power to neutralize global threats that presented an imminent danger to the United States. Not content with arguing merely that the President could send forces abroad without congressional approval, executive branch officials behind the new memorandum tucked in the much bolder assertion that Congress lacked power even to constrain by statute the President's deployment of armed forces.[48]

Many on Truman's team understood that, in the wake of the costly Korea intervention, such arguments would land poorly on Capitol Hill and with the public. Acheson, however, did not hide his aim to expand presidential freedom of action against global threats. At a hearing on the European deployments, he brushed aside a senator's inquiry by saying that "in this very critical hour," debates over "who has the power to do this, that, or the other thing" were beside the point.[49]

Despite Acheson's efforts to steer the discussion elsewhere, constitutional arguments ran throughout the Great Debate. Opponents objected that Truman was again encroaching on Congress's authority to decide war and peace. Stationing sizable U.S. forces as a tripwire, they argued, would pre-commit the nation to the next European war and strip Congress of its prerogative to make that decision if and

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when the moment came. Representative Coudert went so far as to state publicly that "[i]f the President alone is allowed to send anywhere abroad, at any time, hundreds of thousands of American troops without a declaration of war by Congress, pursuant to the Constitution, then, indeed, there is little of American constitutional government or freedom."[50]

Taft expanded on these objections in Senate speeches and in his 1951 book, *A Foreign Policy for Americans*. He denounced the State Department's memorandum on presidential authority to send forces overseas as "the most unbridled claims for the authority of the President that I have ever seen written in cold print," and he submitted to the Congressional Record his own detailed rebuttal.[51] Taft conceded that a president could station troops, without congressional approval, in a friendly country that did not face a direct threat. But, he argued, unilateral deployment of troops to a flashpoint like West Germany would neuter Congress's authority to declare war; it was tantamount to sending combat troops into a war zone.[52] Taft further argued that the Administration's proposal for a unified NATO command under an American supreme commander amounted to an unconstitutional "international army."[53]

The strategic and constitutional debates were entwined. Taft and his colleagues were arguing that Truman's proposed deployments would displace Congress's power to control whether the United States went to war: Any Soviet attack on Western Europe – and thus on American troops there – would automatically put the United States in the fight. Truman considered that the point. Stationing U.S. forces in Europe would, in his view, deter Moscow by raising the stakes of aggression. To congressional critics, the plan heightened the risk of U.S. involvement in a future war; to Truman, it was necessary to keep war from breaking out in the first place.[54] One side viewed a broad presidential power as enabling a dangerously interventionist policy, and the other viewed it as enabling a strategy of conflict prevention.

Truman was ultimately aided by his ally Tom Connally, the Democratic chairman of the Foreign Relations Committee, who helped broker an April 1951 compromise that gave the President most of what he sought. By that time, the Administration had capped its deployment plans at four combat divisions, which was still more than 100,000 troops.[55] The House took no formal action, and the Senate passed a nonbinding resolution that endorsed Truman's plans while expressing "the sense of the Senate that no ground troops in addition to such four divisions should be sent to Western Europe … without further Congressional approval."[56] On one side, Truman had avoided any legally binding obligation that the President obtain Congress's approval to send troops to Europe.[57] On the other, Taft hailed the resolution as "a clear statement by the Senate that it has the right to pass on any question of sending troops to Europe to implement the Atlantic Pact" and "that it is unconstitutional for the President to send troops abroad to implement that pact without congressional approval, at least until war comes." Acheson, meanwhile, dismissed the resolution as "without force of law."[58]

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However one scored that debate, the lasting consequence has been the President's continued practice of unilaterally stationing American forces overseas in peacetime. As Schlesinger observed of the security commitments the United States forged with almost two dozen countries, the "pactomania" of the 1950s "made it more difficult than ever for Congress to prevent Presidents from deploying troops as treaty commitments and the national security were deemed to require (and the President was the judge of both). Presidents therefore acquired the habit of moving the armed forces as if they were institutional, if not personal, property."[59] Although Schlesinger fails to account for congressional support of those deployments, he is right that alliances entrenched dormant and once-contested presidential powers over the placement of U.S. forces. Strategies of forward defense and tripwire deployments – designed to reassure allies and deter aggression – normalized broad presidential discretion over global basing decisions. Over time, presidents would invoke that discretion routinely, even outside formal alliances.

Given the centrality of alliances to Cold War strategy, the pattern of presidents deploying U.S. forces to allied territory – with Congress's political and financial backing or acquiescence – was arguably more consequential than any precedent established in Korea. Although counterfactuals are always uncertain, the United States' strong and credible alliance network likely helped keep the Cold War from turning hot. After Korea, both Europe and northeast Asia experienced relative stability. Effective alliance management – including forward deployments that guaranteed American commitments – helped steady some partners while discouraging destabilizing rearmament or nuclear pursuits by others.[60]

Chapter 9 explores the lessons Truman's successor, Eisenhower, applied in his own effort to extend security protection to allies and partners.

CONCLUSION

American grand strategy underwent a radical transformation after World War II. No wonder the early Cold War became a period of constitutional ferment as well.

The advent of large standing forces and collective-security commitments brought new constitutional questions about who directed military power. As in the Founding era, war-powers disputes turned on domestic as much as foreign stakes, and critics cautioned that shifting authority risked eroding republican self-rule. The President often carried the day, but only with congressional support or against the legal and political drag of constitutional protest.

The 1951 State Department memo on deploying forces abroad observed that war-powers doctrine "has been largely molded by practical necessities." New geopolitical realities – and the strategies crafted to meet them – were continuing that process:

> Use of the congressional power to declare war, for example, has fallen into abeyance because wars are no longer declared in advance. The constitutional power of the Commander in Chief has been exercised more often because the need for

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> armed international action has grown more acute. The long delays occasioned by the slowness of communications in the eighteenth century have given place to breath-taking rapidity in the tempo of history. Repelling aggression in Korea or Europe cannot wait upon congressional debate.

Although the document advanced an aggressive case for executive initiative, it also underscored the importance of legislative support:

> [W]hile the need for speed and the growth in the size and complexity of the armed forces have enlarged the area in which the powers of the Commander in Chief are to be wielded, the magnitude of present-day military operations and international policies requires a degree of congressional support that was unnecessary in the days of the nineteenth century.[61]

Even as presidential power expanded, so too did Congress's responsibilities. Truman's ability to intervene in Korea and maintain large deployments in Germany rested on the legislative creation of the Cold War national security state. Congress also endorsed a vision of global American interests by approving major alliance commitments and continuing to fund support for U.S. partners.

Truman's successors inherited war-powers practices shaped not only by executive action in crises but also by peacetime choices – organizational structuring, appropriations, alliances, and deployments – that Congress helped craft or endorsed. Chapter 9 examines how those successors would use both expanded constitutional authorities and a new arsenal of congressionally created tools during the most dangerous years of the Cold War.

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