AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal and Great Society Era – Separation of Powers

**Department of State Memorandum on the Authority of the President to Repel Attack in Korea** (1950)[[1]](#footnote-1)

*In the aftermath of World War II, the Korean peninsula became independent of Japan, divided between a northern section occupied by the Soviet Union and a southern section occupied by the United States. The partition was soon institutionalized, creating two countries separated by the 38th parallel. In June 1950, the North Korean army crossed the national border and invaded South Korea, quickly capturing the capital city of Seoul. The United Nations Security Council adopted a resolution calling on North Korea to withdraw, and two days later called on UN members to take any necessary steps “to repel the armed attack and to restore international peace and security in the area.” President Harry S. Truman immediately ordered American ground forces into South Korea to engage the North Korean troops, with a multination force joining the Americans soon afterwards. Although the United States announced a goal of establishing a unified, democratic Korean state, the war soon bogged down and three years later a peace agreement was signed that preserved two separate Koreas.*

*The president did not pursue a congressional declaration of war either before or after the introduction of American troops into hostilities. A State Department legal memorandum set out the constitutional justification for unilateral presidential action, emphasizing the president’s independent duty to take care that the laws be faithfully executed and his role as commander in chief. Those laws should be understood to include the commitments built into the United Nations charter. For many critics, Truman’s actions in Korea marked a turning point in presidential war powers and the rise of a new claim that presidents could commit to a war without congressional authorization.*

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The President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof. He also has authority to conduct the foreign relations of the United States. Since the beginning of the United States history, he has, upon numerous occasions, utilized these powers in sending armed forces abroad. The preservation of the United Nations for the maintenance of peace is a cardinal interest of the United States. Both international law and article 39 of the United Nations Charter and the resolution pursuant thereto authorize the United States to repel the armed aggression against the Republic of Korea.

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That the President’s power to send the Armed Forces outside the country is not dependent on Congressional authority has been repeatedly emphasized by numerous writers.

For example, ex-President William Howard Taft wrote:

The President is made Commander in Chief of the Army and Navy by the Constitution evidently for the purpose of enabling him to defend the country against invasion, to suppress insurrection and to take care that the laws be faithfully executed. If Congress were to attempt to prevent his use of the Army for any of these purposes, the action would be void. . . .

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The basic interest of the United States is international peace and security. The United States has, throughout its history, upon orders of the Commander in Chief to the Armed Forces and without congressional authorization, acted to prevent violent and unlawful acts in other states from depriving the United States and its nationals of the benefits of such peace and security. It has taken such action both unilaterally and in concert with others. . . .

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Thus, even before the ratification of the United Nations Charter, the President had used the Armed Forces of the United States without consulting the Congress for the purpose of protecting the foreign policy of the United States. The ratification of the United Nations Charter was, of course, a landmark in the development of American foreign policy. . . .

Action contrary to the Charter of the United Nations is action against the interests of the United States. Preservation of peace under the Charter is a cornerstone of American foreign policy. . . .

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. . . [T]he point was made by Senator Austin [in the debates over ratification of the United Nations charter], who stated:

. . . . [T]here is no doubt in my mind of his obligation and authority to employ all the force that is necessary to enforce the laws.

It may be asked, How does a threat to international security and peace violate the laws of the United States? Perhaps . . . it would not have violated the laws of the United States previous to the obligations set forth in this treaty. Perhaps we have never before recognized as being true the fundamental doctrine with which I opened my remarks. But we are doing so now. We recognize that a breach of the peace of the world is an attack upon us; and after this treaty is accepted by 29 nations, that will be the express law of the world. It will be the law of nations, because according to its express terms it will bind those who are nonmembers, as well as members, and it will be the law of the United States, because we shall have adopted it in a treaty. . . .

So I have no doubt of the authority of the President in the past, and his authority in the future, to enforce peace. I am bound to say that I feel that the President is the officer under our Constitution in whom there is exclusively vested the responsibility for maintenance of peace.

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In the Korean situation, the resolution of the Security Council of June 25 determined, under article 39 of the Charter, that the action of the North Koreans constituted a breach of the peace. . . . It also called upon “all Members to render every assistance to the United Nations in the execution of this resolution.” . . .

The President’s action seeks to accomplish the objectives [of this resolution].

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. The continued existence of the United Nations as an effective international organization is a paramount United States interest. . . . It is a threat to the international peace and security, a threat to the peace and security of the United States and to the security of the United States forces in the Pacific.

These interests of the United States are interests which the President as Commander in Chief can protect by the employment of the Armed Forces of the United States without a declaration of war. It was they which the President’s order of June 27 did protect. The order was within his authority as Commander in Chief.

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1. Excerpt taken from “Authority of the President to Repel Attack in Korea: Department of State Memorandum of July 3, 1950,” *Department of State Bulletin* 23 (July 31, 1950): 173. [↑](#footnote-ref-1)