



# Idaho Standards and Applications for 12<sup>th</sup> Grade Civics and Government

---

---

## **Federal Government: A Case Study of The Constitution, the War Power, and the Rule of Law**

Dr. David Adler, Idaho State University

The decision to go to war, it often has been remarked, is the most solemn decision any nation will ever make. The long American experience with warfare, from the Revolutionary War through two world wars to the war against terrorism, confirms the importance of both wise decision-making and the unhappy and grim conclusion that war, sometimes, is unavoidable.

For their part, the Framers of the United States Constitution understood that the twists and turns of warfare are unpredictable and that they can lead to massive loss of life, financial ruin and perhaps the destruction of the country. As a consequence, their constitutional design for war sought protection against the possibility that the nation might be plunged into an ill-advised and unnecessary war, one that did not reflect the genuine interests of the nation. In particular, they feared the prospect of unilateral Presidential war making.

Their intention in writing the War Clause of the Constitution ([United States Constitution, Article I, Section 8](#)) was to ensure that only Congress could make the awesome decision to go to war. Thus it was left to Congress to either declare or otherwise authorize wars--



# Idaho Standards and Applications for 12<sup>th</sup> Grade Civics and Government

---

great or small. The President was given no authority to initiate military hostilities. One of the Constitutional Convention's most important delegates, James Wilson, of Pennsylvania, summed up the purpose of the War Clause when he stated: "the system is designed to prevent one man from hurrying us into war."

In this effort, the Framers applied to war making and the conduct of foreign affairs familiar principles of constitutionalism: separation of powers, checks and balances, collective decision-making, and the principle of the rule of law. The constitutional blueprint for war making represented a radical departure from the way in which nations made the decision to initiate war. In England, for example, the King possessed the authority to go to war.

But the Framers were keen students of history and they were familiar with the fact that, across the centuries, executive leaders often had marched their people into war for less than meritorious reasons, including the pursuit of their own personal and political agendas. Given their concern that an American President might pursue war when the national interest did not require it, the Framers chose to place their confidence in the wisdom of Congress, particularly in the process of discussion and debate among the nation's representatives, to decide between war and peace.



# Idaho Standards and Applications for 12<sup>th</sup> Grade Civics and Government

---

The delegates to the Constitutional Convention were convinced that Congress, comprised of representatives accountable to and mindful of their constituents' concerns and interests, would not authorize war unless it was clearly necessary. The determination of the Convention to vest the war power in Congress, as opposed to the President, reflected not only a widespread fear among the delegates of a powerful President, and especially the specter of executive war making, but also their commitment to collective decision making, the cardinal principle of republicanism; to wit, the combined wisdom of the many is superior to that of one person.

The principle of republicanism is, of course, the dominant characteristic of the constitutional system. As students know, the constitutional allocation of powers rests on the Framers' perception that unchecked unilateral power represented a grave threat to liberty. This assumption rests on the understanding that government is not infallible; as James Madison explained in [Federalist No. 51](#), it is comprised of men and women who are not only likely to make some mistakes but whom, the Framers believed, will be tempted to abuse power in the pursuit of their goals.

The implementation of checks and balances, which provides for shared powers between Congress and the President, provides some assurance that policy proposals, bills and departmental actions will be reviewed and, perhaps, challenged by others, in the spirit of



# Idaho Standards and Applications for 12<sup>th</sup> Grade Civics and Government

---

producing wiser governmental policies and actions. This is spelled out, for example, in the lawmaking process in which the House and the Senate check each other, and in the provisions that authorize the President to veto a bill and the Congress to override a Presidential veto.

The application of the doctrine of checks and balances is to be observed, moreover, in the general formulation of foreign policy, in which, for example, the President and the Senate share the treaty making power, and in the constitutional requirement that a majority of the members in the House and the Senate must vote to authorize war. The emphasis in the Constitution on shared decision making in both domestic and foreign policy, reflects what students recognize as the foundational belief of the [United States Constitution, First Amendment](#) guarantee of freedom of speech: that it is through the process of discussion and debate, a process in which all views are given a full airing and subjected to the cross-fire of analysis and evaluation, that the truth will emerge.

Until 1950, no President ever claimed the unilateral power to take the nation into war without authorization from Congress. But President Harry Truman's decision to enter the Korean War represented a rank usurpation of the war power and it ushered in a practice, now more than fifty years old, in which Presidents have assumed the authority to choose between war and peace--in defiance of the Constitution.



# Idaho Standards and Applications for 12<sup>th</sup> Grade Civics and Government

---

This practice of unilateral executive war making, which is precisely what the Framers of the Constitution feared when they drafted the War Clause, represents an ongoing constitutional crisis. For the past half -century, Presidential usurpation of the war power has met no significant opposition from Congress which, indeed, has been passive and quiescent. The judiciary, moreover, has refused to hear challenges to Presidential war making.

American citizens are entitled to wonder: Who is left to protect the integrity of the Constitution when it comes to war making?

It has been said that, in the interpretation of the Constitution, the views of the Framers are irrelevant and outdated. But before we too readily acquiesce in that judgment, we ought to consider that under the current practice one person, the President, may take the nation into war. That means, of course, that one person may initiate nuclear war, which could set the earth afire and eclipse human life. If we allow our mind's eye to visualize that catastrophe, we may be persuaded that the Framers' decision to grant the war power to Congress is more compelling today than it ever was in their time.