# DA – War Powers

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#### Congress is rolling back Trump’s powers now. Herb 7/1

Herb, Jeremy. “How Congress Is Taking Back Power from Trump on National Security.” CNN, Cable News Network, 1 July 2017, www.cnn.com/2017/07/01/politics/congress-trump-war-power/index.html. Jeremy Herb is a national security reporter covering Congress for CNN Politics. Prior to CNN, Herb was a defense reporter at Politico, where he wrote about the Pentagon, Congress and defense industry political influence. Herb was also a national security reporter at The Hill and a Washington correspondent for the Minneapolis Star Tribune. He has a bachelor's degree from Santa Clara University and a master's degree from Columbia University's Journalism School. //nhs-VA

In ways big and small, Congress is taking back power from President Donald Trump on national security matters. From Russia to the Pentagon budget, Republicans in Congress are proposing new checks to curb the White House's power and in some cases simply ignoring the Trump administration's desires on national security and foreign policy. Wary of favorable comments Trump has previously made about Russia, the Senate has passed a significant Russia sanctions package that gives Congress the ability to review any administration effort to roll back sanctions against the Kremlin. Congressional committees approved three defense bills this week boosting Pentagon spending by about $30 billion more than the Trump administration proposed after Republicans complained that Trump's budget failed to rebuild the military as he promised. And in a surprise vote this week, a House panel approved an amendment to [repeal the 2001 Authorization](http://www.cnn.com/2017/06/29/politics/house-panel-repeal-war-authorization-isis-al-qaeda/index.html) for Use of Military Force, which provides legal authority for the US wars in Syria, Iraq and Afghanistan. "I think it's sinking in, especially with Republican members of Congress, that they are not getting the kind of adult leadership out of the White house that would allow you to give deference to the White House," said Mieke Eoyang, a national security analyst at Third Way and former congressional aide. "So you see Congress stepping up to take a much more aggressive role on national security for the first time in a very long time." Bottom of Form Legislative vs. Executive For years, a small chorus in Congress has bemoaned the legislative branch giving back its national security powers to the executive, from war-making to the budget caps imposed by the sequestration law. [Russia sanctions bill still stuck in Congress before Trump-Putin meeting](http://www.cnn.com/2017/06/29/politics/russia-sanctions-bill-senate/index.html) Congress certainly hasn't taken back those authorities in full, and some experts argue most of the steps taken thus far are mostly symbolic. There are still major hurdles to passing a new ISIS war authorization, the new Russia sanctions have stalled with the House, and sequestration spending caps are still looming over the spending process. "I'm cautiously optimistic that Congress is looking to assert some structure on a chaotic national security process ... but at the moment these don't yet strike me as significant checks -- yet," said Loren DeJonge Schulman, a defense analyst at the Center for a New American Security. "I'll be willing to say Congress is offering a real check to this administration when it refuses to fund one of its initiatives, or halts war funding until a clear strategy is provided." There were also similar efforts to curb President Barack Obama's national security powers, including blocking the closure of the US military prison in Guantanamo Bay and rolling back surveillance authorities. At the start of the Trump administration, Republican congressional leaders on national security were hopeful that the national security team -- Defense Secretary Jim Mattis, national security adviser H.R. McMaster and Director of National Intelligence Dan Coats -- would steer Trump in what they consider the right direction. Trump was praised for his decision to strike Syria in response to a chemical weapons attack. But in many cases, Trump has ignored or overruled his national security team, and the President's actions and statements -- or lack of action -- has sparked a more robust response on Capitol Hill than during the Obama years. "I think we are seeing a growing dose of skepticism by members of Congress -- notably in the President's own party -- about Trump's ability and willingness to grasp the complexities of key national security problems and his unique responsibilities as commander in chief," said John Kirby, a CNN diplomatic and military analyst a former Pentagon and State Department spokesman under Obama. Rebukes of Trump The Senate's [Russia sanctions bill](http://www.cnn.com/2017/06/14/politics/senate-new-russia-sanctions/index.html) may be the most significant fight thus far over the balance of national security power. The bill, which passed 98-2, would give Congress the ability to block Trump from rolling back sanctions on Moscow and comes amid concerns from lawmakers following a Washington Post [report](https://www.washingtonpost.com/world/national-security/trump-administration-moves-to-return-russian-compounds-in-maryland-and-new-york/2017/05/31/3c4778d2-4616-11e7-98cd-af64b4fe2dfc_story.html?tid=sm_tw&utm_term=.b7845a32b47d) in May that said Trump was considering returning two Russian compounds that the US seized in December sanctions on Russia. Senators are now pressing the House to pass the bill without weakening it. While the House Appropriations Committee's vote to repeal the 2001 war authorization is unlikely to be signed into law, it is another implicit rebuke to Trump and a sign of growing congressional discontent with an unchecked war on terror. The proposed amendment received support from both Democrats and Republicans during debate, but the vote caught House leaders in both parties off guard. In other cases, Congress has taken symbolic gestures to rebuke the President. The Senate, for instance, passed an amendment reaffirming support for NATO's Article 5 principle that an attack on one member is an attack on all -- a vote that came after Trump did not reaffirm the principle during his speech at NATO headquarters. The House passed a similar resolution on the floor this week to reaffirm the US commitment to NATO. Key Republican senators are also injecting themselves directly into foreign policy decisions. After Trump took Saudi Arabia's side in the blockade of Qatar by four Gulf countries -- putting him at odds with statements from Secretary of State Rex Tillerson -- Senate Foreign Relations Chairman Bob Corker got involved. The Tennessee Republican said he would use [his authority as chairman to block any new foreign arms sales](http://www.cnn.com/2017/06/26/politics/corker-arms-sales-qatar-gulf/index.html) to all of the countries involved until a path to a resolution was found. Senate Armed Services Chairman John McCain has slammed the administration for failing to articulate a strategy for Afghanistan, and he threatened to provide one himself at a June confirmation hearing for Patrick Shanahan, Trump's nominee for deputy defense secretary. "The President has two choices: Either give us a strategy or we will put a strategy that we develop into the defense authorization bill," McCain said. Ignoring Trump's budget McCain did not include his own Afghanistan strategy in his defense bill that passed this week given that Mattis has promised one in July. But the Arizona Republican did blow by the Trump administration's Pentagon budget request, authorizing $640 billion in base spending compared to the Trump budget's $603 billion request. [How Trump is empowering the military -- and raising some eyebrows](http://www.cnn.com/2017/06/24/politics/trump-pentagon-shift-war-power-military/index.html) "He called it a 10% (budget increase)," McCain told CNN. "It wasn't. It was 3%, and it was a joke. I think it's very clear that the majority of Congress, because of events in the world, view more seriously the cuts that have been made in defense spending." While Republicans will still have to fight with Democrats over final spending levels, McCain and other defense hawks have placed the blame for Trump's defense spending levels at the feet of his budget chief, Mick Mulvaney, a fiscal hawk who often targeted defense spending while in Congress. "Congress is in the lead here, but we're not making this up, we're going to the experts," said Ohio Republican Rep. Mike Turner. "We're listening to DoD and we're merely giving them what they've already said that they needed. The problem is that OMB didn't listen and we are."

#### Drafts must pass a “compelling government interest” through “narrowly tailored means” test to withstand any thirteenth amendment challenge. Only a wartime draft can do so. Durable fiat necessitates defining status quo as “total” or “imperfect” war to remain legal.

Britt 9 – JD Northwestern School of Law (Jason Britt, Unwilling Warriors: An Examination of the Power to Conscript in Peacetime, 4 Nw. J. L. & Soc. Pol'y. 400 (2009). <http://scholarlycommons.law.northwestern.edu/njlsp/vol4/iss2/4>) LADI

The draft cases that have dealt with the Thirteenth Amendment have done so in an enclave carved out by the judiciary, where the courts have decided that the constitutional protections of the Amendment do not apply.141 These cases have largely avoided direct questions concerning the compelling interests of the government as weighed against the infringement of a fundamental freedom of the citizen. We may chalk this up to a higher level of deference to the state when dealing with the war powers, and the unwillingness of the Court to interpose itself in decisions involving these powers.142 Given the extent of wartime case law reinforcing the constitutionality of the draft, and the extraordinary leeway granted the legislature in making decisions during times of war, it would be a fool’s errand to argue that wartime conscription (particularly during involvement in an indisputable total war, such as the Civil War or World War II) is unconstitutional. Indeed, there have been analyses showing that the draft cases that have been successful (generally dealing with conscientious objection and other individual exceptions, rather than dealing with the institution as a whole) have succeeded because they dealt with unprofessional conduct on the part of local boards, which fall under a less deferential civilian analysis.143 Given these examples, an attempt to find the draft unconstitutional will probably have to withstand the strong military deference espoused in cases such as Korematsu v. United States.144 In the cases discussed here, that deference is probably most visible in Heflin, with its language regarding the totality of the conflict in World War II, where the consequences to the nation of failing to mobilize would have been dire.145 However, many of the draft cases, most notably those during the Vietnam War, did not involve total war. ¶44 It is here that a distinction must be made. The Supreme Court has never answered the question of whether a peacetime conscription would be unconstitutional. However, it is unclear from precedent whether there would be a difference between peacetime as peacetime and peacetime during which the United States is engaged in a conflict that may represent an “imperfect war” falling short of a total war. Looking at past conscription challenges under the Thirteenth Amendment, we can see two themes emerge: ƒ The Thirteenth Amendment does not prevent the government from using powers that it has traditionally employed, such as the use of the trinoda necessitas doctrine mentioned in Butler. 146 ƒ The Thirteenth Amendment does not take precedence over the nation’s military requirements, and does not excuse nonparticipation in the military once Congress exercises its authority under the Constitution to raise armies through a draft.147 ¶46 The first line of reasoning is that because the government has historically used the draft, the Thirteenth Amendment does not prevent the government from continuing to do so. However, the historical record does not support this conclusion. If and when the courts recognize that historically the United States has only sparingly used the draft, how will that recognition change the constitutional viability of conscription? A. Historical Underpinnings of the Draft ¶47 The first flaw in the analysis used by courts to uphold the draft as constitutional involves the historical use of the draft. In the Selective Draft Cases, which through Vietnam proved to be sufficient authority to uphold the constitutionality of the draft, the Court mentions the history of the draft in the United States, treating it as undisputed fact that the government has used the draft if not routinely, then frequently enough to merit serious consideration.148 In addition, Butler seems to open an exception for long-standing government activities to the Thirteenth Amendment, so that traditional tasks of the government cannot be halted by constitutional challenge.149 ¶48 The problem is that the use of a modern, national draft that does not allow substitutes or buy-outs postdates the passage of the Thirteenth Amendment. Our first national experience with a draft as we currently understand it came during World War I.150 Before the twentieth century, conscription was either applied only to the destitute portions of a population,151 conducted on a local level without direct federal intervention,152 or had loopholes that allowed ninety-five percent of those drafted to evade service.153 Even prior to the Revolution, the British failed a number of times to institute a conscription program that could have served as a model to the new nation.154 To use the Butler rule to argue that the draft was a pre-existing traditional use of government power that the framers of the Thirteenth Amendment did not wish to displace ignores the fact that the Amendment predated the tradition entirely. B. Types of War and Strict Scrutiny Challenges ¶49 While the Thirteenth Amendment could not incorporate a tradition that did not yet exist, it could—and did—create new fundamental rights for U.S. citizens. Because a draft infringes on these fundamental rights in violation of the Thirteenth Amendment, a strict scrutiny test should be applied. ¶50 During a time of total war or even a sufficiently pressing national emergency, this analysis is not difficult. Even under strict scrutiny, in the event of total war, curtailing fundamental liberties may be seen as a necessary measure in the face of a compelling government interest—and there is arguably no more compelling interest than the survival of the nation. Abraham Lincoln’s famous quotation rings true under a total war analysis: “[A]re all the laws but one to go unexecuted, and the Government itself go to pieces, lest that one be violated?”155 Under a strict scrutiny analysis of a draft during a total war, the Court could still find the existence of a compelling national interest to deal with war or emergency that precipitated the draft in the first place.156 For example, while the Korematsu decision is often reviled as bad law,157 it does offer an example of a court applying strict scrutiny and nevertheless upholding the infringement of a fundamental interest. With the compelling interest of national preservation established, the inquiry goes next to whether the means of achieving that interest are narrowly tailored. As pointed out in Heflin, however, these kinds of conflicts can require a dedication of the citizenry unparalleled by other challenges.158 ¶51 A peacetime challenge would proceed very differently. In a time of true peace, it is unlikely that there could be any compelling justification for drafting citizens into the military against their will and in violation of their Thirteenth Amendment rights. Because a draft is intended to help field a military to prevail in a conflict, the government would be hard-pressed during peacetime to argue that a draft is narrowly tailored to meet a compelling government interest. Beyond the mere problem of being too far-reaching a solution to the problems at hand, the institution of the draft has tended to have widespread social and political consequences.159 There are very few ways one can argue that a draft is the narrowest way to achieve an increase in troop strength. For example, while financially draining, bonuses offered to encourage volunteer enlistment can be one more narrowly tailored method of increasing recruitment.160 In addition to the constitutional reasons for adopting this approach, there are arguments that encouraging volunteer enlistment would be less costly financially than compelling military service.161 While having a draft may provide other benefits, such as lessening the disproportionate representation of minority populations in the armed forces, courts would be unlikely to find the draft a narrowly tailored means of meeting those objectives. ¶52 Perhaps one example of a situation where a peacetime challenge to the draft could have succeeded is the period between 1939 and 1941, when the world was at war, and it appeared inevitable that the United States would be involved. While this was a real concern in 1939, it is not a common situation, and it is one that the courts can deal with under the strict scrutiny standard if such an exceptional situation arises again. ¶53 A draft during an imperfect war would be most likely to create controversy, as the Vietnam War, a conflict likely classified as imperfect war, generated several challenges to the draft based on varying theories. While there would still be military involvement in an imperfect war, reasoning borrowed from Heflin would be unlikely to apply. It is worth noting that military conflicts not accompanied by declarations of war tend to be overseas, have had very little impact on the civilians in the territory of the United States, and have not been as critically important to the nation’s survival as the total wars in U.S. history.162 While the judiciary is not eager to involve itself in military decisions, it has been known to check the powers of the other branches during armed conflicts that were not declared wars.163 This should signal a willingness by the courts to consider challenges to the draft during conflicts that fall short of total war.

#### Such a ruling would grant sweeping war powers to the executive

Britt 9 – JD Northwestern School of Law (Jason Britt, Unwilling Warriors: An Examination of the Power to Conscript in Peacetime, 4 Nw. J. L. & Soc. Pol'y. 400 (2009). <http://scholarlycommons.law.northwestern.edu/njlsp/vol4/iss2/4>) LADI

Of course, there is a middle ground between pure peace and total war as exemplified by World War II. There is precedent in labeling the differing degrees of U.S. involvement in wars and assigning these degrees of involvement greater or lesser judicial recognition. The earliest such case dealt with the Quasi-War, a purely naval conflict between the United States and France waged between 1798 and 1800 as a result of the XYZ Affair.126 In Bas v. Tingy, the Supreme Court reviewed a dispute between the owner of a ship which had been seized by the French and the commander of another ship recovering the seized vessel.127 The dispute centered on the amount of salvage that the owner of the seized vessel owed the salvager, and the relevant question became whether or not the United States was at war with France.128 While Congress had not declared war, the Court found that “hostilities may subsist between two nations more confined in its nature and extent; being limited as to places, persons, and things; and this is more properly termed imperfect war.”129 Thus, the Court would recognize a milder state of war in the absence of a formal declaration of war by Congress. ¶38 The example of the Quasi-War as a state of undeclared conflict has reappeared, most notably in recent years. The Vietnam War is the most prominent example of undeclared war, which resulted in a number of casualties both for the United States and its enemies in the conflict. Yet, it did not reach the level of “total war” seen in World War II, with cities fire-bombed and civilians targeted widely and indiscriminately.130 In addition, Vietnam did not pose a direct threat to the existence or immediate physical security of the country; rather, it was an aggressive extension of a policy of containing Communism.131 In these respects, it is clear that Vietnam is in the gray area that the Bas court referred to as “imperfect war.” ¶39 Is there a metric to reliably determine the difference between a “total” and an “imperfect” war? The federal courts have held in the context of the War Clause132 that they are competent to determine when the nation is at war.133 Factors that courts have considered include the duration, expense, and American fatalities involved in the conflict in question.134 However, these inquiries have focused on a question apart from the Thirteenth Amendment: whether conflicts like Vietnam have been sufficiently war-like to require Congressional approval to be constitutional.135 This is at heart a separation of powers issue. However, under a Thirteenth Amendment analysis, courts are concerned with whether a crisis is sufficiently pressing to justify government action that has the effect of depriving citizens of certain fundamental liberties. While measures like the monetary expense and the duration of a conflict may be sufficient to determine whether a war requires express Congressional approval, they would seem to be insufficient when looking at an actual violation of a citizen’s fundamental rights. Therefore, other factors should be considered in a Thirteenth Amendment challenge to a draft. In the heat of an “imperfect war” conflict, courts may be under pressure to grant sweeping authority to the government, including powers that exceed the authority conferred by the Constitution. Though strict scrutiny analysis would require courts to determine whether an interest is compelling, and whether the means of achieving that interest are narrow, there would be great political and social pressure during a time of conflict to allow the draft to pass muster notwithstanding strict scrutiny. Establishing some stable factors that would allow courts to give a discrete basis for its decision, rather than simply rolling over under either internal or external pressure (as the Court arguably did in the Selective Draft Cases), is important. Some factors I propose for consideration in a Thirteenth Amendment analysis reviewing a military draft include: (1) The impact of success or failure of the war on national survival. This surpasses a mere involvement in national interests, such as natural resources or an ideological interest in fostering certain forms of government. This should be the most heavily weighted factor; a war that threatens the very survival of a nation can be nothing less than total as far as that nation is concerned. (2) The degree of involvement of civilians in the war effort. As the Heflin case discussed in regard to World War II, a war in which destruction can be visited upon civilians may require civilians to take extreme measures to resist destruction.136 (3) Party initiating hostilities. While this may be difficult to determine in a timely fashion in many cases (for example, the Gulf of Tonkin Resolution authorizing expanded U.S. military involvement in Vietnam was based on pretenses that later turned out to be dubious at best137), in some cases the instigating party can be more quickly identified. In World War II, hostilities were rudely visited upon the United States in the form of Pearl Harbor. In contrast, the invasion of Iraq was not a reaction to military overtures by the Iraqi Army, or any other belligerent action towards the United States or its interests. (4) Formal declaration of war. As Bas indicated, an “imperfect war” is often unaccompanied by a declaration of war. By formally declaring war, Congress makes an affirmative action that open, acknowledged hostility is called for, moving the conflict from one that is likely to have narrow aims and execution to one that is more open-ended. In the Quasi-War and the ongoing conflict in Afghanistan, the aims of Congress in sanctioning conflict were narrower than they would have been in a full war. In the Quasi-War, the United States followed a policy of purely naval engagement. In the conflict in Afghanistan, we have followed a policy of targeting Taliban militants and Al Qaeda terrorists, rather than the nation of Afghanistan itself. This leads to a pressing question for current times. Is the War on Terror a “war” under this analysis? In reviewing whether the “Global War on Terror” is a war, Professor Ackerman answers in the negative: “War is traditionally defined as a state of belligerency between sovereigns.”138 Although the Global War on Terror is not against a sovereign (any more than the wars on drugs or poverty), the wars in Afghanistan and Iraq were conducted, if in a limited fashion, against a sovereign.139 ¶42 In draft cases, the existence of a war has been narrowly defined in at least one instance as “a conflict by force between two or more nations; it is a conflict of violence by one politically organized body seeking to overcome or overthrow another political entity.”140 Involvement in fighting against an inchoate insurgency does not qualify as war under this reasoning; the enemy in the conflict would not be politically organized or politically recognized, so there would be only one “nation” in the conflict. By limiting the definition of a “war” to conflicts against another sovereign, we can prevent the nation’s leaders from using political and rhetorical devices to seize full war powers whenever convenient to their interests.

#### This causes a nuclear war – Trump is uniquely irrational.

Frank 17 – Jeffery, The New Yorker(“The War Powers of President Trump”, Apr 26 17, <http://www.newyorker.com/news/daily-comment/the-war-powers-of-president-trump>) LADI

Or can he? The limit of executive power remains one of those enduring unsettled questions about American democracy. While a President may, in theory, entertain anyone cleared by the Secret Service, preferably someone not carrying a machine gun, what if he decides, on the spur of the moment, that he wants to start a war? Suppose, for instance, that he wants to launch a preëmptive strike, nuclear or otherwise, against a country he believes is a danger to the United States? Who could stop that from happening? Americans tend to view their Presidents in a certain way: as men (so far) who’ve taken office with a basic understanding of history, of geopolitical realities, and of the Constitution; as people who possess enough wisdom to make cautious, rational choices about war and peace. Trump, though, has demonstrated few, if any, of those heretofore Presidential qualities. Rather, he’s shown an inclination to make casual, offhand choices, whether about dismantling the Affordable Care Act to get a “win” or, while feasting on “the most beautiful piece of chocolate cake,” and apparently in response to television images of the victims of chemical weapons, ordering the military to fire cruise missiles at a Syrian air base—an act followed almost immediately by Trump telling Fox Business Network’s Maria Bartiromo that “we’re not going into Syria.” Many of the questions about the Syrian attack recall those asked after nearly every postwar American intervention, large and small, whether it was the decision to respond to North Korea’s invasion of South Korea, in July, 1950, which President Harry Truman was able to cast as a United Nations action to halt Communist aggression; President Lyndon Johnson’s escalation of the Vietnam conflict, aided by lies about an alleged attack on a Navy ship in the Gulf of Tonkin; or the invasion of Iraq, in 2002, when President George W. Bush asked for, and got, a joint congressional resolution that authorized the use of military force. In none of these instances was something called “war” ever declared, much to the dismay of people like the Ohio Republican Senator Robert A. Taft, in 1950, and, in recent years, the Kentucky Republican Senator Rand Paul, who each feared that dangerous precedents were being set by bypassing Article 1, Section 8, of the Constitution, which gives only Congress the power to declare war. After the Syrian strike, Paul said, “I think what we are doing right now is illegal and unconstitutional,” to which Senators John McCain and Lindsey Graham replied, “Unlike the previous Administration, President Trump confronted a pivotal moment in Syria and took action.” Perhaps because there was already fighting in Afghanistan, those objections weren’t raised after Trump’s generals dropped the nation’s largest non-nuclear weapon—a device never previously deployed—on tunnels suspected of being used by Islamic State militants.

## 2NR

### AT: Already at war

#### The line between wartime and peacetime is blurry now and “declarations” of war are nothing more than rhetoric. Brooks 15

Brooks, Rosa. “There’s No Such Thing as Peacetime.” Foreign Policy, 13 Mar. 2015, foreignpolicy.com/2015/03/13/theres-no-such-thing-as-peacetime-forever-war-terror-civil-liberties/. Rosa Brooks is a law professor at Georgetown University and a senior fellow with the New America/Arizona State University Future of War Project. She served as a counselor to the U.S. defense undersecretary for policy from 2009 to 2011 and previously served as a senior advisor at the U.S. State Department. //nhs-VA

When war is relatively bounded, when it is something that happens within a defined place and time and involves a clearly defined group of actors, we can tolerate its relatively unconstrained violence. But the nature of modern security threats resists all efforts at categorization. In a war against a geographically diffuse terrorist network, the spatial boundaries are necessarily arbitrary. A war against constantly morphing organizations that often lack centralized leadership structures cannot “end” with a peace treaty. A war against a constantly changing set of actors who move from place to place and from organization to organization can have no clearly defined “enemy.” (Just look at the difficulty that the United States has had in defining the “associated forces” of al Qaeda and the Taliban or in placing geographical limits on efforts to counter the Islamic State, which has now declared “provinces” in multiple noncontiguous regions from Libya to Egypt.) Rights advocates are often inclined to dismiss the increasing blurriness of the boundaries between war and peace as merely a product of disingenuous U.S. government rhetoric. They are wrong to do so. No question, there has been some disingenuous rhetoric, but recent decades have also seen real and significant changes in the geopolitical landscape: Revolutionary technological changes have reduced the salience of state borders and physical territory and have increased the lethality and disruptive capabilities of nonstate actors and even individuals The nature of modern security threats makes it virtually impossible to draw neat lines between war and peace, foreign and domestic, emergency and normality. Today, this is the central challenge to hard-won global gains in human rights and the rule of law: Most of the institutions and laws designed to protect rights and prevent the arbitrary or abusive exercise of state power rest on the assumption that we can readily distinguish between war and peace, yet there is no longer any principled way to do so. The modern law of armed conflict is little more useful to us than the Navajos’ lines in the desert sand or their symbolic shift from ordinary language to the “twisted language” of war.

#### Obama’s renewal of the “war on terror” was not an actual declaration of war. Friedman 14

Friedman, Uri. “Is It Peacetime or Wartime in America?” The Atlantic, Atlantic Media Company, 11 Sept. 2014, www.theatlantic.com/international/archive/2014/09/obamas-losing-battle-with-perpetual-war/380060/. Uri Friedman is a staff writer at The Atlantic, where he covers global affairs. He was previously the deputy managing editor at Foreign Policy. //nhs-VA

Barack Obama delivered a [bewildering speech](http://www.npr.org/2014/09/10/347515100/transcript-president-obama-on-how-u-s-will-address-islamic-state) on Wednesday. The pledge to "destroy" the Islamic State of Iraq and Syria; the deployment of U.S. troops to do just that; the flag-flanked, sober-sounding president addressing the American people behind a podium in prime-time—all appeared to amount to a declaration of war. But Obama never used the word "war" to describe his decision to launch airstrikes against ISIS and provide military assistance to regional forces fighting the extremist group. When he employed the w-word, it was to clarify what this is not. It's not "another ground war in Iraq." It's not Afghanistan. It's a "counterterrorism campaign" to "take out ISIL wherever they exist." Obama didn't say how long the campaign would take, or how we'll know when its mission is accomplished. The effect was to thoroughly blur the boundary between peacetime and wartime. And maybe that was on purpose. After all, it was less than a year and a half ago that Obama promised, in an [address](http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university) at National Defense University, to remove America from the "perpetual war footing" it had assumed since the September 11 attacks. On Wednesday night, he seemingly tried to honor that pledge while simultaneously preparing the country for military operations against ISIS. Did the president announce a war? A military action? Targeted strikes? Are there meaningful differences between these terms? It's not all that clear.

### AT: Frank

#### Courts check full war powers now – *from their article*. Frank 4/26

Frank, Jeffrey. “The War Powers of President Trump.” The New Yorker, The New Yorker, 26 April 2017, www.newyorker.com/news/daily-comment/the-war-powers-of-president-trump. Jeffrey Frank is an American journalist and author from Washington, D.C., born in Baltimore. He is a senior editor at The New Yorker and deputy editor of the Outlook Section in the Washington Post. Frank worked for the Post for almost 12 years. Wrote hella books super good //nhs-VA

But, before it’s too late, shouldn’t the nation revisit this question? One of the clearest statements on Presidential power, and the balance of power, came in an opinion by the Supreme Court Justice Robert H. Jackson (he served from 1941 to 1954), who wrote, “While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate depending upon their disjunction or conjunction with those of Congress.” Justice Jackson was concurring with a decision handed down, six to three, in June, 1952, to deny President Truman the “inherent power” to seize the nation’s steel mills, but Jackson was fully aware of its applicability to the war in Korea. He acknowledged that the Constitution “undoubtedly puts the Nation’s armed forces under presidential command” (Article 2, Section 2, states that a President is “commander in chief of the Army and Navy”); but that provision, he continued, had become an argument “sometimes advanced as support for any presidential action, internal or external, involving use of force, the idea being that it vests power to do anything, anywhere, that can be done with an army or navy.” And this development was one that Jackson found appalling. “I cannot foresee all that it might entail if the Court should indorse this argument,” Jackson [wrote](https://supreme.justia.com/cases/federal/us/343/579/case.html). “Nothing in our Constitution is plainer than that declaration of a war is entrusted only to Congress.” While acknowledging that a state of war may exist without a formal declaration, he continued, “No doctrine that the Court could promulgate would seem to me more sinister and alarming 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.” In case anyone missed the point, Jackson added, “And, if we seek instruction from our own times, we can match it only from the executive powers in those governments we disparagingly describe as totalitarian.” It is worth noting that Jackson, in 1945 and 1946, had been the U.S. prosecutor at the Nuremberg trials. The Korean War has never formally ended, although an armistice has lasted since the summer of 1952. Recent threats by the apparently unstable North Korean leader Kim Jong-un are a reminder of how close the world already is to the edge of disaster. Mike Pence, the Vice-President, recently [responded](https://www.nytimes.com/aponline/2017/04/19/world/asia/ap-as-pence-japan.html) to those threats while aboard a carrier at the U.S. Yokosuka naval base, in Tokyo Bay, where he said that “the shield stands guard and the sword stands ready,” and added, “Those who would challenge our resolve or readiness should know, we will defeat any attack and meet any use of conventional or nuclear weapons with an overwhelming and effective American response.” That at least belongs to the tradition of tough talk, as opposed to the language of a Donald Trump, whose recent public words on the subject have tended to come in the form of childish tweets. “North Korea is behaving very badly. They have been ‘playing’ the United States for years. China has done little to help!” he tweeted on March 17th. “North Korea is looking for trouble. If China decides to help, that would be great. If not, we will solve the problem without them! U.S.A.,” he wrote on April 11th.

### AT: Trump is rational

#### Seriously, err neg. Strong checks on presidential authority are the only way to stop a nuclear war. The risk is incredibly high.

Beres 16 — Louis René Beres, Professor Emeritus of Political Science at Purdue University, has served as a consultant for the Department of Defense’s Defense Nuclear Agency, the JFK Special Warfare Center, the Arms Control and Disarmament Agency, the Defense Advanced Research Projects Agency, and the Nuclear Control Institute, former Research Fellow at the Center of International Studies at Princeton University, holds a Ph.D. in Politics from Princeton University, 2016 (“What if you don’t trust the judgment of the president whose finger is over the nuclear button?,” *Bulletin of the Atomic Scientists*, August 23rd, Available Online at <http://thebulletin.org/what-if-you-don%E2%80%99t-trust-judgment-president-whose-finger-over-nuclear-button9794>, Accessed 08-23-2016)

In essence, we Americans would finally have to really ask ourselves: “What if an American president becomes irrational or emotionally incapacitated, and sometimes moves too precipitously toward exercising the military nuclear option?” I have been working on precisely such questions for almost a half-century, usually as an independent scholar, but sometimes also as a consultant to certain appropriate agencies of government. In the late 1970s, I was preparing a book on American nuclear strategy and the corollary risks of a worldwide nuclear war, called Apocalypse: Nuclear Catastrophe in World Politics which caused me to become interested in the command-and-control of US strategic nuclear weapons, especially over questions of presidential authority to order the use of such weapons. Although I quickly learned that there were seemingly reliable safeguards built into all American nuclear command decisions, I also discovered that these redundant safeguards might not apply at the very highest decisional level of all—that is, in the White House. This disjunction didn’t appear to make any sense, especially in a world where leadership has been known to be irrational—including, in the United States, the case of a prominent nuclear-era Secretary of Defense. (After being institutionalized for assorted and serious psychiatric disorders, US Secretary of Defense James V. Forrestal fell to his death from a naval hospital window on May 22, 1949. Following years of documented clinical depression, it is almost certainly the case that his death was a suicide.) Concerned about such a readily apparent and potentially fatal lapse in American nuclear planning, I had reached out to retired Gen. Maxwell D. Taylor, a distinguished former Chairman of the Joint Chiefs of Staff. In response to my query, Taylor very quickly sent me a detailed handwritten letter of reply. Dated 14 March 1976, the letter concluded: “As to dangers arising from an irrational American president, the only protection is not to elect one.” Until now, I had never given any further thought to this informed response, and had simply assumed that “the system,” somehow, would always manage to work. Now, however, with the deeply serious prospect of a President Donald Trump, Gen. Taylor’s 1976 warning takes on a substantially more immediate meaning. It is now at least worth considering that if a President Trump were ever to become unstable or irrational in office, he could then: (1) order the use of American nuclear weapons; and (2) do so with seemingly unassailable decisional impunity. A precedent? Let us be fair. This is arguably not the first time that the actions of a sitting president or aspiring president should have raised such fearful concerns. (Richard Nixon, in his closing days in office, was hardly an exemplar of emotional stability.) But our national task, going forward, must be to focus purposefully on future threats. Nixon is long gone; Trump may, however, still be on the verge of arrival. And there are other considerations. Even if a President Trump were not unstable or irrational, he might still lack the complex analytical requirements needed to render sober strategic judgments, especially in compressed decision-time periods. For example, during one of the early Republican primary debates, Mr. Trump made plain that he had absolutely no understanding or awareness of this country’s strategic “triad.” Now, it might be argued that even a presidential nuclear novice would still have ample professional expertise available to him at all times. But as a matter of simple logic, every American citizen should also expect any new president to be familiar with the barest rudiments of America’s strategic nuclear deployments. I am not speaking here about arcane or otherwise little-known aspects of nuclear strategizing. I am speaking, rather, about what every American high school student is expected to know before he or she receives a diploma. For example, over the many years that I taught international relations at Princeton and Purdue, I correctly assumed that most of my beginning students already understood the most basic elements of the Cold War and US nuclear deterrence policy. There is more. The United States and Russia are already involved in what amounts to “Cold War 2.0”—a steadily expanding and corrosive development that could complicate any presidential strategic nuclear decisions. Marked by an increasingly bellicose undersea nuclear arms race (submarines), and by accelerating nuclear weapons competition from Moscow, Cold War 2.0 could compel even a well-intentioned and fully-rational President Trump to make ultra high-consequence nuclear decisions in just a few seconds. In such chronologically compressed circumstances—where seconds matter—what precisely should be done by the National Command Authority, if its members should decide to oppose a “confused” presidential order to use American nuclear weapons? Can the Authority properly respond in a seat-of-the-pants, impromptu, and ad hoc fashion? Or should there already be in place certain measures to suitably vet the sitting president’s reason and judgment—measures of the same sort applied at all lower levels of nuclear command authority? In principle, at least, any presidential order to use nuclear weapons, whether issued by an apparently irrational president or an otherwise incapacitated one, would have to be followed. After all, for senior figures in the Nuclear Command Authority to do otherwise, and to in any way actually obstruct such an order, would be illegal on its face. In this connection, it should be recalled that candidate Trump has several times advised “killing the families” of alleged ISIS terrorists, and also becoming less constrained by orthodox rules of engagement, i.e., the peremptory rules of Humanitarian International Law. In essence, heeding this advice would be tantamount to reversing authoritative Nuremberg Principles concerning the obligatory disobedience of unlawful orders, and could have uniquely dire consequences wherever such orders would involve nuclear weapons. The readily imaginable prospect of a Trump presidency is now the most visible manifestation of a deeper structural problem. It follows that any doubts one might currently have about a President Trump armed with the nuclear codes should also be framed as part of a more fully generic discussion of American presidential authority. For example, when faced with a presidential order to use nuclear weapons—and not offered sufficiently appropriate corroborative evidence of an impending existential threat—would the sitting Secretary of Defense or the Chairman of the Joint Chiefs be willing to disobey? And if willing, would one or the other (or some third party) be capable of enforcing any such apparently well-founded expressions of disobedience? We must finally inquire: Are these important national decision-makers trained or encouraged to exercise private expressions of decisional will? And could they effectively do so without immediately becoming complicit in what would amount to an unwitting American coup d’état? Significantly, such important questions are merely the tip of the American nuclear command iceberg. Looking ahead, even more specific and detailed questions will need to be asked and answered. If these questions were to be simply avoided, or ignored altogether, we could sometime discover that remediation is already long past due, and that the supposed “only protection” against an irrational American president—“not to elect one,” as Gen. Maxwell Taylor wisely advised—had been too casually disregarded. Back in the 1960s, a popular movie genre was centered on the assorted risks of nuclear war. Films such as Dr. Strangelove and Fail Safe (both 1964) presented ominous scenarios of an inadvertent nuclear war caused by military command failure, or by mechanical and computer malfunctions. At that time, however, there was never any hint that the critically weak link in the nuclear decision chain could ever be the American president himself. Now it is conspicuously this highest link that warrants our special concern and appropriately corrective action. No aspect of the current presidential campaign could possibly be more urgent.

#### This makes him more susceptible to go to war. Foster 16

Foster 16 - Dennis M. Foster is professor of international studies and political science at the Virginia Military Institute. “Would President Trump go to war to divert attention from problems at home?” December 19, 2016, Washington Post Monkey Cage Blog, https://www.washingtonpost.com/news/monkey-cage/wp/2016/12/19/yes-trump-might-well-go-to-war-to-divert-attention-from-problems-at-home/?utm\_term=.9ac2999a0f48) LADI

Then-Republican presidential candidate Donald Trump gives a speech aboard the World War II battleship USS Iowa in San Pedro, Calif., in September, 2015. (Robyn Beck/AFP/Getty Images) If the U.S. economy tanks, should we expect Donald Trump to engage in a diversionary war? Since the age of Machiavelli, analysts have expected world leaders to launch international conflicts to deflect popular attention away from problems at home. By stirring up feelings of patriotism, leaders might escape the political costs of scandal, unpopularity — or a poorly performing economy. One often-cited example of diversionary war in modern times is Argentina’s 1982 invasion of the Falklands, which several (though not all) political scientists attribute to the junta’s desire to divert the people’s attention from a disastrous economy. In a 2014 article, Jonathan Keller and I argued that whether U.S. presidents engage in diversionary conflicts depends in part on their psychological traits — how they frame the world, process information and develop plans of action. Certain traits predispose leaders to more belligerent behavior. Do words translate into foreign policy action? One way to identify these traits is content analyses of leaders’ rhetoric. The more leaders use certain types of verbal constructs, the more likely they are to possess traits that lead them to use military force. [Trump may put 5 former top military brass in his administration. That’s unprecedented.] For one, conceptually simplistic leaders view the world in “black and white” terms; they develop unsophisticated solutions to problems and are largely insensitive to risks. Similarly, distrustful leaders tend to exaggerate threats and rely on aggression to deal with threats. Distrustful leaders typically favor military action and are confident in their ability to wield it effectively. Thus, when faced with politically damaging problems that are hard to solve — such as a faltering economy — leaders who are both distrustful and simplistic are less likely to put together complex, direct responses. Instead, they develop simplistic but risky “solutions” that divert popular attention from the problem, utilizing the tools with which they are most comfortable and confident (military force). [Will Beijing cut Trump some slack after that phone call with Taiwan?] Based on our analysis of the rhetoric of previous U.S. presidents, we found that presidents whose language appeared more simplistic and distrustful, such as Harry Truman, Dwight Eisenhower and George W. Bush, were more likely to use force abroad in times of rising inflation and unemployment. By contrast, John F. Kennedy and Bill Clinton, whose rhetoric pegged them as more complex and trusting, were less likely to do so. What about Donald Trump? Since Donald Trump’s election, many commentators have expressed concern about how he will react to new challenges and whether he might make quick recourse to military action. For example, the Guardian’s George Monbiot has argued that political realities will stymie Trump’s agenda, especially his promises regarding the economy. Then, rather than risk disappointing his base, Trump might try to rally public opinion to his side via military action. I sampled Trump’s campaign rhetoric, analyzing 71,446 words across 24 events from January 2015 to December 2016. Using a program for measuring leadership traits in rhetoric, I estimated what Trump’s words may tell us about his level of distrust and conceptual complexity. The graph below shows Trump’s level of distrust compared to previous presidents. These results are startling. Nearly 35 percent of Trump’s references to outside groups paint them as harmful to himself, his allies and friends, and causes that are important to him — a percentage almost twice the previous high. The data suggest that Americans have elected a leader who, if his campaign rhetoric is any indication, will be historically unparalleled among modern presidents in his active suspicion of those unlike himself and his inner circle, and those who disagree with his goals. As a candidate, Trump also scored second-lowest among presidents in conceptual complexity. Compared to earlier presidents, he used more words and phrases that indicate less willingness to see multiple dimensions or ambiguities in the decision-making environment. These include words and phrases like “absolutely,” “greatest” and “without a doubt.” A possible implication for military action I took these data on Trump and plugged them into the statistical model that we developed to predict major uses of force by the United States from 1953 to 2000. For a president of average distrust and conceptual complexity, an economic downturn only weakly predicts an increase in the use of force. But the model would predict that a president with Trump’s numbers would respond to even a minor economic downturn with an increase in the use of force. For example, were the misery index (aggregate inflation and unemployment) equal to 12 — about where it stood in October 2011 — the model predicts a president with Trump’s psychological traits would initiate more than one major conflict per quarter.