

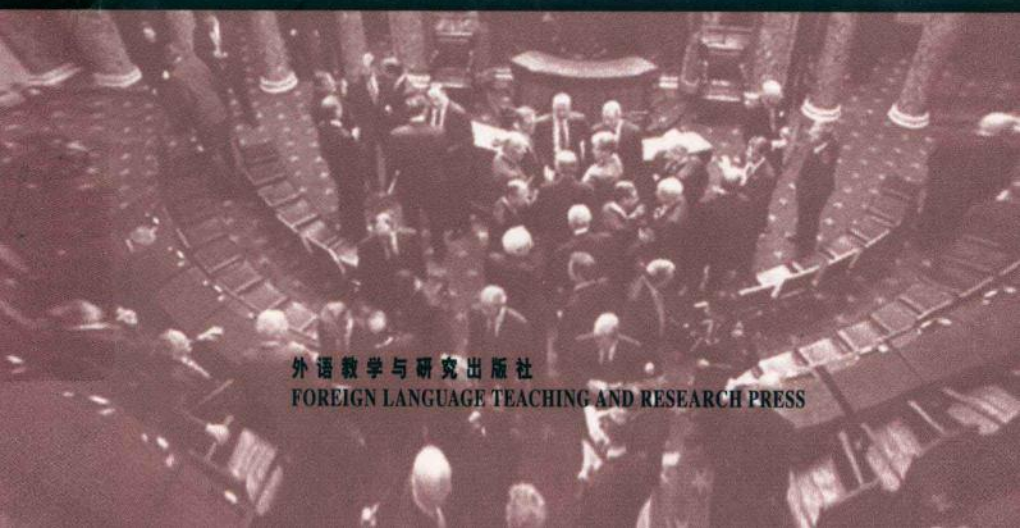


北京外国语大学211工程建设学术成果系列
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美国总统与国会的 战争决策权之争

War Power Struggle between
the President and Congress

刘学政 著



外语教学与研究出版社
FOREIGN LANGUAGE TEACHING AND RESEARCH PRESS

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北京 BEIJING

图书在版编目(CIP)数据

美国总统与国会的战争决策权之争 = War Power Struggle between the President and Congress : 英文 / 刘学政著. — 北京 : 外语教学与研究出版社, 2010.6

(北京外国语大学2006年博士文库系列)

ISBN 978-7-5600-9720-6

I. ①美… II. ①刘… III. ①总统-决策权-研究-美国-英文 ②议会-决策权-研究-美国-英文 IV. ①D771.22

中国版本图书馆CIP数据核字(2010)第106615号

出 版 人: 于春迟

责任编辑: 孙 丹

封面设计: 袁 璐

出版发行: 外语教学与研究出版社

社 址: 北京市西三环北路19号 (100089)

网 址: <http://www.fltrp.com>

印 刷: 北京九州迅驰传媒文化有限公司

开 本: 850×1168 1/32

印 张: 12.5

版 次: 2010年6月第1版 2010年6月第1次印刷

书 号: ISBN 978-7-5600-9720-6

定 价: 49.90元

* * *

如有印刷、装订质量问题, 请与出版社联系

联系电话: (010) 61207896 电子邮箱: zhijian@fltrp.com

制售盗版必究 举报查实奖励

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物料号: 197200001

Acknowledgements

My study on the subject of war power struggle between the President and Congress started about two and a half years ago. I was pondering what topic to take for my doctorate dissertation when Professor Mei Renyi suggested the topic for my thesis. His suggestion was more than welcome as I have been interested in war history and military affairs all the time. In the following two years Professor Mei has carefully guided me through every stage of the project. His broad vision, insightful suggestions and timely encouragement have paved the way for my research. I am especially grateful for his great care in reading the drafts and the meticulous corrections he has made. Without his help and guidance this dissertation would hardly be possible. At the same time I am aware that the problems remaining with the thesis rest with me alone.

My profound gratitude should also be extended to the Starr Foundation for financing my visiting studentship at the University of Hong Kong, and to Dr. Priscilla Roberts, Director of the Centre of American Studies, University of Hong Kong, for kindly offering me the studentship. My half-year stay at HKU enabled me to do a major part of the research necessary for this dissertation. The rich collections of HKU, its electronic databases, especially its inter-library loan system provided me an easy access to many publications I badly need.

I find myself deeply indebted to senior classmates at Beijing Foreign Studies University for their precious advice and ready help. These include Li Zhidong, Li Qikeng, Zhang Ligang, Kong Hao,

Yan Xunhua. Their company and friendship enriched my campus life and reduced the formidableness of the task.

Special thanks go to my wife. Throughout the hard years of study her help and encouragement have been unfailing sources of inspiration.

摘 要

由于宪法确立的分权和制衡体制，在美国建国两百多年来所进行的大小战争中，总统与国会关于战争决策权力的斗争一直持续不断，成为总统与国会争夺外交决策权力斗争的核心内容之一。研究总统与国会关于战争决策权力的斗争不但可以考察美国的战争决策机制和决策模式，而且可以更加深入地了解美国外交政策制定过程中总统与国会的相互作用和影响。

越战以来，对战争决策权之争的研究在美国学界成为热点，但美国学者的研究大多是从宪法或法律角度进行讨论或围绕《战权决议》进行个案研究，其着眼点往往在于总统和国会谁应拥有战争决策权力的法律或政治论争，摒弃个人立场对战争决策实践的综合历史研究并不多见。国内目前对此问题的研究多限于对战争决策权力之争特别是对《战权决议》的一般性介绍，鲜有比较全面或深入的研究成果。本书的写作目的就在于从一定程度上弥补现有研究之不足。

书中对美国建国以来总统与国会关于战争决策权力的斗争进行了综合历史研究，全面考察了美国战争决策实践在各个历史时期的发展变化及其国际、国内政治背景，分析并总结了总统战争决策权扩展的阶段、成因，总统扩展权力的手法，以及总统和国会在战争决策中的互动模式及影响互动模式的国内外因素；同时，对战争决策权之争的性质及未来发展也进行了试探性定位和分析。以历史分析和案例分析为主要研究方法，以“府院政治互动过程”研究模式为主要分析工具，在两个层面上进行了分析研究：对战争决策权之争和战争决策实践的历史综合研究及对战争决策案例的具体分析考察。

全书主要内容如下：

首先，阐述了战争决策权之争的法律框架和总统与国会对相关法律条文的不同解读。战争决策权之争的根源在于美国宪法的分权和制衡原则，宪法对大部分战争权力进行了明确的划分，但在决策权的归属上并不十分明确，从而导致行政与立法部门对宪法条文解读不一，在实践中引发了持续不断的府院之争。二战以后，《联合国宪章》以及《里约热内卢条约》、《北大西洋公约》、《东南亚共同防御条约》等同盟条约的签署都涉及战争决策权力的问题并引发争论，国会亦先后通过《联合国参与法案》及《战权决议》，试图对战争决策权力加以明确，但结果仍然是总统与国会对相关法律条文各自解读，使战争决策权之争更为复杂。而负责解释宪法和联邦法律的法院则竭力置身事外，以各种理由回避对战争决策权的归属作出判决，遂致府院之争无休无止。

其次，正文分三个大的阶段全面分析考察了美国战争决策实践在各个历史时期的发展变化及其国际、国内政治背景，从中揭示出总统战争决策权力的扩张趋势和战争决策模式的历史演变。第一个阶段从美国建国到美国公开参加二战，期间战争决策权经历了由国会把持发展到总统开始采取主动行动的衍变过程；第二个阶段从朝鲜战争到国会通过《战权决议》，期间经历了越战以前总统决策权力的扩张、越战中后期国会重申决策权力并起草和通过《战权决议》以限制总统等过程；第三个阶段从《战权决议》生效到伊拉克战争，期间历任总统均拒绝承认《战权决议》合法有效，并在实践中以各种方式和借口予以回避或拒不执行，战争决策权在多数情况下由总统把持，国会在很大程度上未能充分参与，《战权决议》实际上未能达到限制总统的目的，反而导致了更多冲突和争论。

最后，对总统战争决策权力得以扩大的几个历史阶段、国

际与国内的促成因素以及总统扩张自己权力的手法进行了分析和归纳，并对总统和国会在战争决策过程中的四种互动模式以及决定互动模式的国内外因素进行了分析总结，同时对战争决策权之争的性质及未来发展进行了试探性定位和分析，指出总统和国会的战争决策权之争既是一个宪法和法律问题，更是一个政治问题，同时又是一个文化和历史问题。这一斗争是由美国的政治文化和政治体制所决定的，短期内不可能结束。

本书的创新之处在于：其一，如前所述，现有研究多从宪法和法律角度入手，视野多囿于美国国内政治，陷于谁应拥有战争决策权的争论，作者对历史案例的解读也会因个人立场而有失客观，而本书从战争决策角度入手，着眼于美国战争决策实践和决策模式的发展变化，并把决策权之争放置到国际政治环境和国内政治环境双重背景下加以考察，且无立场影响之虞。其二，以往的历史研究因上述原因往往限于高度概括的描述，缺乏对战争决策实践的综合历史研究和具体详实的府院互动过程研究，个案研究也多数着眼于以个案支撑作者对《战权决议》的看法，本书则以“府院政治互动过程”研究模式为主要分析工具，用战争决策案例中府院互动过程的具体研究支持对战争决策权之争的综合历史分析，既避免了只有概括描述而无具体过程分析的弊端，也达到了进行综合历史分析的目的。其三，现有研究往往只论及双方斗争的一面而忽略了其合作的一面，本书对总统和国会在战争决策中共识与合作、遵从与默认、斗争与妥协等多种互动模式的分析和总结，则比较全面地反映了二者之间的互动关系，避免了片面性和可能给读者带来的误解。

关键词：美国外交 总统 国会 战争决策权

Abstract

Due to the constitutional system of separation of powers and checks and balances, there has been constant struggle over war power between the President and Congress in all the major and minor wars ever since the founding of the United States. In fact, the struggle has constituted an essential part of presidential-congressional struggle over foreign policy powers. Therefore, researches on the subject would be of academic as well as practical value in that they would not only provide insights into American war decision-making but also facilitate a better understanding of the interplay between the President and Congress in foreign policy-making.

Since the Vietnam War, war power struggle has become a focus of scholarly attention in the American academia. Yet most present publications are either researches from a constitutional or legal approach or case studies centering round the War Powers Resolution. The authors tend to concentrate on the constitutional and political debate over who should wield the power of war, and they almost invariably take sides. There have been very few up-to-date unbiased comprehensive historical studies of war power practice. The study of war power struggle in China is just at a beginning stage. So far most publications are introductory in nature and they usually focus on the War Powers Resolution. No detailed or comprehensive study has been made. This book is in part an effort to make up for these deficiencies.

This book is intended to be a comprehensive historical study of war power struggle over the course of more than two hundred

years since 1789. It comprises both a comprehensive study of the evolution of war power practice and a detailed investigation into the international and domestic causes of such evolution. The phases, causes and means of presidential aggrandizement are analyzed and summarized. So are the patterns of presidential-congressional interplay in war decision-making and the relevant variables. Besides, efforts are also made to define the nature of war power struggle and to predict its future development. In undertaking the research, “the inter-branch politics model” is employed as the primary analytical tool. The major research methods adopted are descriptive historical analysis and case study. Accordingly, analysis is conducted at two levels: comprehensive historical analysis of war power struggle and practice, and detailed process analysis of decision-making in specific cases.

Following are the major contents of the book:

First, the constitutional and legal framework of war power is analyzed, together with the struggle over interpretation. The root of war power struggle is the constitutional principle of separation of powers and checks and balances. The Constitution, while making a clear division of the majority of war powers, leaves some ambiguity over the power to decide on war, thus allowing for different interpretations by the executive and legislative departments and leading to persistent struggle between them. After WWII, the United Nations Charter, the mutual-defense treaties like the Rio Treaty (Inter-American Treaty of Reciprocal Assistance), the NATO (North Atlantic Treaty Organization) Treaty, and the SEATO (The Southeast Asia Treaty Organization) Treaty all involved war power and gave rise to repeated controversies. Congress, in its efforts to

set up clear procedures for the use of war power, first passed the UN Participation Act in 1945 and then enacted the War Powers Resolution in 1973. However, in practice both the executive and the legislative departments maintained the practice of interpreting these laws in their own terms and favor, thus complicating rather than solving the inter-branch conflict. And the judicial department, although in charge of interpreting the Constitution and federal laws, has successfully kept itself from involving in the struggle by employing various technicalities to abstain from ruling on war power cases between the other two branches.

Next, a comprehensive study of war power struggle and practice in different historical periods, divided into three phases (each for one chapter), reveals the trend of expanding presidential war power and demonstrates the evolution of the patterns of presidential-congressional interplay in war decision-making. The first phase covers early experience till WWII, during which time war power practice evolved from congressional dominance to presidential initiative. The second phase, from the Korean War till the War Powers Resolution, witnessed the evolution from presidential expansion to congressional reassertion. The third phase, from the enactment of the War Powers Resolution till the on-going Iraq War at the time I'm writing about the thesis, features presidential dominance of war power. Since the enactment of the War Powers Resolution, Presidents have maintained that the act is unconstitutional, and they have evaded compliance in one way or another. Most decisions to use force in this period have been unilaterally made by Presidents without much participation from Congress. The act, instead of fulfilling its intended function

of checking the President, has in fact led to more conflicts and controversies.

Last, the phases, causes and means of presidential expansion are analyzed and summarized. Similar analysis and summary are made of the patterns of presidential-congressional interplay in war decision-making and the relevant variables. Besides, efforts are also made to define the nature of war power struggle and to foresee its future development. It is pointed out that the problem of war power struggle is multi-dimensional in nature: In addition to being constitutional and legal as well as political, it is also cultural and historical. The struggle over war power, predetermined by the unique political culture and political system of the United States, could not be resolved in the foreseeable future.

This book brings innovation to the study of war power struggle in the following respects. First, as noted above, most present works are from a constitutional or legal approach, studying the subject within the context of domestic politics, invariably taking sides in the debate over who should wield war power, and with their case studies suffering from personal stands. Approaching the subject from the perspective of decision-making and setting it within the context of both international and domestic circumstances, this book focuses on the war power practices of the United States and the evolution of its decision-making patterns. And it is free from the adverse effects of personal stands. Second, due to the above reasons, most present historical studies are highly generalized descriptions in short of comprehensive study in the processes of interplay between the President and Congress. Also, most case studies are conducted for the purpose of supporting personal

opinions on the War Powers Resolution. Employing the inter-branch politics model as the primary analytical tool, this book makes up for these deficiencies by supporting comprehensive historical study with detailed analysis of the processes of interplay in each specific case. Third, while most present works focus only on war power struggle and ignore the side of cooperation in war power practice, this book presents a better and full picture of the relationship between the President and Congress with a conclusive interplay patterns into consensus and cooperation, deference and acquiescence, conflict and compromise.

Key Words: American foreign policy the President Congress
war power struggle

Contents

Chapter 1	Introduction	1
1.	The Origins and Development of the Subject	1
2.	The Reasons for Choosing the Subject: Its Significance and Relevance	4
3.	Definition of Terms and Scope of Study	7
3.1	Definition of Terms	7
3.2	Scope of Study	12
4.	Literature Review	14
5.	What Is New and Different in This Research	25
5.1	Thesis of the Book	25
5.2	Thesis Contribution and Limitation	26
6.	Theory—Foreign Policy Decision-Making Models	28
6.1	The Rational Actor Model	29
6.2	The Bureaucratic Politics Model	31
6.3	The Organization Process Model	32
6.4	Congressional Approach: Theories of Congressional Behavior	34
6.5	The Political Process Model	37
6.6	The Inter-Branch Politics Model	39
7.	Methodology	40
8.	Layout of the Book	41

Chapter 2 Constitutional and Legal Framework of War Power and the Struggle over Interpretation

.....	43
1. Constitutional Framework	43
1.1 Constitutional Allocation of War Power	43
1.2 The Intent of the Framers	47
1.3 Why and How the Struggles Arise.....	56
2. International Treaties	60
2.1 UN Charter and UN Participation Act.....	60
2.2 Mutual-Defense Treaties.....	66
3. The War Powers Resolution	74
3.1 Major Provisions.....	74
3.2 Presidential Compliance and Non-Compliance.....	77
4. The Attitude of the Judiciary	78

Chapter 3 Early Practice till the Beginning of WWII: from Congressional Dominance to Presidential Initiative

84

1. Framers' War Power Practice: Congressional Dominance (from George Washington to James Monroe).....	85
2. War Power in Evolution (Post-Monroe 19th century)	97
3. Presidential Initiatives and Congressional Acquiescence (from 1900 to WWII).....	109
3.1 Presidential Initiatives and Congressional Acquiescence: Interventions in Latin America	113

- 3.2 Formal Assertion of Presidential War Power yet Respect
for Congress: Woodrow Wilson and WWI 119
- 3.3 Bypassing Congress: Roosevelt and WWII..... 124

Chapter 4 From Korea to the War Powers Resolution: From Presidential Expansion to Congressional Reassertion.....	136
1. The Korean War: Congress Ignored	141
2. The Blank-Check Resolutions: All “According to His Best Judgment”	156
2.1 The Taiwan Resolution	157
2.2 The Middle East Resolution	161
2.3 The Cuba Resolution	165
2.4 The Tonkin Gulf Resolution	169
3. The Vietnam War: from Congressional Deference to Congressional Resurgence.....	176
4. The War Powers Resolution: to Check Presidential War Power	195

Chapter 5 War Power Struggle after the War Powers Resolution: Presidential Dominance Largely Unchecked.....	204
1. Presidential Unilateral Decisions: Consultation as Notification or No Consultation at All.....	205
1.1 The <i>Mayaguez</i> Recapture	206
1.2 Iran Hostage Rescue Attempt	211

1.3 Air Strikes against Libya	215
1.4 The Invasion of Panama	218
1.5 Air Strikes against Baghdad	221
2. Congressional Attempts to Enforce the War Powers	
Resolution: More Failures than Successes	223
2.1 Lebanon	224
2.2 The Invasion of Grenada	231
2.3 Persian Gulf Operations against Iran.....	234
3. Unilateral Presidential Decisions with UN or NATO	
Sanction but Not Congressional Approval	242
3.1 Somalia	245
3.2 Haiti	253
3.3 Bosnia and Herzegovina.....	262
3.4 Kosovo.....	275
4. Congressional Support but Not Approval.....	288
4.1 The Persian Gulf War	289
4.2 The Afghanistan War	304
4.3 The Iraq War	312
5. Presidential Compliance and Non-Compliance: a Summary	
.....	322
Chapter 6 Conclusion	327
1. The Expansion of Presidential War Power: Phases, Causes, and Means.....	327
2. The Patterns of Interplay in War Decision-Making and the Relevant Variables	338