The War President

Building a Constitutional Model for the Modern Security Crisis Presidency

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Dedicated
To my mother and father, who never let me forget the importance of education.
Introduction to the Question at Hand

One of the most important and pressing topics in American political and constitutional theory in the past decade has been the legitimacy of presidential energy and unilateral action in responding to the threat of terrorism and conducting the War on Terror. The reasons for investigating the claims made on both sides of the legitimacy question are evident. First, the question involves a fundamental aspect of the Constitution and, consequently, affects in a meaningful way how the federal government protects and defends the United States. Second, because it affects our system of national defense, the answer to the question has potentially existential ramifications for Americans. Third, the issues presented here have the potential to determine the future status of individual liberty for American citizens. Last, the circumstances prompting the War and the debate, the unique nature of terrorism and other modern threats, potentially force unique, original reconsiderations of our governmental system and its values of security and limited government.

The first three reasons provide a substantial motive for any detailed, thorough, and honest discussion of the place for expanded presidential energy and authority in the scheme of separation of powers. Decisions regarding the power to commit and conduct the nation’s armed and economic forces in war and the balance between individual liberty and governmental authority go to the heart of our constitutional and historical foundations. In fact, disputes over these issues inspired the colonies to revolution when their frustration at restricted liberties and the taxation forced upon them for wars initiated by King George III came to a boiling point. The proper settling of these questions is critical to the security and very existence of the United States. A nation-state must be able to respond to threats with appropriate strength and swiftness,
but the United States has the added burden of preventing, at all costs, the development of military rule or dictatorship. For the executive branch, this means there must be a balance struck between a stagnant executive, which jeopardizes national security, and unchecked executive power, which jeopardizes liberty. Thus, the question considered here is of existential and fundamental importance to American society.

Although those particular problems carry tremendous importance, the last of the four reasons presented above serves as the most pressing factor and the guiding motivation for this paper. There should be no doubt that the security situation in which the United States finds itself in the new millennium is unlike any other in history. Because of its global presence and influence, and because of the speed and ease with which information, people, and weapons can traverse the globe, the United States never ceases to be a potential target for hostilities. Regardless of one’s normative judgment of the situation America is in, its perils cannot be overlooked. The question which arises based on that condition is this: how should the modern president faced with a security crisis respond to the threat? In response, this paper will posit that in light of the threat of terrorism and the circumstances of the modern world, the president should follow criteria that can be drawn from the examples set by Presidents Abraham Lincoln and Franklin Roosevelt. These criteria include respect for constitutional restrictions, consideration of the popular will, efficient and involved management of the administration, and a greater responsibility for transparency and legality in his actions. Where the models are not or cannot be instructive, national security should be pursued with energetic executive leadership tempered by wisdom, foresight, and respect for institutional limitations.

To reach this conclusion, this paper will begin with the Constitution of the United States, the foundation upon which the rest of American history is built, to determine what the text
arranges for the war powers framework with regard to the presidency. From the text of the
Constitution and the supporting documents of the founding era, it will be argued that the most
appropriate interpretation of how war should be handled under the Constitution involves
Congressional, not presidential, initiation of hostilities, except in the case of an attack against the
United States, in combination with a fair amount of discretion given to the president to conduct
war *after* it is begun. That discretion composes the grey space this paper will attempt to fill in,
and therefore it is important to establish its existence from the first. In reaching this
Constitutional conclusion, the competing theories of the unitary executive and constitutional
fundamentalism will be presented, along with an original analysis of evidence from the founding
era.

With this backdrop in place, the paper will move on to consider two historical cases
alongside the Bush presidency and the War on Terror: the Civil War and World War II. The
administrations of Abraham Lincoln and Franklin Roosevelt are the closest analogues to that of
George W. Bush with regard to their energy and circumstances in occupying the presidency.
The comparisons that can be drawn and the differences to be highlighted among these cases will
illustrate that although Bush is not the first president to act with tremendous and sometimes
controversial energy as a war-time leader, there are distinctions about his presidency which must
be considered that make the Lincoln and Roosevelt presidencies better “role models” on which to
base the ideal view of the modern, energetic, war-time president.


**Literature Review**

**John Yoo and the Unitary Executive**

With regard to war powers, proponents of the unitary executive theory espouse for the President a unilateral authority to manage the executive branch in conducting the military aspects of war, implementing war-related domestic policy, and, for some, initiating hostilities with enemy nations or entities. The theory has garnered attention as the War on Terror has played out since September, 2001, although it has been heard argued intermittently, whether in limited degrees or only in certain respects, throughout American history. George W. Bush has largely conducted the War on Terror based on the conclusions of the unitary executive theory, thanks in part to the influence of a former deputy assistant attorney general in the Office of Legal Counsel (OLC), John Yoo. Yoo served in OLC from 2001 to 2003 and authored several legal opinions which served as the basis for some of the most controversial actions taken by the Bush administration in conducting the War, including indefinite detention of those deemed “enemy combatants” and the employment of questionable interrogation methods. Yoo entered OLC as a leading proponent of the unitary executive theory and, after leaving, published *The Powers of War and Peace* (2005), in which he makes his case for unilateral presidential power.

The thrust of John Yoo’s argument is that the Constitution establishes a framework among the political branches for foreign affairs and the powers of war and peace in which the President has the unilateral authority to initiate and conduct warfare by virtue of the executive and commander-in-chief powers. Yoo goes to great lengths to show that the understanding of foreign affairs at the time held that conducting as well as beginning war were executive functions. Beginning with John Locke, Yoo argues that English political thinkers consistently
separated power in the domestic and international realms and called for the vesting of control over foreign affairs largely in the executive with a mild legislative check based on the legislative body’s control over domestic affairs (31). In other words, a legislature could undermine or ruin an executive’s initiation of warfare by refusing to appropriate funds or mobilize a nation’s economy. Because of their shared philosophic history with those English thinkers, the Framers would have been familiar with this position, and Yoo asserts that after the shortcomings of the Articles of Confederation in the realm of foreign affairs, they would have turned to that position as the starting point for their reconsideration of the American executive (86).

From this turning point, Yoo attempts to provide more evidence that the English system would have been the model on which the founding generation would have based their understanding of the Constitution. He cites ratification debates and state constitutions to point out examples of the prominence of that understanding. Thus, Yoo concludes, vesting “the Executive Power” in the President would have been and must be understood to include the authority (though not necessarily the sole authority) to commit American forces to hostilities unilaterally in certain situations and to conduct foreign and certain domestic aspects of war in any situation (19).

Congress, meanwhile, can rein in that authority by its control over funding and its other legislative powers, as in the English model described above. Further, Yoo acknowledges that the Constitution “reclassifies” a few foreign affairs powers as legislative, most significantly the power to declare war (22). That acknowledgment seems to be a mighty obstacle for Yoo to overcome because it is, apparently, a concrete grant of the power to initiate hostilities to Congress, not to the President. In an attempt to refute, he returns to English philosophy and finds that the declaration of war did not typically signify nor coincide with the initiation of
hostilities. Rather, a declaration of war served two other roles. First, it alerts the international community and the targeted enemy that a state of war exists between two nations (Yoo, 33). Second, it is only after a declaration that a state of “total war” exists for a nation – that is, the nation entirely converts from a peaceful state to warring state, changing the status of citizens’ rights and duties (Yoo, 34).

Yoo’s analysis, however falls short in several aspects. Foremost, he never actually connects English political philosophy to the Constitution. He merely posits that because the Framers surely read English philosophy and were familiar with that system, they would have used it as the mold for the Constitution. In fact, in his confusing and muddled dealing with the debate regarding the “declare war” clause from the Philadelphia Convention, Yoo essentially admits that the Framers would not have intended the clause to mean what he asserts it means. Rather, the general population, or at least those ratifying the document, would have understood it Yoo’s way, and this serves as the justification for his interpretation.

This, of course, completely disregards two important and related historical points. First, the founding generation was also the generation which grew so unhappy under the reign of the British government that it resorted to the ultimate means of redress – a violent revolution. To assume offhandedly that those Americans would have naturally projected principles of that same British model onto their own government displays an astounding lack of appreciation for the sentiment of the Revolution. Second, Yoo states that the Articles of Confederation contained principles precisely the opposite of those he reads into the Constitution and of eighteenth century British governance by merging legislative and executive powers, including foreign affairs powers, into one Congress (75). Would the founding generation really have so swiftly shifted from English to revolutionary and then back to English philosophy? One could more reasonably
assert that the Founders would have instead made a second attempt at a new, different style of
government, one which not only separated executive and legislative, but also separated the
executive from certain, highly dangerous powers. When one considers that the Revolution was
brought on by unwarranted taxation to pay for the wars that the King of England initiated, the
argument for separation resounds even more powerfully.

Furthermore, the framework for which Yoo argues has shown itself to be unworkable in a
practical sense. History has demonstrated that while, in theory, Congress could check
presidential war-making by refusing appropriations or other legislative tactics, doing so would
amount to committing political suicide. Upon the initiation of almost any hostilities, Americans
instinctively react with a “rally around the flag” response and would immediately lash out at
legislators seen as “not supporting the troops” (Baker and Oneal).

In addition to the theoretical problems, Yoo’s argumentation strikes the reader as rather
biased. If one examines the documents of the founding era, such as notes from the Philadelphia
Convention, the Federalist Papers, or the Pacificus-Helvidius debates, it is difficult to put
together the evidence in the way Yoo does to support his position. He seems to be scoping and
probing, stretching and molding the documents to read like a desperate legal brief meant as a
defense of the positions he took while in the Office of Legal Counsel. As will be shown in a
more careful, more objective analysis of the raw materials from the time of the Constitution’s
authoring, those positions are demonstrably untenable.

David Gray Adler and Constitutional Fundamentalism

David Gray Adler, professor at Idaho State University, is a leading voice of what could
be called constitutional fundamentalism, on the opposite end of the spectrum from the unitary
executive theory. In a chapter titled *The President's War Making Power*, Adler presents his arguments in a response to Yoo’s predecessors, whom he calls “revisionists” seeking to justify a presidential war-making authority. His is what might be considered a more “fundamentalist” position, and he asserts that “the authority to initiate hostilities, short of and including war, is vested in Congress. The president has only the constitutional power to repel invasions” (121). Adler examines the arguments put forth by the revisionists, many of which Yoo reiterates in his work.

On the “declare war” clause, Adler finds that the delegates to the Convention generally understood quite clearly that the power of deciding war and peace was a legislative one. In fact, the delegates specifically withheld the war-initiating power from the President (Adler, *President’s War-Making Power*, 122). Furthermore, the words “declare” and “commence” and “make” were all basically interchangeable in this context at the time of the Founding, including in England. The power to “declare war” has to be understood to be the power to change the status of the nation from one of peace to one of war, regardless of whether it is called “declaring” or “making” war (Adler, *President’s War Making Power*, 124). This reserves to the President the power to repel attacks on the nation because the attacks themselves institute that change of status from peace to war.

Adler next considers the argument that the “commander-in-chief” clause grants the President the power to begin war, which he notes has become the “principal pillar” for the revisionists. In response, Adler explains that the classical and commonly-held understanding was that the title “commander-in-chief” was simply a military title meant to designate the officer who was the highest in the chain of command. That military title did not imply political authority: in fact, the commander-in-chief was always subordinate to some political superior
At the Convention, there was little argument because this understanding was simply taken for granted. Naming the President “Commander in Chief” simply vested in him the command of the armed forces once a state of war was authorized or initiated.

The last textual argument Adler confronts is based on the “executive-power” clause. Revisionists have asserted that the war-making power was understood to be included in the broad executive power vested in the Presidency. However, no Framer ever suggested this at the Convention. Rather, the opposite was explicitly stated and accepted – the power to initiate war was a legislative one. Thus, Adler finds there is simply no textual basis for Presidential war-making (President’s War-Making Power, 132).

Adler moves on to consider other, extratextual arguments derived from early American constitutional history and from the latter half of the twentieth century. He notes from the Pacificus-Helvidius debates that both Hamilton and Madison acknowledge explicitly that Congress alone has the power to begin war (Adler, President’s War-Making Power, 133). Further, Jefferson, Madison, Monroe, and even Jackson all deferred to Congress and waited for their approval before taking military actions, including instances of obvious attacks on American ships and territory (Adler, President’s War-Making Power, 133-37). Adler cites the Mexican-American War as an exception that proves the rule. Polk, despite claiming the Mexico had initiated the hostilities and thus removed Congress’s declaration from the equation, was investigated by Congress and found unconstitutionally to have instigated the hostilities, thereby usurping the declare-war power (Adler, President’s War-Making Power, 138).

Lastly, Adler considers an argument from historical practicality. He considers the War Powers Act, which is perhaps the most famous instance of an institutional attempt to sort out the
developing complications surrounding the placement of the power to initiate war. Adler argues that the War Powers Resolution wildly missed the mark in its effort to stem the tide of Presidential war-making, effectively giving Presidents the power to commence hostilities without consulting Congress (President’s War-Making Power, 143). Because of this, the Act must be considered unconstitutional. Furthermore, repeated Presidential war-making, even given the statutory basis of the War Powers Act, cannot be considered to give the act legitimacy. Believing so undermines the entire purpose of a constitution and would permit the Presidency to usurp all governmental power over enough time (Adler, President’s War-Making Power, 145). This understanding of the War Powers Act will influence this paper’s evaluation below of President Bush’s handling of the war in Iraq.

The Evidence

Notes from the Philadelphia Convention

While Yoo does his best to downplay the extent to which the Framers desired a break from the English system of governance, even suggesting that the Founding generation would have reverted back to and desired that system because of the failures of the Articles of Confederation, the few remarks that can be gleaned from James Madison’s notes on the Philadelphia Convention indicate that, in fact, the fear of a British style monarchy was still very much alive and was certainly inspiring the men at the Convention. From the initial consideration of the potential powers of the executive, the Framers consistently expressed great concern about giving the executive too much power. Charles Pinkney did not want to extend the executive power to include peace and war, fearing that doing so would “render the Executive a Monarchy” (Farrand 1966, 65). Roger Sherman argued that the executive should quite literally be
responsible for nothing more than carrying the will of the Legislature into effect. Two others stated explicitly that the British model should certainly not serve as their model. James Wilson claimed that “He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers” (Farrand, 1966, 65) and Edmund Randolph explained that they had “no motive to be governed by the British Government, as our prototype” (Farrand 1966, 66).

In the Convention’s consideration of the power to declare war, a consideration which Yoo attempts to explain in his book, it is clear that an executive prerogative to initiate hostilities was not what the Framers had in mind. Other than a proposal by Pierce Butler, who argued for giving the President the power to commence war, every remark indicates that these men feared an executive with the power to unilaterally make war. Madison and Elbridge Gerry moved initially to replace “make war” with “declare war” in the text, indicating in doing so that the President would still have the power to “make” war in the case of repelling sudden attacks (Farrand 1937, 318). Sherman felt that “declare” would limit the legislature’s power too far and agreed that the President should only be able to respond to attacks, not begin war. Gerry makes the most telling remark, claiming he “never expected to hear in a republic a motion to empower the Executive alone to declare war” (Farrand 1937, 318). Though Gerry seems to have misunderstood the object of the motion, his sentiment still resounds. Furthermore, Madison notes that the delegation from Connecticut changed its vote on the “declare” motion from “no” to “aye” when Rufus King clarified that “make war” might be understood as “conduct war,” which was understood to be an executive function (Farrand 1937, 319). This clearly shows that the Framers distinguished in their minds between the authority to conduct war as an executive power, on the one hand, and the authority to begin war as a legislative power, on the other.
The perspective to be gleaned from the Convention with regard to the energy expected from the executive is slightly more ambiguous but generally points to a presidency characterized by high ambition and energy. In a speech given on June 18, Alexander Hamilton calls for the executive to be made a hereditary monarchy based on the British model. His goal in doing so is to place a check over the representative branch with proportionate power. Furthermore, Hamilton argues that one who would occupy an office with that much power would recognize that it is not in his interest to risk much in order to gain more power (Farrand 1966, 290). Such an executive would be above corruption and would be the most consistent in acting for the good and glory of the nation. Last, a strong executive would offset the main weakness of the republican form: the lack of vigorous execution of the laws (Farrand 1966, 289).

On July 19, Governeur Morris speaks and recommends an executive in same vein as Hamilton’s, although he does not go so far as to suggest a hereditary monarchy. He gives several reasons why a very energetic and powerful executive would be necessary to the new republic. First, the great size of the Union requires great energy in the executive, because vigor wanes as it is spread over a vast area. Second, the executive must remain independent of the legislature to protect the people from a legislative tyranny. Third, because he is eligible for reelection, he must act in a way that garners the approval of the people in all of his responsibilities. (The executive was not re-eligible at the time of Morris’s speech but is, of course, in the final document.) Last, any man who managed to be elected to the office would have to be well-known across the country as a man of good merit, an inherent check that makes the executive trustworthy of greater authority (Farrand 1937, 52-53).

Two days before Morris’s speech, Madison gave a more general statement regarding the importance of the maintenance of separation of powers. In words that clearly form the
underpinning for what would come later in *Federalist 51*, he explains that the executive remaining separate from and independent of the legislative is absolutely essential to the maintenance of the republic. The executive cannot simply be the legislature’s subject or else the legislature becomes the executor and takes a great step toward tyrannical power (Farrand 1937, 34). Furthermore, the legislature is the branch that is to be feared the most for Madison, so it is more important to protect the independence of the executive from the legislature than vice versa. Thus, an executive with high energy would be more conducive to maintaining the republican form of government sought at the Convention (Farrand 1937, 35). Thus, Morris’s vision of an energetic executive, which is a toned-down version of Hamilton’s, roughly fits into the scheme Madison had developed for separation of powers. Consequently, this is the model for the executive which must be accepted in order for the proper maintenance of the separation of powers as established by the Constitution.

**The Federalist Papers**

From the Convention, one must next consider the way in which the Constitution was presented for ratification. This is an important step because the immediate interpretations argued for by the writers of the text pave the way for all future interpretations. The most widely accepted documents that give an indication of that early interpretation are *The Federalist Papers*, authored by Madison, Hamilton, and John Jay to encourage the New York ratification convention to assent to the Constitution. While it is not explicitly evident exactly what Madison views as a “good” or “desirable” president from *The Federalist Papers* because Hamilton actually wrote the papers dealing specifically with that office, there are some inferences to be made from his descriptions of the proper place of the executive in Federalists 48-51.
Consistently throughout these Papers, Madison makes clear that he views the legislative branch as the most powerful of the three, the most dangerous to liberty. He also indicates that this is a necessary evil. However, in #48, Madison also states that “It appears, also, that the executive department had not been innocent of frequent breaches of the Constitution” (\textit{Federalist Papers}, 309). With this observation, he adds the circumstances under which these breaches usually occur, the first of which he lists as “immediately produced by the necessities of war, or recommended by Congress or the commander-in-chief” (\textit{Federalist Papers}, 309). With the transition Madison uses between the observation and this particular circumstance, it seems that he views this as a reasonably justifiable action on the part of the executive.

Hamilton’s discussion of the Presidency in the \textit{Federalist} provides more insight into his opinion of the position. First, it is important to note Hamilton’s respect for the institution of the electoral college. Through it, he argues that “there will be a constant probability of seeing [the presidency] filled by characters pre-eminent for ability and virtue” (\textit{Federalist 68}). This belief in the inherent virtues of the President, by reason of his being elected President, provides a ground for Hamilton’s desire for an energetic executive. Energy, he says, “is essential to the protection of the community against foreign attacks…the bulwark of national security” (\textit{Federalist 70}). Further, Hamilton argues that a good executive is one who “[acts] his own opinion with vigor and decision” even against the will of the people or the legislature (\textit{Federalist 71}). He also stresses the importance of presidential experience and action in the case of national emergencies (\textit{Federalist 72}). Despite all his espousing of executive energy, Hamilton still points out that “safety in the republican sense” is tied to “due dependence on the people” (\textit{Federalist 70}).

The major difference between Madison’s and Hamilton’s analysis of the presidency lies in the means by which each believes the office is limited. For Madison, the systems of
separation of powers and checks and balances restrict the capabilities of the office. In other words, the external relationships with other bodies provide for checks on the president. Though he suspects each of the branches to be capable of tyranny, in a sense that danger is more real in the case of the executive because of the similarities between the singular president and the king against whom the Revolution was fought. This explains his motive for pitting the three against each other by checking their ambitions: he does not believe that even men of the highest character can resist the urge to seize power. For Hamilton, on the other hand, the protection against an overly ambitious president, i.e. a potential tyrant, can be found already built into the structure of the office itself. As explained, he sees no problem with executive energy because he expects the character of any man who endures the gauntlet of the electoral process to be impeccable and incapable of despotism.

Both Madison and Hamilton agree that the President should be granted at least some constitutional lee-way in cases of national security emergencies. As an extension of this agreement, both, I believe, would also argue that a desirable President is one who is strong-willed, in Hamilton’s words, and “ambitious,” in Madison’s. These are roughly analogous values. The two do differ on the question of executive independence, with Hamilton desiring more energy than Madison. However, it seems clear that both of these Framers agree that the Presidency, as defined by the Constitution, provides room for an energetic executive and requires a degree of initiative and resolve, especially in matters of national security. Both these points of congruence and the point of divergence explained above will be useful in assessing the propriety of historical displays of executive energy and of the unitary executive theory.

Conclusions
There are two important points which are manifest and clear from the documents considered here. First, the president is not authorized by the Constitution to commit American forces to hostilities with a foreign nation unless a state of war is established by a declaration of war from Congress or a sudden attack by an enemy. The presentation of either of these circumstances activates the president’s war powers. The strongest evidence for this comes from the considerations of the “declare war” clause during the Philadelphia Convention. Yoo’s argument for unilateral presidential authority to initiate war fails to counter this evidence.

Second, the president is expected and counted on to act with energy, confidence, and decisiveness in fulfilling his wartime responsibilities. It is evident from both the Convention notes and *The Federalist Papers* that the success of the separation of powers in contingent upon an independent, energetic executive. At no time is that more true than in war because of the stresses that war places on a government. During war, in fact, the Founders seem to have intended the president be given, to some extent, the authority to bend the constraints placed upon him by the separation of powers during peace that limit him mostly to execution of legislation.

It remains unclear from these considerations to what extent the president has the authority to expand his role during war, and several questions remain. If the commander-in-chief is expected to answer to a political superior, what, if anything, does the president control on his own? What checks can be placed on a war president? How transparent must the president be in his actions in conducting a war? From these questions, and the conclusions above, this paper now turns to the historical cases of the Civil War and World War II in an attempt to find answers.
Abraham Lincoln and the Civil War

As Herman Belz posits, the main question regarding Lincoln’s presidency in the context of this paper is whether Lincoln violated the Constitution in taking the actions he did in response to the instigation of the Civil War, thus replacing the Constitution of the Founders with some new, organic foundation of government that became the basis for the presidential supremacy model that dominated the twentieth century (91). The evidence makes clear that Lincoln neither accomplished such a re-founding, nor did he “[adhere] to the written constitution of the framers – its forms, procedures, principles, and spirit” as Belz argues (73). Foremost, because the Constitution only vaguely describes the war powers, Lincoln worked from a belief in the framework that this paper espouses as that envisioned by the Founders and filled out the first outlines of the character of the wartime presidency. He did so first, by adjusting the way he employed his powers and asserted authorities to the demands of the War. Additionally, he added a new dimension to the separation of war powers – a relationship between the popular will and presidential responsibility. Finally, Lincoln also held the philosophical belief that the Union, the Constitution, and liberty were uniquely tied together in the United States so that the fate of one was the fate of all. Thus, rather than replace the Founders’ Constitution, Lincoln appears to have adapted it to his situation and challenges (which had never before been undertaken) while proposing a particular understanding of the Constitution in defense of the controversial actions he undertook as President.

As he was the first president to encounter the challenges of a large-scale war, to deal with wide-spread subversion in the homeland, and to have to face head-on the issue of slavery, Lincoln was presented the unique opportunity to set a powerful precedent for wartime presidents.
Rather than set the example based on a particular constitutional position or political philosophy, he adjusted the frequency and strength with which he asserted his authorities and employed his war powers as the course of the War unfolded. Specifically, Lincoln started from a fairly reserved position regarding the president’s war powers and gradually came to claim greater prerogative to act unilaterally in conducting the various aspects of the War (McPherson). The example Lincoln set in the latter stages of the conflict, then, is his true precedent for wartime presidencies and is one that commands some, but not total, unilateral discretion vis-à-vis Congress.

Furthermore, Lincoln undertook an adaptation in the understanding of the presidency in response to the tremendous expansion of democracy that occurred in the antebellum period. Specifically, Lincoln used his understanding of the Founders’ system and adjusted it according to “the political realities of a democratic age that demanded greater recognition of popular passion and prejudice than did the era of the Founding” (Belz, 80). The Founders’ system was intended to be run by the best qualified, most respected individuals from among the people who were trusted to use their judgment in promotion of the common good. Before and during his presidency, however, Lincoln often referred to the opinion of the people as the ultimate, direct authority on political issues. His decisions on slavery and abolition and his management of the war effort as commander in chief were also shaped and influenced by public opinion and popular influence.

Moreover, the relationship between President and population in Lincoln’s mind did not end at an ascertainment by the executive of the popular will. Lincoln makes clear that the President is also responsible for making his acts and motives transparent to the people, stating that if the executive “uses the power justly, the people will probably justify him; if he abuses it,
he is in their hands, to be dealt with by all the modes they have reserved to themselves in the constitution” (Belz, 43). In espousing these positions, Lincoln added a dimension to the separation of powers in wartime government that linked presidential authority with popular authorization, in particular via the channel of the Republican party.

In addition to these new facets, Lincoln defended his actions by emphasizing what he believed was an underlying, fundamental relationship between republican liberty, the Constitution and the Union. He argued that the Founders considered the Union and the Constitution to be one and the same, and therefore the continued existence of the nation relied on the protection of the document. Because the Constitution embodied the protection of republican liberty, Lincoln considered the maintenance of the Union and the Constitution as necessarily antecedent to the defense of that liberty. As a consequence of this relationship, actions which might otherwise be considered constitutional become lawful by being indispensable to protecting the constitution and nation (Belz, 94). Lincoln freely admitted the dubious legality of some of his measures, but because “the government was saved from overthrow” by means that were derived from the basis of constitutional power, those measures could not be considered constitutionally lawless (Belz, 92). These characteristics of Lincoln’s administering of the Civil War make his presidency the model against which any crisis presidency should be evaluated.

**Lincoln’s Practical Development of Presidential Wartime Authority**

From the start of the war, Lincoln found himself in a nebulous situation as commander in chief that was only vaguely outlined by the Framers and had not, to that point, received much treatment in either practice or legal debate. Thus, even if he had preferred not to, Lincoln “would have to establish most of the powers of commander in chief for himself” (McPherson, 5).
One area of presidential responsibility which was more clearly delineated than others was his control over military matters, including the establishment of military strategy and the promotion and removal of military officers. With regard to both of these aspects of his war power as commander in chief, Lincoln demonstrated growing confidence and assertiveness that correlated to the frustrations and setbacks experienced in the Civil War. This growth in response to the demands of the War is one aspect of the strong precedent Lincoln set for war-time presidents.

At the outset Lincoln recognized both his ignorance of the subject of military strategy and the benefits of aggressive study of the subject. He “faced a steep learning curve,” however, and for much of the first three years of the Civil War, Lincoln deferred to the generals he assigned to command below him, despite frequent disagreements (McPherson, 2). In hindsight, many of Lincoln’s strategic contributions would perhaps have been extremely helpful to the generals’ efforts had they been heeded. Instead, he was consistently frustrated by generals who lacked the energy and sense of urgency that he brought to his appraisal of the events of the War (Reid). His first general in chief, Winfield Scott, was widely respected for his military accomplishments in the War of 1812, but his passive and practically impossible “Anaconda Plan” resulted in little through the fall of 1861 except the Union slaughter at First Manassas (Oates, Ch. 7). Scott’s replacement, George McClellan, proved to be a chronic hesitator who repeatedly ignored Lincoln’s urgent requests that he advance on rebel positions. In the late fall of 1862, “Lincoln’s patience finally snapped” and McClellan was replaced (McPherson, 141). At this point, the President began to increase the rate of turnover for failing, reluctant generals, a reflection of his growing confidence that victory would require action and initiative (Reid). Despite Lincoln’s clear expectations, the hesitancy, risk aversion, and defensive mentality of McClellan remained characteristic of much of the Union forces and “compelled Lincoln to become in effect his own
general-in-chief as well as commander in chief during key campaigns” (McPherson, 8). It was not until the appointment of Ulysses S. Grant as general in chief in the spring of 1864 that Lincoln found a man whom he could trust in conducting the remainder of the War.

The trust was not absolute, however, and Lincoln’s now great confidence in his abilities as commander in chief were evident in his relationship with Grant. While Grant was the creator for the grand strategy for victory in early 1864, Lincoln approved of it because it was “exactly the kind of concerted action he’d advocated since 1861” (Oates, 385). With weekly input from Lincoln considered over the course of the spring fit into the final scheme, the President finally relinquished much control to his new general in chief. This ultimate point of Lincoln’s course of initial deference, growing impatience and frustration, and increasing assertion in personnel and strategic matters is a key part of the precedent that he set as commander in chief. It is a precedent of hands-on involvement and final decision-making power for the President in times of war.

Over the course of the War, Lincoln’s assertiveness in his political positioning also grew in response to the same frustrations that forced the development of his military confidence. Lincoln’s First Inaugural Address, issued on March 4, 1861, provides a subtle glimpse into the newly-elected President’s mindset regarding his war powers. With regard to the faithful execution of the law in all the states of the Union, he states

Doing this I deem to be only a simply duty on my part, and I shall perform it so far as practicable unless my rightful masters, the American people, shall withhold the requisite means or in some authoritative manner direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it will constitutionally defend and maintain itself.

As an early reference point, this Address indicates that Lincoln initially held a somewhat reserved opinion of what his constitutional powers would entail. He speaks in language that
refers strictly to his responsibilities as chief executive, that is, his Article II powers. The
President’s power and authority faithfully to execute the laws throughout the Union could hardly
be denied. The rebel states, if considered as members of the Union standing in violation of the
Constitution by attempting to break it, could be dealt with directly by Lincoln as a result of his
Article II executive powers. In the opening days of his tenure, then, Lincoln was willing to claim
a straightforward, but only marginally useful power to put down the rebellion.

Additionally, Lincoln indicates what he believes his responsibilities in opposing
secession entail. According to the passage above, he believes his execution of the laws is part of
the “declared purpose” of the Constitution of the Union to “defend and maintain itself,” which in
this context would include preventing secession and protecting against possible Southern
aggression. This interpretation is bolstered by a line from his closing remarks in which he
addresses Southerners by saying, “You have no oath registered in heaven to destroy the
Government, while I shall have the most solemn one to ‘preserve, protect, and defend it’”
(Lincoln, *First Inaugural*). Quoting the Presidential Oath, Lincoln makes clear with this
Inaugural Address that he intends to act with some degree of unilateral authority to the extent he
is allowed by Congress and within his responsibilities as chief executor with the goal of
preserving the Union. Thus, there are indications both of Lincoln’s belief in the absolute
necessity of some action on his part, but also of doubts regarding how that action could take form
legally based on the president’s powers.

Four months later, on July 4, 1861, Lincoln addressed a special session of Congress. In
this message, he establishes a bolder defense of his actions up to that point in response to
Southern secession and initiation of hostilities at Fort Sumter. Based on his statements, Lincoln
seems to be arguing that his position fits exactly with what the Framers had in mind at the
Philadelphia Convention – an aggressor, despite Lincoln attempting “all that which a president might constitutionally, and justifiably, do in such a case,” attacked the Union and “forced upon the country, the distinct issue: ‘Immediate dissolution, or blood’” (Lincoln, *Message to Congress*). According to arguments proposed at the Philadelphia Convention, such an action by an aggressor activates the government and the president’s war powers, and Lincoln acted accordingly. Thus, his statements mark a step forward from the more reserved positions in the Inaugural Address. No longer does Lincoln refer to his responsibility to faithful execution, but rather he asserts war-time authority for the presidency.

Lincoln also tackles the specific issue of his suspension of habeas corpus in this address. First, he refers to his presidential oath, asking “Even in such a case, would not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law, would tend to preserve it?” (Lincoln, *Message to Congress*). In other words, he is arguing openly that suspension of habeas corpus was necessary to preserving the government. Furthermore, Lincoln insists that as president, he was justified in assuming the Article I power to disregard habeas corpus, “as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended, that in every case, the danger should run its course, until Congress could be called together; the very assembling of which might be prevented, as was intended in this case, by the rebellion” (Lincoln, *Message to Congress*). These particular arguments presented by Lincoln on July 4 appear to be attempts to fit the particular circumstances of the opening of the Civil War to the framework that was intended by the Framers. Additionally, his positions hearken back to his philosophy of the existential connection between Union and the Constitution. Lincoln is making his case that the South initiated the hostilities, thus activating more extensive presidential war-time powers to preserve the Union,
which he believes includes the power to suspend habeas corpus and thereby preserve the Constitution.

There is no more striking example of Lincoln’s growing confidence than the history of the Emancipation Proclamation. In the winter of 1861, still less than a year into the War, Lincoln told Congress that he would not issue a proclamation of emancipation because the War would then take on a radical, revolutionary character rather than remaining strictly about the maintenance of the Union (Oates, 268). In July of 1862, a year after the special session of Congress, Lincoln first seriously considered issuing a proclamation. At that time, he argued for it as a measure of military importance that would “set the army an example and strike at the heart of the rebellion” (McPherson, 108). Lincoln was advised against such action by General McClellan in favor of more conservative war and was ultimately convinced by Secretary of State William Seward that he should wait for military success to issue the Proclamation, rather than do so then after the Union’s defeat in the Seven Days’ battle (Oates, 311). It was not until two months later, after a series of painful missteps was made by General George McClellan that had demoralized the Union and was only remedied by the luck of finding the detailed plan for Lee’s army in the coming days, that the Army of the Potomac accomplished a bloody, long-awaited victory at Antietam.

In the aftermath of the battle, Lincoln issued the first portion of the Emancipation Proclamation and followed it with his famous public defense explaining the document’s pragmatic purpose in winning the War and maintaining the Union (Donald, 456). Such a defense was made largely in consideration of public opinion, as these “were the only terms the white public was likely to accept” (Oates, 313). While Lincoln should be commended for his political savvy, this defense is a sign of his early tentativeness to assert his opinion over that of the public.
Just three months later, on January 1, 1863, when Lincoln signed the final statement of emancipation, the text of the Proclamation made a more powerful defense of itself, claiming to be act of justice and invoking the judgment of God and all mankind (primary source). Thus, Lincoln’s public position on the slavery question strengthened from one of the practical, military value of emancipation to one of the principled rightness of abolition, a testament to his both his political savvy and growing political confidence.

In the summer of 1864, Lincoln’s confidence shone through in his handling of the Wade-Davis bill. The bill’s course through Congress was, in essence, a demonstration of the strength of the anti-Lincoln section of the Republican party in altering significantly some of the provisions Lincoln had recommended for the anticipated reconstruction process (Donald, 509). However, the bill was presented to the President with less than an hour left in Congress’s summer session. With the November election approaching, Lincoln saw an opportunity to “reassert his authority” and decided to pocket-veto the bill (Donald, 510). It was a political move rarely seen before, and the bill was defeated by his refusing to sign it. Soon after, Lincoln issued a statement explaining that he actually endorsed the reconstruction plan contained in the Wade-Davis bill and was “prepared to give the Executive aid and assistance” to Southern states willing to adopt it (Lincoln VII, 433). This act was truly a power play by the President, a fine example of the now abundant confidence Lincoln possessed in his political authority.

The trajectory of Lincoln’s precedent in terms of war power is now clear. Ultimately, the outline he drew for the wartime presidency contains unilateral authority in conducting the various aspects of war as well as the power to stretch the textual limitations of the Constitution when justifiable on constitutional grounds. Over the course of the war, Lincoln’s confidence in that position expanded greatly. The increase in frequency and strength of his assertions of
unilateral war power in both the military and political aspects of conducting war have been
detailed. When considered with the various events, both reaffirming and frustrating, that
accompanied this development, Lincoln’s precedent must be considered as one based on
practical necessity. With regard to these aspects of the presidency, any occupant of the office
should look to imitate his example.

Lincoln’s Link to the Popular Will

Although Lincoln’s presidency, with regard to the military and political authorities he claimed, greatly expanded the power future presidents could claim in wartime, Lincoln also added an essential condition to that expanded power: responsibility to the people. The importance he placed on his responsibility to the public was a powerful factor in virtually every decision he made during the War, including decisions regarding military strategy, enactments of policy, and the slavery question. Based on his practices, it seems that Lincoln felt that responsibility was two-fold. First, the President must attune himself to the public opinion when anticipating action on the part of the administration. He must consider whether the public supports the action in addition to the consequences his action might have based on their will. Second, the President must make his motivations apparent and must be willing to defend his actions publicly. In dedicating himself to maintaining transparency, Lincoln further tied presidential prerogative to public opinion, an important development to this study of executive wartime power.

Despite his reluctance to claim too much power at the time, Lincoln does make clear in the 1861 Inaugural his commitment to the Republican party platform and to the promises he had made to those who had elected him (Lincoln, *First Inaugural*). This commitment certainly
included unconditional opposition to secession, a point on which Lincoln believed he had to remain steadfast. To waiver would be to risk “the future of freedom and self-government” (Oates, 216). In the opening debate regarding the siege of Fort Sumter, the consideration that withdrawal from the Fort “would demoralize Lincoln’s own party and concede the legitimacy of the Confederacy” was the most important one on his mind (McPherson, 17). In fact, that consideration drove Lincoln to assert himself over the recommendations of his Secretary of State William Seward and General Winfield Scott to relinquish Sumter to the Confederacy.

When Lincoln issued his message in July to the special session of Congress, his continued respect for the popular will remained evident. However, much to the dismay of abolitionists and his close Republican allies, Senators Charles Sumner, Ben Wade, and Zachariah Chandler, Lincoln failed completely to mention the issue of slavery (Oates, 253). Before the special session, they had counseled Lincoln to make ending the peculiar institution an objective of the Union army. Lincoln agreed, but he also recognized that two crucial factors were preventing him from doing so. First, popular opinion would not have supported emancipation at that time, even as an act of war (Oates, 253). A strong bipartisan coalition between Northern Democrats and Republicans had been forged after Fort Sumter, and abolishing slavery would have surely broken that coalition down (Donald, 305). Second, emancipation would have alienated the loyal border-states and their citizens, setting the Union cause back significantly, perhaps insurmountably (Gienapp). In these opening months of the war, then, Lincoln’s respect for and commitment to popular will was unquestionable.

As the conflict wore on, the President continually proved himself to be a masterful politician and to be responsible to the public, delicately balancing the important relationship he had with his Republican party and the American people. Lincoln had a strong understanding of
what was a relatively new aspect of the presidency – its status as an office elected by a universal white male electorate. He knew that he had no choice but to listen and appeal to the “democratic polity whose zeal was vital for the mass mobilization” that was necessary to preserve the Union (Belz, 38). In particular, Lincoln displayed his keen sensitivity with shrewd officer commissions of both Republicans and Democrats, attempts to ease the border-states into emancipation, and ultimately the timing of the Emancipation Proclamation itself.

In appointing military officers, Lincoln typically selected the man who objectively held the better qualifications, regardless of his political ties. As a result, a “sizeable” portion of his major appointments came from the Democratic party (Donald, 313). When merit was not the dominating factor, for example in lower level positions, Lincoln commissioned several generals who were considered because of their political status or position as leaders of strong ethnic communities in the country. These appointments served to keep as many people in the North behind the cause of the Union as possible, an essential consideration in a war that had to be fought by those very people (McPherson, 42). Of course, the Republican party was responsible for most of the support for the war efforts and, accordingly, many Republican political figures were either commissioned or sponsored appointments for specific generals (McPherson, 43). Some of these appointments, like John Fremont and George McClellan, proved to be bothersome at best and disastrous at worst. Others worked out very much in Lincoln’s favor, like Ulysses S. Grant and William Tecumseh Sherman. Regardless, popular opinion motivated Lincoln’s appointments in many instances, a sign of his acknowledgment of the necessity of popular support.

Not only did Lincoln have an astute sense of responsibility to the popular will at large, but he understood the need to placate important factions in particular areas of importance,
especially the border-states with slaveholders, Missouri, Kentucky, Delaware, and Maryland (Gienapp). With no issue did those states take on more importance than on the question of emancipation. Lincoln consistently refused to issue a general emancipation order through mid-1862. In fact, the President ordered General John Fremont to modify an emancipation proclamation he made in Missouri to make it conform to the previously-enacted Confiscation Act (Donald, 315). He repeatedly emphasized to liberal Republicans that he had no choice but to adhere to his border-state policy, “because to alienate the border was to lose the war, the Union, everything” (Oates, 267).

As the issue of emancipation became more pressing through the summer and autumn of 1862, Lincoln repeatedly approached Congressmen from the border-states with his plan offering financial assistance to those states in exchange for their agreement to enact gradual emancipation (Oates, 308). Each time, the representatives rejected the plan, including voting against the Congressional resolution which approved Lincoln’s plan (Oates, 298). These developments caused Lincoln to stall, again because of his respect for the public will in those states. Ultimately, of course, Lincoln went forward with a general proclamation after a last offer to the border-states and despite advice from Unionists in those states that the act would, in fact, sway their loyalty (Donald, 379). This decision arose from Lincoln’s consideration of the general population in the North, which reflected a strong, growing abolitionist sentiment, and from the considerations of his own authority described in the section above; thus, the Proclamation should be considered to be consistent with Lincoln’s legacy of deference to the popular will.

The influence of the Republican party over Lincoln’s administration did not prevent him from taking actions they deemed objectionable, but when he did so, Lincoln consistently demonstrated another of the important aspects of his wartime presidency: transparency. During
the course of the war, Lincoln used his addresses and often public letters to explain his case regarding actions taken by his administration, whether his opposition consisted of Democrats or Republicans or both (McPherson, 173). Moreover, he often made very candid and lengthy responses to challenges made by political allies and friends, including a defense made to Orville Browning of the order made to General Fremont to rescind his emancipation proclamation. The president’s order was applauded by Lincoln’s own Republicans, but he recognized the need for the political tact described above (Oates, 261). In his letter to Browning, Lincoln explained that had he allowed Fremont’s order to stand, he had received explicit warning that Kentucky would abandon the Union cause and secede. Furthermore, the President proposed a constitutional reason for the order, stating the Fremont’s action was purely political and could not be justified by military necessity (Lincoln IV, 532).

The most pertinent and impressive example of Lincoln’s transparency, though, appropriately arises in the history of what are his most constitutionally troubling policies, including infringements on free speech and press and suspension of habeas corpus. In the late spring of 1863, Clement Vallandigham, a prominent leader of the Peace Democrats in the West, was arrested and detained after trial by military commission with explicit approval from Lincoln (McPherson, 172). A month after the arrest, Lincoln received a letter of protest from a group of Democrats in New York, “strongly condemning the arrest and trial” of Vallandigham (Donald, 442). In a lengthy written response, issued both to the protestors and to the New York Tribune, Lincoln laid out his case in defense of his actions. He explained that these arrests, made in a time of crisis, must necessarily be distinguished from arrests made in peace. Arrests must be made in war with the goal of prevention, rather than as a means of vindication, as they are in peace (Lincoln VI, 265). Furthermore, Lincoln argues this distinction is clearly one the
Constitution contemplates in the very clause permitting Congress to suspend the writ and, therefore, that the document’s application cannot be understood to be “in all respects the same, in cases of Rebellion or invasion, involving the public Safety, as it is in times of profound peace and public security” (Lincoln VI, 267). Finally, the President also addresses Vallandigham’s specific case, explaining that he had not been detained simply for speaking out against the administration, but for impeding the raising of troops and encouraging desertion (Lincoln VI, 266). In publishing this letter, Lincoln accomplished his goal of publicly defending his actions, “[reassuring] Unionists genuinely troubled by an assumption of despotic power on the part of the President” (Donald, 443).

Lincoln’s relationship with the public is the second key contribution he made to shaping the character of the war president. He set a clear example in two aspects of that relationship. In nearly all of his actions, including military appointments, his handling of the volatile border-states, and his issuing of the Emancipation Proclamation, Lincoln kept the public opinion at the forefront of his mind. Furthermore, on the occasions when he felt compelled to take actions that contradicted the will of the people or that adversely affected the population, the President regularly publicized his motivations and defended their legitimacy. Thus, responsibility to the people and transparency characterized the Lincoln presidency and his precedent for future presidents facing security crises.

**Conclusions**

Lincoln’s administration during the Civil War serves as the foundation for the image of the wartime presidency and should be considered the model for other wartime presidents. The fact that history largely reflects on the Lincoln presidency as a great success could be reason
enough to compare any crisis presidency to his. Such a reason, though, would be superficial. There are more substantial reasons for using Lincoln’s presidency as the criterion against which to evaluate other administrations during security crises.

Before his ascendancy to the office, no president had faced so great a threat to the safety and preservation of the nation; thus, his actions required inspiration and defenses that had never been contemplated. Because of his circumstances and the vagueness of the Constitution, Lincoln’s actions largely reconcile with the intent of the Framers. In comparing the Civil War to the framework espoused in this paper as the proper understanding of the Constitution, the conclusion is that Lincoln clearly faced a situation which fit precisely in that framework. The opening of the War clearly consisted of an aggressor initiating hostilities against the Union, an act sufficient to replace a declaration of war in activating the government’s war powers. After the war powers came into effect, Lincoln conducted the War in the exact manner the Framers prescribed, employing a strong prerogative in making military and political decisions while never closing himself off from accountability to Congress and the public. Again, these characteristics of Lincoln’s administration suffice to name his the model wartime presidency.

The two aspects of this presidency described in this section, though, provide the real reason for evaluating crisis presidents against Lincoln’s example. First, the great authority in Lincoln claimed and asserted in conducting the Civil War expanded over the course of the war in response to frustrations and setbacks the President faced. In other words, Lincoln attempted at times to do less, to be less energetic, but his doing so correlated to a failing effort on the part of the Union. Thus, he grew in his assertion of power and authority, and his increased energy was a leading factor in the Union victory. Second, Lincoln went beyond the requirement of accountability by dedicating himself to adherence to the popular will and to transparency in his
administration. Whether considering military matters, constitutional issues, or policy decisions, Lincoln consistently considered the public opinion to be a controlling influence. If public dissent regarding his actions arose, the President made public his intentions and defended their legitimacy openly. These two aspects of Lincoln’s presidency, the practical necessity of the energy he employed and his relationship with the people, in combination with his adherence to the Constitution, are the most important reasons for basing any evaluation of a wartime president on his model.
Roosevelt and World War II

The Lincoln presidency presents the baseline criteria for judging modern wartime presidents. However, there are a few difficulties in strictly comparing an administration in the modern age to Lincoln’s. Foremost, the presidency as an institution has changed drastically since the Civil War. The chief executive now heads an enormous bureaucracy, a responsibility which results in his having greater direct impact on the people than ever before. That bureaucracy also potentially complicates the decision-making process by substantially decentralizing the executive power in ways Lincoln never considered. Furthermore, the growth in diversity and timeliness of media coverage subjects the president to constant scrutiny, even (or especially) in security crises. Finally, the president’s greater connection to the people via the media and the bureaucracy serves as enticement for acting with greater autonomy relative to the other branches. Thus, while we have great reasons to judge crisis presidents by Lincoln’s standards on those issues that are relatively timeless, like constitutionality of actions, transparency, and effectiveness, we must also seek to find other criteria to assess a president’s efficiency of management, popular appeal, and power as the symbolic leader of the United States.

Presidential scholars generally agree that the beginning of the developments that resulted in many of the disparities between Lincoln and the modern presidency mentioned above came with the national security operations of Franklin Roosevelt. As posited by Theodore Lowi, Roosevelt was the first personal president: that is, the first to take on a personal relationship with the people as the head of a newly president-centered federal government that was directly involved in regulation and redistribution. While the New Deal in some ways initiated the shift
from tradition to modern presidency, the manner in which Roosevelt managed World War II truly transformed the institution (Burns, 3). Furthermore, as his presidency initiated the shift to the personal presidency, FDR operates at a sort of midpoint in the transition between 19th-century presidents and modern ones. Thus, examination of the successes and failures of Roosevelt’s administration during World War II will hopefully yield further criteria by which we can evaluate those aspects of the modern presidency which the Lincoln criteria could not address.

This examination of the Roosevelt presidency will be two-fold. As was argued, the precedent Lincoln set should be used to judge other presidents, and we can garner useful insight by looking at the Roosevelt administration in this light. Thus, one part of this project will be to evaluate FDR in his transparency and appreciation for the popular will, his respect for the constitutional framework for the initiation of war, and whether he stretches his bounds in conducting the War. In addition to this comparison, the second task is to extract principles for evaluating modern presidents that correspond to the deficiencies of the Lincoln model. Roosevelt, it will be submitted, was an involved, effective leader of the bureaucracy who understood the need for a balance between caution in choice and confidence in action. He also took full advantage of the outlets granted to him by the media to maintain and to bolster public support. As an important corollary to both of these criteria, Roosevelt acted as a powerful symbolic leader for the administration and the people, keeping hopes up and efforts focused on the mission of winning the war.

In completing these two tasks, we can generate a full list of criteria by which we can judge modern crisis presidents. Specifically, we will be able to evaluate President Bush’s handling of the War on Terror and sketch a general outline for how, if at all, future presidents
should deviate from the Bush administration. With that goal in mind, we turn now to the Roosevelt administration of World War II.

**Roosevelt and the Constitution**

In certain ways, Roosevelt displayed ideal respect for the law of the Constitution in conducting his administration during World War II. Specifically, it is evident that he saw in that law the same framework for the initiation of war that this paper espouses, and that he respected that framework deeply. His reluctance to overstep his bounds in involving the United States in the European war through 1941 resulted from the recognition that the country had to be faced with the reality of war and that it was not within his power to commence war. However, Roosevelt has received much criticism for the Lend-Lease Agreement he negotiated with Winston Churchill, Prime Minister of Great Britain. Critics argue that Roosevelt inextricably involved the US in the interests of Britain and its allies with Lend-Lease and subsequent policies and, thus, practically committed the country to war unilaterally. Moreover, the blame for what is considered one of the most egregious wholesale violations of the civil rights ultimately falls squarely at Roosevelt’s feet for issuing Executive Order 9066. These actions and policies, when examined in more detail, will shed light on the character of the war presidency and what should be expected of presidents faced with security crises today.

Roosevelt’s management of the American position in the months and years leading up to Pearl Harbor provides sufficient evidence to argue that he possessed a respect for the importance of the constitutional guidelines for the initiation of war. In all his efforts in Lend-Lease and in the Atlantic cold war in 1941, including authorization to the Navy to fire on German ships on sight, Roosevelt never sought a declaration of war or contemplated use of the totality of the
United States’ armed forces, despite his personal beliefs that Hitler posed a serious, “undeniable threat” (Roosevelt, “Arsenal of Democracy”). The tension between the constitutional requirements and his assessment of the situation in Europe served to create much anxiety for Roosevelt and his administration, but the fact that his beliefs were subordinated to the Constitution strongly indicates his view of the document’s importance (Larrabee, 42). Even on December 6, when confronted with evidence that a Japanese attack was likely, Roosevelt denied the possibility that America could strike first (Burns, 161). It was only on December 8, standing before Congress after the attack on Pearl Harbor, Roosevelt finally called for a declaration of war against Japan.

The address Roosevelt issued that day indicates his acceptance of the framework set forth in the Constitution. Beginning with the moment of the attack, Roosevelt acted upon his wartime authority as commander in chief. His explanation of the intent and deliberateness of the attack, along with the simple statement, “Hostilities exist,” served to establish that an enemy had initiated war against the United States (Roosevelt, “Address to Congress”). According to the Constitution, that initiation activates the government’s war powers. Roosevelt’s request to Congress reflects that interpretation (“Address to Congress”),

*I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, 1941, a state of war has existed between the United States and the Japanese Empire.*

Even after Pearl Harbor, Roosevelt refused to ask for a declaration against Germany because they had no hand in executing the attack. While such a declaration would have been readily issued by Congress, he still felt that the people had to be “presented with the fact of war,” and it was not until Hitler announced initiation of hostilities that Roosevelt asked for a declaration from
Capitol Hill (Heinrich, 220). The initial conclusion, then, is that in word and in deed, FDR exhibited respect and acted according to the Constitution’s requirements for the initiation of war. While this conclusion is warranted from the evidence, the details and nuances of the Lend-Lease program and other moves made by Roosevelt pursuant to his desire to aid Britain before Pearl Harbor complicate the picture. Although he remained cautious enough to wait for events “to propel the nation toward full intervention in the Atlantic,” Roosevelt took advantage of opportunities to force the action under the guise of neutrality (Burns, 104). From the outset he presented the Lend-Lease program, which inextricably tied American security interests with Britain’s, as a means to distance the United States from the war (Roosevelt, “Fireside Chat 16”). His argument could be taken as sincere, but future actions would contradict such an interpretation. In May of 1941, for example, Roosevelt, in an otherwise subdued speech, explained to the nation that he had signed a proclamation declaring an unlimited national emergency and stated that the nation would decide for itself when and where its security interests were threatened (Roosevelt, “Transcript”). The statement was relatively unprovoked, other than by pressure coming from members of his administration and the pleas of Winston Churchill (Fleming, 86).

In other cases, he was consistently ready to pounce on any chance to escalate American military involvement, whether or not the occasion actually called for such action. In September, 1941, the American destroyed Greer was involved in an altercation with a German submarine. The Greer discovered the exact location of the U-boat and trailed it for hours, broadcasting the information to a British plane attempting to sink the sub with depth charges. In response, the Germans fired torpedoes at the Greer and missed, to which the Americans responded in kind with depth charges. After another chase and another series of depth charges, the Greer
disengaged, leaving the sub to the British forces in the area. No casualties were incurred on either side (Heinrichs, 166). Upon learning of this relatively minor incident, Roosevelt decided to take full advantage of the opportunity, painting it as an act of war on Germany’s part and authorizing the Navy to shoot on sight at German ships (Roosevelt, “Greer Incident”). The move changed the situation in the Atlantic Ocean from a stand-off to a gun-fight in one instant (Burns, 141). In other words, it was a momentous shift that transpired in the wake of the minor incident instigated by the Greer because of Roosevelt’s inflation of the incident’s importance for the sake of involving the nation further in the war.

The debate over the Lend-Lease program and Roosevelt’s decisions made in pursuance thereof was “the last great fight of the isolationists” (Heinrichs, 11). While their influence factored into the caution with which the President proceeded during that year, and despite his announced position of neutrality, we can look back and question with those opponents whether Roosevelt truly acted in accordance with the constitutional framework in the build-up to American involvement in World War II (Ross, 34). From that constitutional perspective, Roosevelt probably did not commit any actual violations. From the view of historical hindsight, Roosevelt’s slow lead toward intervention was arguably an appropriate act on his part. However, the severity of the claims levied against him by contemporary opposition and some modern critics suggest that such behavior should probably be avoided by presidents. Those who face security crises must understand, like Roosevelt, that the president is not empowered to initiate hostilities unilaterally. Military action is only authorized in response to specific events that indicate the existence of a state of war, specifically an attack or a Congressional declaration. While even these circumstances cannot be defined concretely, the inflation of or overreaction to events for the sake of promoting war should not be in consideration.
Roosevelt’s confrontations with the Constitution during World War II extended far beyond the controversy over the power to commit the country to war. In the most infamous instance, he authorized via Executive Order 9066 the relocation and internment of Japanese citizens and aliens residing on the West Coast (Fleming, 110). The vagueness of the order itself embodied both the complex nature of the controversy and Roosevelt’s conscience on the matter. Though clearly provoked by tension on the West Coast and directed at the issue of potential Japanese subversion, the order makes no specific mention of the region, the people, or the problem, instead conferring the blanket authority “to prescribe military areas…from which any or all persons may be excluded” (Roosevelt, “Executive Order 9066”). Based on the document’s text, it is possible either that Roosevelt did not anticipate internment, or that he wished to avoid being directly culpable for what was the inevitable outcome of the order (Burns, 216). Despite those qualms, the President also felt strongly that the matter was one of great military importance and required implementation, and he believed the policy of internment to be justifiable on those terms (Fleming, 210). Thus, the vague executive order assigns the power to relocate to the Secretary of War and to aid in the pursuance of the order to the other federal agencies (Roosevelt, “Executive Order 9066”). His inclusion of the aid provision clearly anticipates the need for relocation and detention, however, leaving Roosevelt to “[bear] responsibility for the decision to evacuate and incarcerate citizens and aliens of Japanese descent” (Ng, 18).

The backdrop of the problem developed throughout the months leading up to Pearl Harbor. Smoldering racial tensions on the West Coast had been heating, and the attack “served in many cases to inflame (or rationalize) preexisting suspicions and hatred of the Japanese Americans” (Robinson, 87). Some of the tension reflected economic rivalries between Japanese and white farmers, merchants, and businessmen in the region (Robinson, 90). Suspicion
stemming from racism and free-floating rumors about Japanese disloyalty also long predated Pearl Harbor. With these preexisting factors and absent any sort of statement of support on Roosevelt’s part for those Japanese citizens after Pearl Harbor, calls for their removal began to come from political officials, media outlets, and groups like the American Legion and the California Joint Immigration Committee, previously called the Japanese Exclusion League, on the West Coast (Ng, 15). FDR opted for viewing the situation as a strictly military matter and, therefore, deferred to the military’s recommendations. With a tidal wave of misinformation seemingly supporting internment and with the only opposition coming from quiet and poorly-organized sources, the War and Justice Departments presented the order to Roosevelt, which he signed into policy.

As it was written, Executive Order 9066 did not necessitate Japanese internment. However, there are several reasons for holding Roosevelt accountable for the outcome. Foremost, the order he signed was drafted by members of the War and Justice departments who “clearly understood that it was directed primarily against Japanese Americans” (Robinson, 128). Moreover, the implications of the order, that the Japanese were not to be trusted and were a threat to national security, served to instigate greater hostility toward Japanese Americans nationwide (Casey, 67). The text of the order also definitely anticipates relocation, if not internment, in its provisions for the entire body of federal agencies to assist with “the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services” (Roosevelt, “Executive Order 9066”). After the order was issued and as the policy played out, Roosevelt did not have an active role. However, he was well-informed of the manner in which 9066 was being executed and “displayed a shocking unconcern for the negative effects and ramifications of the policy as it developed”
Roosevelt discussed the events as they unfolded mostly in euphemisms and failed to take steps to meet the practical demands of internment (Burns, 267). Overall, the context in which the order was written, signed, and issued, along with his treatment of the policy as it unfolded serve to place a significant share of responsibility for the occurrence, severity, and duration of Japanese internment at Roosevelt’s feet.

In defense of the move, the President and his advisors argued removal and internment were of military necessity (Ng, 13). However, there had not been a single documented case of any espionage, sabotage, or subversion by Japanese living on the West Coast, and the an investigation into the internal military threat posed by the Japanese concluded that the Japanese living in the United States would not threaten national security” (Ng, 14). Though many factors contributed to the Order, including the misleading and mistakes of fact on the part of many Roosevelt advisors, Greg Robinson argues that racism ultimately had to play a part. Indeed, the President likely acted on his belief that the Japanese were biologically “incapable of being true Americans” (Robinson, 121). In this instance, Roosevelt failed to follow Lincoln’s example of making public arguments in defense of rights violations other than the argument from military necessity. It is improbable any such argument could be made in this case. Such blatant attacks on civil rights and stripping of liberties cannot be tolerated today, regardless of the perception of military necessity. Executive Order 9066, in that sense, embodies the danger of espousing complete, unilateral presidential power in conducting a war. Ultimately, a president should avoid even minor restrictions on liberties, and if such a policy is pursued, he should be able to make a public defense based on stronger principles than military necessity.

**Roosevelt as Personal President**
In the introduction to this section, it was posited that Franklin Roosevelt and his administration sparked a variety of developments that resulted in the emergence of the personal president. These developments must be explained more fully to grasp the ways in which Roosevelt matched and furthered the precedents Lincoln set with regard to transparency in action and responsibility to the popular will. Specifically, Roosevelt used to his advantage improved technology and expansion in the variety and intensity of media coverage of national politics. As did Lincoln, Roosevelt utilized these resources in a two-part dynamic, both to monitor popular opinion and to maintain the transparency of his administration. Additionally, Roosevelt employed, though somewhat reluctantly, the tactic of framing public opinion on the war; that is, he discussed and addressed war-related matters using specific terminology to shape people’s opinions of current events. The degrees to which public opinion influenced his decisions and he influenced public opinion are difficult to assess exactly, but what emerges from the case is an overall conclusion that Roosevelt, while respecting the limits placed on him by public opinion and remaining mindful of how far ahead of public opinion he moved, used his connection with the people to prepare and to motivate the masses for the war effort.

Roosevelt’s commitment to respecting the popular will consistently underwrote his decision-making in foreign and domestic strategy during World War II, a position made possible by the expansion of reliable opinion polling during the early 1940s (Steele, 206). In the year before Pearl Harbor, during the development of the Lend-Lease program, the caution with which Roosevelt pursued each step and each new policy stemmed directly from his concern for the general “No Foreign Wars” sentiment that prevailed throughout the country and the influence of isolationists in Congress (Burns, 42). His positioning during the pre-war period also exemplifies
the degree to which Roosevelt shaped public opinion. Even his controversial moves, particularly Executive Order 9066, resulted at least in part from considerations of the demands of the people.

The manner in which Roosevelt maneuvered between interventionists and isolationists in 1941 and adjusted his policies directly resulted from his monitoring of public opinion through direct means and congressional influence. He moved forward with developing the Lend-Lease program only when “Poll after poll in the early weeks of 1941 showed that by roughly two-to-one margins people supported not only the Lend-Lease bill but also controversial specifics” (Burns, 41). Before its final enactment by Congress, the Lend-Lease bill was altered from Roosevelt’s original version with his consent to appease isolationist segments of Congress (Fleming, 83). Further, in May, 1941, members of the administration began to question Roosevelt’s refusal to escort convoys in the Atlantic in conjunction with Lend-Lease; but the President, remembering his promises of peace to the people, “was watching Congress and public opinion warily” and could not bring himself to make such a bold step toward involvement (Burns, 91). As the year proceeded, approval rates for each small step Roosevelt made in boosting aid given to Britain remained consistently high, an indication that he was moving in step with public opinion (Doenecke and Stoler, 131). Thus, much, if not all, of Roosevelt’s hesitation in intervening in the war emerged from his respect for the popular voice.

One of the most important instances of popular will guiding Roosevelt’s decision-making is in the developments that led to the issuance of Executive Order 9066 and the internment of Japanese-Americans on the West Coast. Even before the build-up to the War began, there existed a latent, widespread racist sentiment against the Japanese living in the region that painted them as inherently war-like and arrogant, a feeling which was inflamed by the administration’s own efforts at building public antipathy for the Japanese Empire (Casey, 67). In the weeks after
Pearl Harbor, that sentiment materialized and manifested itself in public calls for Japanese removal from the Coast (Ng, 15). The calls came from many sources, including a deluge of letters that arrived on Roosevelt’s desk in January of 1942. In addition, more vociferous outcries came from media outlets in radio and newspapers (Robinson, 93). With arguments supporting removal flooding the President, the lack of organized opposition was also telling of popular opinion to Roosevelt’s mind (Casey, 67). Combined with several other factors, the public pressure pushed Roosevelt into signing Order 9066 and authorizing internment of Japanese-Americans.

As argued above, in this last instance Roosevelt made a clear mistake of judgment. It is likely that his own race-based opinions played into his final decision, and it is indisputable that he failed to recognize the injustice of the claims laid before him by the people asking for removal. Moreover, opposition in the public was scarce and irresolute and therefore provided no real obstacle toward reaching the conclusion of internment (Burns, 215). Thus, Roosevelt’s respect for the popular will sets an important precedent for wartime presidencies in two ways. First, it is vital that the president monitor and consider public opinion as expressed in the vast array of media and communication outlets available today. Second, the president must not allow public pressure, whether actual or just apparent, to take action in violation of civil rights and liberties. The relationship between the president’s administration and the people, though, does not end at his attunement to the popular will. War presidents must also make every effort to make their dealings and policies transparent.

As did Lincoln, Roosevelt utilized the resources available to explain the decisions he made and to serve as the focal point for inspiration and morale during the war effort, two key aspects of the crisis presidency. He employed press conferences and “fireside chats” via radio to
inform the public of his policy goals, particularly in the case of the controversial Lend-Lease program. After the passing of Lend-Lease and through the War, Roosevelt remained at the head of the American ship, providing powerful leadership both to his administration and the people. Additionally, Roosevelt held true to the classical mold by rousing patriotism and resolve while defending his policy choices in his more formal speeches during the war. In each stage of American involvement in World War II, Roosevelt led with the transparency and inspirational personality necessary to successful administration of a security crisis.

Roosevelt’s fireside chats perhaps characterized his presidency more so than any other of its many aspects, but he also used press conferences to disseminate his message and intentions among the people. Each of these methods was manifested in the effort to rally support for the Lend-Lease program shortly after it was devised. Importantly, the plan itself was “unveiled” at a press conference, in which Roosevelt related Lend-Lease to loaning a garden hose to a neighbor whose house was on fire (Roosevelt, *Press Conference on Lend-Lease*). With this rudimentary explanation in place, the President took his case directly to the people shortly thereafter in the “climax of Roosevelt’s year-end effort” in December 1940 (Burns, 27). In a fireside chat, he argued that the program would “keep war away from our country and our people” (Roosevelt, *Arsenal of Democracy*) and resolved upon asking the people for a production effort on a scale never seen before. And three years later, the early morning after the D-Day storming of the beaches of Normandy, France, saw the President before a group of reporters to address the public concerns regarding the invasion (Burns, 476). Such openness and direction was essential to Roosevelt’s popularity and success as a wartime president.

Equally essential and evident in both of these instances was the emotional, inspirational leadership Roosevelt provided for his administration and the people. Indeed, one of Roosevelt’s
great strengths was in “dramatizing goals, enunciating principles, lifting hopes,…mobilizing popular energies, recruiting gifted aides and administrators, harmonizing disputants, protecting administrative moral” (Burns, 351). In a fireside chat issued after the American warship Greer encountered German submarine fire in 1941, he condemned the act as piracy, explained that he was authorizing the Navy to shoot at German ships on sight in response, thus issuing a clear warning to Germany and his reasoning for “active defense” (Burns, 141). The combination of transparency and inspirational leadership evident in this chat was typical of Roosevelt’s style in such radio addresses as well as in his formal speeches. Perhaps no better example exists than his speech before Congress on December 8, 1941. The speech brilliantly melded the sober facts of Pearl Harbor and the rationale for issuance of a declaration of war while adding the stirring message that “the American people in their righteous might will win through to absolute victory” (Roosevelt, “Address to Congress”). Almost a year into the war, Roosevelt continued to build hope and patriotism, declaring at Arlington National Cemetery that “All the heroism, all the unconquerable devotion that free men and women are showing in this war shall make certain the survival and the advancement of civilization” (Roosevelt, Public Papers v. 11, 469). And in the evening of June 6, 1944, Roosevelt led the nation in a stirring prayer for the soldiers landing on the beaches of Normandy, asking for “strength to their arms, stoutness to their hearts, steadfastness in their faith” (Roosevelt, Public Papers v. 13, 152). These instances of strong emotional leadership through the duration of the war effort are fine examples for any wartime presidents.

These occasions, which Roosevelt utilized to make his administration more transparent, also presented him the opportunity to frame public opinion. As discussed above, Roosevelt was consistently cautious in his positioning relative to public opinion, careful not to move too far
away or ahead of the people’s will. However, Roosevelt also believed during the build-up to the war that the American public did not fully appreciate the threat posed by the Third Reich and that he had the power to direct their attention, to govern with “leadership that lit the path” (Heinrichs, 83). His popular press conferences, fireside chats, and his formal addresses to Congress and other audiences, which were broadcast to the entire nation, all served as means to presenting the issues to the people that Roosevelt felt demanded the most attention and to pushing opinion toward the option he believed to be correct (Casey, 33). For example, in the fireside chat Roosevelt issued in response to the engagement of the *Greer* by a German submarine described above, he employed strong rhetoric regarding Axis “belligerents” and the German “menace” bent on a “world system based on force, on terror and on murder” (Roosevelt, “Fireside Chat 18”). In an appeal to the nation’s patriotism, he cited the cases of John Adams and Thomas Jefferson, who had defended the freedom of the seas, and he concluded by stating that his intent was a clear warning to the Axis powers (Roosevelt, “Fireside Chat 18”). Despite his earlier proclamation of a state of unlimited national emergency and his current call for active defense by the Navy, FDR was still wary not to make any statement resembling a proclamation of war. This event, then, epitomizes the relationship between Roosevelt and public opinion in the build-up to the war. He viewed his role as assessing and responding to the people’s will, while simultaneously directing it toward the end that he perceived was necessary to the nation’s security.

This general statement held true throughout the war. When Roosevelt began to consider intently policy options regarding postwar Germany, he concluded that serious, “vindictive” measures were necessary to ensure stability and security in the future, including occupation, political reorganization, and economic oversight (Ross, 123). However, opinion polls conducted
at the time indicated that most Americans disagreed, preferring less severe options for the German people, whom they viewed as unwillingly accompanying Hitler into war (Casey, 142). Roosevelt characteristically approached the disparity between his and the public’s view by declaring his position only slowly and vaguely while waiting for events to occur which would push the public position closer to his. In fact, the President and members of his administration did not begin to shift the public discussion of postwar Germany toward harsher punishment until after the D-Day invasion in June, 1944: even then, mention of the harsher considerations came vaguely and inconsistently (Casey, 165). The brief insights gained at this time correlated to increases in popular support for the more severe peace plans, likely a sign both of Roosevelt’s attunement to public opinion and his influence on it. When specifics regarding the administration’s plan leaked in September, 1944, however, and public outcry ensued (particularly in the media), Roosevelt backed down from the position (Ross, 131).

This is just another example of the more general dynamic between the president and the public that dominated Roosevelt’s wartime policy-making. Throughout, Roosevelt’s policy choices and his interactions with the public through the media consistently reflected his respect for the need for transparency and openness in his administration, the importance of public opinion in determining the nation’s course of action, and the caution with which he must pursue public opinion framing (Steele). His presidency thus teaches important lessons in those regards. Success in managing a security crisis requires the maintenance of transparency and a connection with the people through popular media to accomplish powerful, inspirational leadership. Furthermore, the president must pay close attention to the will of the people as expressed in those outlets and should take care not to lead too far in advance of public opinion. Moreover, popular opinion should not be regarded as an excuse for violations of civil rights and liberties.
even in matters of apparent military necessity when there is no constitutionally-principled defense available for the violation.

**Roosevelt as Head of His Administration**

Due to the tremendous expansion in the size of the federal bureaucracy that occurred during the New Deal and continued into World War II, Roosevelt shouldered the responsibility of managing a set of agencies and individuals the size and complexity of which was wholly new to the institution of the presidency. In that task FDR demonstrated a laudable balance between assertiveness and caution. Much like Lincoln in his dealings with the Union’s generals in the Civil War, Roosevelt listened sincerely and open-mindedly to his advisors, while leading the administration with a resolve in action that promoted singularity of vision in the executive branch. His leadership style, characterized simultaneously by improvisation and personal involvement, is uniquely Roosevelt’s. He typically refused to plan in the long-term, patiently preferring simply to confront crises as they arose, and despite the size and complexity of the bureaucratic structure that arose beneath him, Roosevelt was “ambivalent toward the administrative canons of unification, co-ordination, integration” (Burns, 353). While assessing the value of Roosevelt’s leadership style is an interesting question, what is more important is the end-result of the style: in this case, a truly powerful mobilization for the war effort. Moreover, in the case of the modern wartime presidency, encouraging a Rooseveltian style unbefitting a particular president might not be prudent.

Therefore, it is important to understand the effects and consequences of that style and how these bolstered the war effort. Specifically, the confused, seemingly capricious manner in which FDR delegated responsibility actually kept him more directly involved in the
administration’s decision-making (Burns, 352). Disputes caused by duplicated, overlapping assignments and the like allowed Roosevelt to assert and involve himself in the process, maintaining control and singularity of vision (Steelman and Kreager). In addition, many organizational maneuvers pursued by Roosevelt tied war agencies closer to the White House and the Executive Office of the President (itself a means of consolidating executive policy-making under the president). And even as he gained tighter control of the administration’s decision-making, FDR consistently sought and valued the counsel of his advisors.

In 1939, FDR merged the Joint Army-Navy Board and the Joint Army-Navy Munitions Board into one Joint Board within his Executive Office. The move transformed the bodies from “an interdepartmental consulting group into a potential source and instrument of national strategy, lifted above the departmental level and joined in a special link to the President alone” (Larrabee, 16). Upon the Board’s formation, Roosevelt gained “powers of decision in the military field which were real and not merely apparent” (Emerson, 185). The new Joint Board eventually became the Joint Chiefs of Staff, though the institution did not receive formal establishment by executive order or legislation until after World War II (Doenecke and Stoler, 154). Interestingly, Roosevelt even indicated at the time that not formalizing the Joint Chiefs was an intentional move directed at maintaining the maximum amount of operational flexibility (Larrabee, 21). This was a clear expression of the informality with which Roosevelt preferred to operate, an aspect of the administration that facilitated his greater involvement in policy-making.

The character of that relationship mirrors roughly Roosevelt’s management of the administration on the issues of the domestic war effort, equally important to success in the war. Shortly after Pearl Harbor, it became apparent to Roosevelt that the agencies he had in place did not possess the scope of authority appropriate to the task of managing wartime industry and
reaching the production goals he had set as necessary for victory. Many in the public looked on the defense effort as a whole as disorganized. Consequently, FDR established the War Production Board in January, 1942, which replaced the Office of Production Management and the Supplies, Priorities and Allocations Board in managing resource distribution along with production, and appointed his good friend Donald Nelson to its highest post (Fleming, 99). One of Nelson’s first actions, and one of the most important steps in the war, was to catalyze the conversion of the auto industry to war production. The process occurred “faster than anyone thought possible,” did not result in the expected widespread unemployment, and was ultimately responsible for as much as 10% of the entire wartime production of the United States (Nelson, 195). Roosevelt also set up the Office of War Mobilization to oversee the domestic war effort in its entirety out of the east wing of the White House. OWM became so influential that its head, James Byrnes, was dubbed “assistant president for the home front” by media outlets, a title that indicated both his clearly subordinate and closely related position to the president (Fleming, 223).

Roosevelt’s role in these contexts sets a good benchmark for presidential involvement, and purpose of involvement, in decision-making during wartime. From the beginning, Roosevelt set up the Joint Chiefs, OWM, and WPB to be reliable, wise bodies of advisors. At the head of the Joint Chiefs, the President had appointed Admiral William Leahy, a man of impeccable credentials and a close friend of FDR’s (Larrabee, 21). Nelson also received his appointment because of his close relationship with Roosevelt and the President’s faith in his ability (Nelson, 19). By merging various authorities into smaller, stronger groups and by tying those groups more closely to the presidency, a relationship obtained that ensured Roosevelt could get dependable and candid advice from individuals who could also be relied on as trustworthy and
loyal. Success in this opening step, this sort of construction phase, is essential for a president in responding to a security crisis. He must find an appropriate group of individuals who display the proper mix of wisdom, insight, and fealty to advise him, especially on military strategic points.

Beyond the initial phase, a wartime president must also manage the activities of his advisory staff, overseeing their decision-making and working to rebuild unity after disagreements occur. The Joint Chiefs were a critical component of strategic decision-making during the war, especially during the latter stages (Emerson). As a body, they were directly involved in oversight of the national strategy and composed the American segment of the Combined Chiefs of Staff of the Allies (Doenecke and Stoler, 154). The planning necessary for fighting the two-theater war required the Joint Chiefs to defend the high priority of the Pacific theater in any combined Allied strategy. At Casablanca in mid-January, 1943, the Combined Chiefs argued rather hotly about their strategic priorities, with the American chiefs preferring to grant more focus on the Pacific while the British demanded the highest priority of Europe and declined the idea of a cross-channel invasion in Western Europe (Larrabee, 185). Adding to the problem was a disunity among the American Joint Chiefs, a problem that Roosevelt had warned against and to which he responded by abandoning the Chiefs’ position (Emerson, 198). An ambiguous resolution was reached at Casablanca, which was reported to Roosevelt and Churchill; and despite the controversy at the conference and a lingering disparity between American and British strategic preferences, FDR, in his typical manner, professed total unity between the Allies (Fleming, 173). Agreement, at least in writing, was finally reached in May, at the Trident meetings in Washington, DC, where Admiral Ernest King convinced the British chiefs to agree to “consideration” before any major action in the Pacific theater (Larrabee, 188). This time, Roosevelt ardently supported the American position, and once more, he reviewed and
publicly approved the outcome (Emerson, 199). The events of the Trident conference were more
typical of the relationship between the Joint Chiefs and Roosevelt in the strategy-setting process,
with disunity like that of the Casablanca conference exemplifying the exceptions that
demonstrate the importance of coherence in the administration.

The officers of the agencies overseeing the domestic war effort experienced similar
working relationships with Roosevelt during the war. As a rubber shortage set in and crisis
ensued in 1942, FDR took the lead in public, expressing confidence in his agencies that the
problem would be solved. The heads of the WPB, OWM, and the Office of Price Administration
converged with others in the White House to search for solutions (Nelson, Chapter 15). While
their final decision, a public rubber drive that ultimately failed, was not unanimously supported,
Roosevelt put on a confident face in announcing the plan (Fleming, 141). A more finely pointed
example was Roosevelt’s veto of a Congressional bill which procured $2.1 billion for a hole in
the budget he had estimated needed at least $10.5 billion to be filled. The decision to veto was
hotly contended in the administration, and Roosevelt finally acted on the advice of Byrnes, and
in fact, the President’s veto message reflected very closely the sentiment Byrnes had expressed
to him with regard to the bill (Fleming, 340). When the time came to deliver the veto, the
President made no mention of the disagreement in the administration and instead gave only the
appearance of unity and firmness.

Roosevelt’s relationship with the agencies in these contexts exemplifies the role he
played in overseeing their operation, taking into consideration their counsel, and maintaining
unity. In working with and managing the Joint Chiefs, Roosevelt served as the final approval on
the course-setting that occurred during the deliberations of the Combined Chiefs. Such a role for
the president is important especially in the context of military decisions because of the potential
for personal biases and ideologies to affect adversely decisions reached by those on advisory staffs. However, Roosevelt was also lenient in allowing the officials in his agencies and advisory bodies to debate and develop their own ideas. King’s stance at the Trident meeting and the development of the rubber drive in 1942 show this tendency. Additionally, a wartime president should foresee the occurrence of disagreements among his counseling groups and should take care to mend those disagreements both internally and externally. In sum, the crisis president must remain accountable for final approval of all decisions made by the administration, for making sure tension within the administration does not create crippling rifts, and for ensuring the message and the image of the executive branch is unified.

**Conclusions**

Many lessons for the modern security crisis president can be gleaned from the Roosevelt presidency. Foremost, his case demonstrates the importance of abiding by the Lincoln example with regard to constitutional limitations. Roosevelt, despite his personal feelings that the Nazis posed a significant threat and that war was inevitable for the US, would not fully commit American forces to fighting on his own. The criticism Roosevelt received for Executive Order 9066 illustrates the problems a president faces when restricting individual liberty and suggests that such moves should be avoided completely. Additionally, the relationship Roosevelt maintained with the American people throughout World War II is important to understand and to emulate. He made every effort to monitor public opinion and always accounted for it in making policy decisions. Simultaneously, he understood the importance of shaping or framing opinion to favor the decisions he felt were necessary to national security. Inspirational leadership coming from FDR was both a means to accomplish framing and was a vital aspect of the war
effort. Roosevelt also worked to maintain transparency in his decision-making, essential to building trust and support among the people.

With these considerations included, the benchmark the Roosevelt case sets with regard to management of the administration is vital in building a model for the modern security crisis presidency. The president must build a strong administration around him by appointing officials who are highly qualified and trustworthy. This somewhat obvious step cannot be disregarded for considerations of political alliance, personal reward, or the like. Executive agencies and advisory bodies should be relied on by the president, but not unquestioningly. Instead, he should be personally involved in the decision-making process on important matters and be tolerant of deliberation over policy alternatives. Moreover, the president must be aware the conflicts will arise within the administration, and he is the one who must make the final decision, resolve the internal conflict, and establish an outward appearance of unity and strength. The administration gives the president a diverse set of tools with which he can confront the various aspects of security crises, but he must employ those tools with care.
George W. Bush and the War on Terror

Given the baseline now formed by the Lincoln and Roosevelt models, one can make an attempt to evaluate the presidency of George W. Bush. Because this examination is so recently removed from the case and history has yet to form its opinion on the matter in the way it has regarding Lincoln and Roosevelt, one must proceed with special care for objectivity and open-mindedness. The analysis must compare the events and decisions of the Bush presidency and the War on Terror with the criteria established throughout this paper. Despite the need for objectivity, consideration must also be paid to the contemporary view of the Bush presidency, which is inarguably more negative than opinions of Lincoln and Roosevelt, who are widely regarded as two of the most important and most effective presidents in American history (Metzler). The reason that popular opinion of Bush must be included is because that opinion, along with the meeting of this paper’s criteria, factors into the ultimate judgment of whether the management of the war should be deemed successful. Also worthy of note is the fact that the administration was objectively successful in preventing a second terrorist attack on United States soil, a fact which should not be overlooked. With these tasks completed, the goal of a picture of the most desirable modern security crisis presidency in light of the unique demands of the 21st-century world will be within reach.

In the two previous cases, discussion began with consideration of how the conflict began: accordingly, this section will start by examining whether the initiation of hostilities in the War on Terror accorded with the framework established by the Constitution. Of course, the Bush administration’s encounters with constitutional limitations did not cease at the outset of the war. Thus, various Bush policies, specifically certain components of the Patriot Act and the
detainment of enemy combatants, will be evaluated for constitutional justice. The aspects of the presidency related most directly to the people – that is, respect for popular opinion, transparency, and opinion framing – can be viewed in the light of popular approval for the war and, especially in the case of framing, in the context of Bush’s public addresses regarding the war in Iraq. In addition to these facets of the Bush presidency, the management strategy employed by the President in governing over the administration itself was a key factor in the outcomes of his time in office. Bush’s relationships with his military advisors and legal counsel are particularly enlightening for the examination at hand.

Before setting out, however, this particular section requires certain pretexts be established. The first point speaks to the psychology of President Bush and his closest advisors and, therefore, impacts the consideration of any of the policies and strategies in which the Bush administration engaged. Many modern presidents have felt strongly that the presidency is and should be the most powerful body in the federal government. In fact Roosevelt, as the first personal president, could easily be dubbed the originator of that sentiment. However, George W. Bush and those in the highest levels of his administration approached every issue and viewed every question at least partially in the light of their shared goal of increasing the power claimed by the presidency. Combined with their agreement with the positions of the unitary executive theory (page 5 of this paper), the very specific goal of never detracting from and at every opportunity adding to presidential power became a central focus for the Bush administration. The difference in motivation, then, between Bush and other modern presidents is the degree to which power-enhancing policies were pursued.
Secondly, the War on Terror was different from any other war in which the United States has ever engaged, including the Civil War and World War II. Jack Goldsmith, former Assistant Attorney General, explains (214):

*The enemy in this war is harder to find but potentially as lethal as any we have ever fought. The existential stakes in this war are less obvious than in prior analogously threatening contexts, thus making it hard to educate and prepare the public for the threat, and thus hard to win its trust. This war has an endless and diffuse character that challenges a democracy’s vigilance.*

These various factors not only fundamentally distinguished the terror crisis from previous wars, they served to distinguish the War on Terror from other wars in the public mind, to classify it publicly as a military conflict less serious, less dangerous than war. Moreover, the more successful Bush was in preventing additional terrorist attacks, the more remote and less pressing the war seemed to the people, which bred greater public skepticism (Goldsmith, 188). Combined with the negative popular response to the unitary executive tendencies of the administration, that skepticism helped to “[weaken] this president, [undermine] his authority to govern, and [leave] his policy agenda incomplete and vulnerable” (Arnold). With these pretexts established, it is now possible to move on to consideration of the Bush presidency.

**Bush and the Constitution**

Bush’s unpopularity resulted, in part, from the widespread perception of illegitimate use of executive power committed by his administration in their pursuit of victory and national security. Whether that perception was justified is a question that must be answered here in order to assess Bush against the example set by Lincoln with regard to respect for and adherence to the guidelines of the Constitution. One vital component of this discussion focuses on the beginning of the war. In the case of the Bush presidency, there are two conflicts which must be considered,
those in Afghanistan and in Iraq. Determining what exactly constitutes the beginning of these wars is the crucial step that permits extrapolation against the framework from the Constitution for initiating hostilities. Other instances of Bush encountering constitutional boundaries are found in the Patriot Act, in the administration’s policy of denying habeas corpus to detainees deemed enemy combatants, and in the extreme methods of interrogation employed by executive agencies in their search for military intelligence. Each of these examples relates directly and pointedly to individual rights, the protections of which are lines presidents must be careful not to cross. Thus, by considering these diverse and complicated issues, Bush’s actions can be judged in light of the Constitution.

The offensive undertaken in Afghanistan essentially began on September 20, 2001, with an address given by Bush to a joint session of Congress. In much the same way Lincoln and Roosevelt did before him, Bush presented the events of 9/11 to show that an attack against American security had served to thrust a state of war upon the country, explaining bluntly that “On September the 11th, enemies of freedom committed an act of war against our country” (Bush). He went on to name al-Qaeda as the perpetrators and connected the terrorist network to the Taliban and the country of Afghanistan. Throughout the speech, it is clear Bush presumed the state of war to be open, addressing the strategies and methods to be pursued in winning the war, calling on the military to be alert and ready, and referring to “the war” multiple times (Bush). Interestingly, one of the major problems with the War on Terror generally was that the enemy in the fight was not a state or collection of states, but a network of individuals and groups. Thus, the state of war should have been considered between al-Qaeda and the United States, not necessarily between Afghanistan and the US. Bush acknowledged this exact clarification by condemning al-Qaeda and the Taliban for their oppression and cruel treatment of the Afghan
people (Bush). In the context of the Afghanistan conflict, then, Bush passes constitutional muster.

With regard to the war in Iraq, the details are much different and yield a much different conclusion. Foremost, an open attack, which predicated every war considered thus far, did not occur in the Iraq context. With this possibility excluded the remaining avenue to a constitutionally justified war is by Congressional declaration. Here the issue is somewhat ambiguous. In September 2002, the Bush administration had introduced a bill to Congress authorizing, in advance, a hypothetical invasion of Iraq, a tactic executive officials were confident would succeed as the off-year congressional election loomed (Ricks, 61). Though the bill was not a declaration of war, its approval by Congress seemingly served a similar purpose by authorizing the president to “use the armed forces of the United States as he determines to be necessary and appropriate in order to defend the national security of the United States against the continuing threat posed by Iraq” (Authorization for the Use of Military Force Against Iraq). When Bush initiated the Iraqi conflict in March, 2003, however, he would only “briefly note the resolution’s existence,” stating in its place that the authorization of force came “pursuant to my authority as Commander in Chief” (Savage, 158). Clearly, the power to assert US military force is fundamentally not the president’s, and the reasoning is flawed. The question remains, though, of whether the congressional authorization was sufficient.

Ultimately, that question falls upon a determination of the legitimacy of the War Powers Act of 1973, pursuant to which Congress made the authorization in consideration (Authorization for the Use of Military Force Against Iraq, Section 3c). Detailed discussion of the warrants of the War Powers Act cannot be included here, but its fundamental premise, that the president can order the use of military force absent an attack on the nation or preemptive approval by
Congress, cannot be regarded as in line with the intentions of the Constitution (Adler, “Constitution and Presidential Warmaking”). Similarly, the Iraq Resolution should not be considered a legitimate declaration of war. Open-ended, “blank check” grants of the authority to commit the nation to war fly in the face of the goals of the constitutional framework and, therefore, should not and cannot be considered within the purview of Congress (Woodward, 204). Thus, the instigation of the Iraq conflict cannot be justified constitutionally.

In conducting the two conflicts, the Bush administration also confronted constitutional protections of individual liberties. Roughly a month after 9/11, Congress eagerly passed the Patriot Act at Bush’s behest, granting authority to the administration’s law enforcement agencies to wiretap telephone and e-mail communications, to search private properties secretly, and to seize business records in the interest of terrorism prevention (Doyle). Soon after its passing, though, “the law came to represent fears that the government security clampdown after 9/11 was going too far in curtailing individual rights” (Savage, 114). In particular, the warrantless surveillance program undertaken by the National Security Agency garnered much criticism as the war proceeded in the form of attacks from pundits and academics, calls for investigation from certain members of Congress, and law suits filed against the administration (Wong). In every instance, though, the administration had its share of defenders. Proponents in the public argued for the program’s necessity to security interests; in Congress, the Senate Intelligence Committee voted 10-8 against looking into the surveillance program; and only one district court ever found against the administration, a decision which was eventually overturned on appeal (Savage, 205, 207). The controversy eventually became moot in 2007, when the administration announced it would return to compliance with the Foreign Intelligence Surveillance Act and subject their decisions to supervision from the court established by FISA.
The question of whether the surveillance program was justified constitutionally, though, is not a moot point. Perhaps the most telling factor in pondering that question comes from the proceedings in the legal sector mentioned above. Though only one suit, ultimately overturned, ever led to a decision against the administration, the others that were dismissed were rejected because of issues with standing. Judges found consistently that because none of the plaintiffs to the suit actually knew whether their communications were being monitored, their suits were invalid (Savage, 206). In other words, the only judge who ever actually ruled on the merits of the case found the program “blatantly [disregarded] the parameters clearly enumerated in the Bill of Rights,” while the others would not challenge the administration’s position that the program was within the president’s power as chief executive (ACLU v. NSA, 23). Ultimately, if the courts had considered the issue, the warrantless surveillance program implemented and espoused by the Bush administration for several years during the War on Terror would likely have been found in violation of statutory and constitutional restrictions, as “the legal theories upon which the Administration relies” to defend the program “[were] seriously defective” (Sims, 172).

Outside the purely domestic controversies of the war, the Bush administration also faced challenges on the indefinite detention of enemy combatants, especially at the military base in Guantanamo Bay, Cuba. The problems Bush faced were numerous. Foremost, the decision itself to imprison at GTMO was based on a desire to avoid legal challenges and “to minimize judicial scrutiny” regarding the detentions (Goldsmith, 108). In keeping with that goal, the administration also planned to conduct any trials of detainees by military commission, rather than conventional court. The commissions concentrated all power relative to the legal process, including determining what is a crime, who has committed one, and how they will be punished into the hands of the military and its head, the president (Koh, 339). Using commissions granted
greater flexibility in conducting trials, permits swifter proceedings, and cut out the potential security risks concomitant with traditional trials (Savage, 134). Opponents to these conducts cited the human rights and civil liberties issues, as well as the possibility that the creation of the commissions was a violation of constitutional separation of powers (Anderson, 592 and Koh, 339).

The opponents of these policies, however, failed to consider the precedents of the Civil War and World War II. Probably, this oversight is the result of the perception that the War on Terror was not of the same magnitude as those wars, a result of the factors described in the introduction to this section. Suspension of habeas corpus, even for American citizens, was not a new wartime policy: Lincoln employed and argued for its necessity and justifiability during the Civil War. The structure of the Bush administration’s military commissions was even based on a World War II commission that tried eight Nazi saboteurs and was upheld unanimously by the Supreme Court as constitutional (Goldsmith, 109). These are powerful precedents in defense of the Bush policies regarding enemy combatants at GTMO.

However, there are also reasons to doubt the strength of the administration’s position. First, the Supreme Court ruled in *Ex parte Milligan* (1866) that military commissions cannot supersede civilian court (oyez.org). Second, the Third Geneva Convention requires that habeas corpus be granted to prisoners of war. Third, the decisions in *Hamdi v. Rumsfeld* (2004) and *Hamdan v. Rumsfeld* (2006) seem to indicate that the Bush administration was, in fact, not justified in its detention of enemy combatants (oyez.org).

In this instance, it is necessary to make the very distinctions the Bush administration made in dealing with enemy fighters, though they attempted to make them more broadly. Foremost, many of the combatants detained at GTMO could legally be denied POW status based
on the criteria of the Third Geneva Convention (Anderson, 615). In order to be protected by the
Convention’s provisions, a soldier had to fight in uniform and abide by the other laws of war.
Many detainees failed this test and were, therefore, not entitled to the habeas corpus provisions
of the Geneva Convention. Additionally, Milligan and Hamdi concerned the treatment of US
citizens, a situation plainly different from cases not involving citizens (oyez.org). Hamdan, on
the other hand, goes directly to the heart of the question, ruling that military commissions are
required to comply with the laws of the United States and ordinary military law (oyez.org).
Shortly after the ruling, however, Congress nullified Hamdan by specifically authorizing the
policies that Court had prohibited (Goldsmith, 138). These distinctions and details, and the
actions taken pursuant to them, indicate that the Bush administration was, in fact, justified in the
detention of non-citizen combatants who failed to meet the requirements of the Geneva
Conventions, a “practice which has been accepted by both U.S. civilian courts, including the
U.S. Supreme Court, as well as by other armed forces such as the World War II allies”
(Anderson, 618).

Thus, the Bush administration’s record on constitutional matters is mixed. While the
initiation of hostilities marked by the invasion of Afghanistan was justified, the Iraq war was not
begun by constitutionally defensible means. Moreover, some of the controversial policies
enacted in conducting the War on Terror went too far by infringing on individual liberty. The
Patriot Act provisions permitting warrantless surveillance and secret property searches are two
prime examples. With regard to indefinite detention of enemy combatants at GTMO, the Bush
administration had stronger ground on which to stand, although their defense could only apply to
non-citizens who fought in violation of Geneva Convention requirements. This mixed record is
further tainted by the knowledge of the administration’s preoccupation with expansion of
executive power and acceptance of the unitary executive theory. In the instances where violations of the Constitution occurred, the administration’s defense was not one of constitutional principle, like Lincoln’s argument for suspending habeas corpus, nor of military necessity, as was Roosevelt’s defense of Japanese internment. Instead, the Bush administration’s last line of defense was simply that the president had the power to supersede the law in conducting war. This stance cannot be reconciled with the Constitution, and therefore the use of such power cannot be considered truly authorized. And as Arnold stated, “power used without authority, a proper justification for action, is arbitrary and, ultimately, illegitimate” (2009).

**Bush’s Disconnect with the People**

Partly because of the controversial policies his administration established and partly because of the consistently waning public belief in the necessity of the War on Terror, Bush and his administration faced substantial division on several fronts between themselves and the people as the war progressed. Unlike Lincoln and Roosevelt, who paid constant attention to public opinion and used it as a guiding influence in policy decisions, Bush approached the popular will as a malleable source of presidential authority (Arnold). Accordingly, whereas Roosevelt used his influence to lead ahead of and frame public opinion only in very slight steps and only in opportune moments, Bush was consistently attempting to frame public opinion, sometimes drastically, to the terms he felt were most conducive to bolstering popular support (Gershkoff and Kushner). Similarly, the Bush administration made every effort to eliminate transparency in the enactment and enforcement of their policies, preferring an approach that “[relied] on minimal deliberation, unilateral action, and legalistic defense” and abandoning justification and compromise (Goldsmith, 205). Thus, in each aspect of the vital relation between public opinion
and presidential decision-making, Bush deviated from the examples set by the two historic wartime presidencies presented in this paper as models, ultimately severely damaging his relationship with the people. This process is key to understanding the shortcomings of the Bush administration in that popular support provides an important source for presidential legitimacy in the modern era of the personal president (Lowi).

In late 2002, as he was pushing through Congress a bill authorizing the future, potential use of force against Iraq, President Bush was also intensifying his efforts at framing public support for such an invasion. The framing that occurred during this period deserves particular attention because both its short-term effectiveness and its long-term consequences teach lessons for the modern security crisis presidency. Bush’s public speeches during that period utilized numerous repetitions and close proximity of words like “Iraq,” “Saddam Hussein,” “terrorism,” and “al-Qaeda,” a reflection of his belief and his need to establish a link between Iraq and 9/11 (Gershkoff and Kushner, 526-527). The project of framing was termed “information dominance” by the Pentagon and went well beyond presidential speeches, including “[programming] the views of retired military officers who worked as ostensibly independent ‘military analysts’ for broadcast news outlets” with extensive briefings, trips to Iraq, and the provision of specific talking points (Arnold). In other words, Bush was attempting to create popular support to lend legitimacy to undertaking an invasion of Iraq and, as a consequence, to manufacture the circumstances that would have activated his war power according to the constitutional framework.

In the short run, as Gershkoff and Kushner determine, “the Bush administration successfully convinced [the people] that a link existed between Saddam Hussein and terrorism generally,…leading to high levels of support for this war” (525). Popular support for the
invasion of Iraq came from roughly three-quarters of Americans despite the theoretical expectations that support should be low, a testament to Bush’s success in framing (Gershkoff and Kushner). As the war drew on and the casualty count mounted, however, support fell off at an historically unprecedented rate (Mueller). Of the many causes of the drop, there are two of particular importance in the context of this paper. First, the popular view of the threat posed by Iraq and terrorism generally was constantly pulling farther away from the opinion held by the Bush administration (Goldsmith, 188). As explained, this process was almost inevitable given the nature of the War on Terror, but the Bush administration, in its obsession with presidential power and sincere concern with protecting Americans from future terrorist attacks, failed to convince the public. The second cause, the Bush administration’s insistence on secrecy in its conducting of the war, contributed to that failure.

On this point Bush deviated significantly from the Lincoln and Roosevelt examples. In keeping with their aspirations of expanding executive power and unitary control of the executive branch, the Bush administration conducted a broad “secrecy campaign,” seeking to control the content and type of a huge variety of information coming from the executive branch (Savage, 101). Where many other presidents have claimed limited executive privilege in appropriate circumstances, “Bush has exercised the privilege in an attempt what he perceives as a more correct balance of powers between the legislative and executive branches...[departing] from recognized executive privilege norms” (Rozell, 405). This deviation prevented Bush from “retaining approval for its policies from the public through accurate information and truthful arguments” (Arnold). Thus, as popular support for the war in Iraq weakened due to the unique aspects of the War on Terror discussed above, the lack of transparency in the Bush
administration compounded the problem, leading to public opposition to the Iraq war as high as 68% in July, 2008 (Opposition).

The problem with insisting on secrecy and invoking executive privilege was also exemplified in the decision to authorize what amounted to physical torture in the questioning of terror suspects. The Office of Legal Counsel in August, 2002, produced a legal opinion indicating that any interrogation methods that inflicted pain less than that “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death” were legally justifiable (Bybee Torture Memo). As Jack Goldsmith, then Assistant Attorney General at OLC, evaluated the memo and others associated with the interrogation policies of the Bush administration in 2003, he found them to be “legally flawed, tendentious in substance and tone, and overbroad and thus largely unnecessary” (Goldsmith, 151). In brief, the Bush administration had crafted a legal defense for itself that could not be justified by close scrutiny and used it as a basis for employing brutal interrogation techniques (Savage, 154). Evidence of the harsh treatment prisoners were receiving at the hands of US soldiers leaked in 2004, and a poll conducted in late 2007 indicated that 49% of Americans did not approve of torturing terror suspects, while 34% thought it was acceptable (Americans Reject Torture). Thus, the torture policy had neither legal legitimacy nor popular support and will likely be regarded as one of the darkest blemishes on the Bush administration’s record.

Bush’s view of public opinion as a source of legitimacy to be framed and shaped according to his needs determined his administration’s course of action throughout his presidency and especially with regard to the War on Terror. Rather than consider the popular voice as a guiding or limiting influence on policy choices, the administration made policy decisions with little external input or concern for the opinion of the people. In many instances
Bush simply did not make public the rationale and justification behind those choices, instead insisting on secrecy over transparency. And in turn, when public statements regarding policies were made, Bush employed strong framing tactics, ultimately weakening his footing with the people. Thus, in this deviation from the historical models, the conduct of the Bush administration in the War on Terror shines light on the importance of respect for popular opinion and of transparency for wartime presidents.

**Bush as Manager of the Wartime Administration**

In keeping with Bush’s go-it-alone approach, his management of the administration was characterized by “secrecy, speed, and tight control of the executive branch” (Pfiffner, 7). Two important aspects of the War on Terror can provide the necessary insight into where Bush succeeded and where he failed in serving as an effective administrative head. First, the process of planning for post-war Iraq serves as a typical example of setting military strategy for the Bush administration, obviously a key component of any war effort. Second, the relationship between Bush and his legal advisors was particularly influential on the policy choices of the Bush presidency. The precedent Bush could have followed was that Lincoln and Roosevelt only hesitantly governed with a heavy hand in deliberations over policy choices, preferring to rely on hearing and evaluating the (sometimes contradicting) counsel of their various advisors. The level to which Bush adhered to or diverged from that model reflects the outcomes and perceptions of his administration’s efforts in the War on Terror as the model would predict.

As the Bush administration initiated its planning for the invasion of Iraq, there was little urgency with regard to designing the post-war occupation that would necessarily follow the displacement of Saddam Hussein. This is not to say that no attention was paid to the issue. In
fact, many of the administration’s officials spent months at work, engaging in endless discussion on the matter. General Tommy Franks even created an entirely new office, called Joint Task Force IV, to manage the planning for the post-war occupation (Ricks, 79). The State Department worked for over a year on a project called “Future of Iraq” and “compiled thousands of pages of reports and recommendations from a range of experts on government, oil, criminal justice and agriculture in Iraq” (Woodward, 282). As the run-up to the invasion continued, most estimates, including from inside and outside the administration, tallied the total troop involvement necessary to be between 300,000 and 400,000 for successful occupation (Pfiffner, 9). In this regard the Bush case aligns well with the Lincoln and Roosevelt studies in that there were a variety of sources available for recommendations regarding the military strategy to be pursued by the administration.

However, the translation from deliberation to effective planning was the step where the occupation design failed. What ultimately resulted from all the efforts was an “agonizingly incompetent occupation” plan (Ricks, 4). The plans that called for troop levels of 300,000-400,000 for the occupation were consistently put under pressure to shrink by administration officials, and the final operation was only allotted just over 150,000 (Diamond). Questions, even in congressional hearings, regarding the specifics of the plan received only vague answers (Woodward, 308). Ideas from outside the administration about the size and scope of the occupation fell on deaf ears, as Bush, above all else, did not want the war to appear too long or too costly (Pfiffner, 10). And when “Baghdad was falling apart in front of the eyes of the US military…no one had orders to do anything about it” (Ricks, 150). The administration had assumed the US troops would be welcomed as liberators, but instead they encountered “an elaborately organized, armed, and financed resistance to the US occupation” (Diamond, 36).
This failure can reasonably be attributed to the characteristics of Bush’s leadership style. Because Bush desired his administration to be run with secrecy and efficiency, he rarely consulted outside opinions and typically had only a few top officials present when key decisions were being made, decreasing the chance any idea or plan had of being seriously heard and considered and resulting, especially in the case of Iraq, in policy choices based on “narrow consultation and flawed processes” (Pfiffner, 7). In the example of the post-Saddam occupation, the desire of Donald Rumsfeld to pursue the mission using a minimal number of “rapidly deployable, fully integrated joint forces capable of reaching distant theaters quickly to strike adversaries swiftly and with devastating effect” both dominated the thinking of the Bush circle and prevented the presentation of the alternatives of heavy troop commitments over a long duration (Rumsfeld, 27). One pointed example occurred less than a month before the invasion, as the “Future of Iraq” report compiled by the State Department was presented at a long-overdue conference of officials from across the administration. When Army Lt. General Jay Garner, who was to command the invasion, arranged for the presenter, Tom Warrick, to work underneath him, Rumsfeld stepped in within days to inform Garner that he had to fire Warrick, a decision reportedly made by Vice President Dick Cheney (Ricks, 103). This refusal to permit outside voices to be heard in military planning, even voices from the State Department, was perhaps the most important aggravating factor in the failure of the Iraqi occupation. If the Bush administration had followed the examples set by Roosevelt and Lincoln in allowing a variety of sources to deliberate among various strategy choices, chances are that the occupation would have been better prepared and better executed.

There existed a similar dynamic among Bush’s legal counselors. From the foundation of the legal team to the drafting and approval of legal opinions, this group of advisors was
essentially a self-selecting, self-affirming body dedicated to expanding unitary presidential power over the executive branch and the conduct of the war. One of the most important figures in this effort was John Yoo, whose espousal of the unitary executive theory (described earlier in this paper) “made him an attractive recruit to the Bush-Cheney legal team” (Savage, 82). Yoo, on entrance into the Office of Legal Counsel, became part of a “small and like-minded group of lawyers” dubbed the “War Council” who rarely consulted or considered outside opinions, similar to the manner in which military strategy was set by the administration (Goldsmith, 206). During the opening months of the War on Terror, the administration’s lawyers churned out dozens of legal opinions on matters including detainment of enemy combatants, the restrictions imposed by the Geneva Conventions, torture, and warrantless surveillance (Weisberg, 176). Every opinion confirmed or authorized the highly controversial powers sought by President Bush, and each one was couched in a firm belief in the importance of the unitary executive (Goldsmith).

While the personal beliefs of the lawyers involved likely played a role in the consistent affirmation of controversial policies, another influential factor was the pressure coming from the top. In particular, top executive branch officials were greatly concerned about having a legal defense to back up their actions in the event of criminal charges being levied against them after the war. Goldsmith’s first-hand account describes an administration “strangled by law” that “took extraordinary steps to ensure that they didn’t” break the law (Terror Presidency, 69). This sentiment goes a long way to explaining why, in 2006 and 2007, the Bush administration took several steps toward formally legitimizing some of the powers they had long claimed to exist simply as part of the inherent presidential powers, including a retreat to compliance with FISA (see page 64) and the seeking of congressional approval for military commissions and certain interrogation methods (Savage, 309-310).
More fundamentally, though, the top officials were the driving force behind the control of the unitary executive theory over the legal thought in the Bush administration. White House Counsel Alberto Gonzales and the Vice President’s Counsel David Addington oversaw and shaped much of the action at OLC, and each took great care to ensure that his client’s insistence on unitary power was well-represented in OLC’s opinion-making (Goldsmith, 79). Addington was a particularly prominent figure in the legal posturing of the administration, urging Bush throughout the war to “take principled stand after stand against media inquisitiveness and congressional meddling” (Weisberg, 174). Once again, as was the case with military strategy, the dynamic in the legal decision-making of the Bush administration diverged from the model of Lincoln and Roosevelt. Bush’s penchant for small circles of close advisors, for ignoring outside opinions, and for shaping debate toward his ideal of a unitary executive resulted in an uninformed, self-affirming deliberative process. Inhibited by these management flaws, the administration’s lawyers “made legal and political errors that became very costly to the administration” and that “were unnecessary and could have been avoided with wider consultation” (Goldsmith, 206).

As argued in the Roosevelt and Lincoln cases, leading the executive branch with strength to promote solidarity is an important task for a wartime president. However, such unity should be the final resolution of the decision-making process, not the foundation. When the top leaders of a wartime administration insist on secrecy, strong top-down control of decision-making, and limitations on the deliberative process, the resulting plans are often doomed to unpopularity, general ineffectiveness, or utter failure. In Bush’s case, he has come under much legal and popular criticism for the controversial policies he set in place in pursuing the War on Terror, such as detention and warrantless surveillance, and the strategy with which his administration
 approached the post-Saddam occupation of Iraq was a disaster. These problems, encountered as a result of their single-minded, insulated method of making policy serve as a warning to security crisis presidents who would promote the same.

**Conclusions**

President Bush’s handling of the response to 9/11 and the War on Terror provides a clear set of lessons for future presidents who must deal with terrorism and similar threats to national security. On some points, Bush aligned his presidency with those of Lincoln and Roosevelt, and it was on these points that he had the greatest success and received the most praise. His conduct of the conflict in Afghanistan, which was begun on constitutionally justifiable terms, was a positive example for the modern war presidency. Bush also brought a tremendous ability to lead effectively with resolve, inspiration, and constitutional energy, essential to successful leadership in a security crisis. That ability translated into successful prevention of another terror attack perpetrated against American citizens and military victories in Afghanistan and Iraq. Evidence of this attribute abounds, including his address to the nation on September 20, 2001, his dedication to the goal of eradicating terrorism, and his willingness to assert presidential power on a variety of issues. Thus, there is good reason to argue for high energy and areas of prerogative power for a war president.

However, that great attribute was also Bush’s downfall in the intense manner in which he pursued expansive executive power. His administration was characterized, above all, by secrecy and insularity, leading to deficient decision-making and a profound lack of transparency. The poor planning and policy choices made in conducting the War on Terror and the subsequent public dissent and negativity, including on the matters of detainment, torture, and the invasion
and occupation of Iraq, will likely be recorded as the defining marks against Bush’s record. The
goal of secrecy meant his administration was essentially opaque to outside observers. Only
rarely was justification or defense for a particular policy given, with Bush instead opting for the
cover-all defense of unitary presidential prerogative. On these vital points, Bush deviated from
the path set by Lincoln and Roosevelt, and the public opposition he encountered as a result
illustrates the importance of adherence to those guidelines. In one way, then, the Bush
presidency provides a negative example for future war presidents, demonstrating the perils of
unbridled quests for executive power vis-à-vis the other branches, insistence on secrecy,
disregard for public opinion as an external guiding force, and promotion of uniformity across the
administration. With the contributions of these observations, the creation of a model for the
modern security crisis presidency is now possible.
Building the Modern Security Crisis Presidency

The final task for this paper is to combine the various lessons and precedents from three historical case studies to paint an instructive, though far from complete, picture of appropriate, desirable, and constitutionally justified presidential management of a security crisis given the circumstances of the modern world. As argued in the introduction, that task is significant to the study of American politics because of its implications for national security, separation of power, and individual liberty. Determining an appropriate theoretical balance between energy and restraint allows for analysis and evaluation of crisis management and, possibly, shapes that management as it unfolds. Moreover, the picture being sought is required because the uniqueness of the modern circumstances, including the unpredictability, severity, and constant looming of security threats, means the direct application of the historical precedents, while helpful, is ultimately insufficient.

In leading the nation through the Civil War, Abraham Lincoln displayed several admirable traits necessary to successful management of a security crisis. Foremost, he set a benchmark for presidential assertiveness in controlling firsthand the operations of the executive branch. Over the course of the war, his level of involvement increased in response to particular deficiencies in the policy setting process. The greater energy with which he governed in a state of war was justified as a response to those shortcomings and the demands of war, establishing a baseline precedent from which future war presidents could operate. The Hamilton and Madison Federalist Papers ponder and approve of such an expansion of energy in its theoretical form, and the character of that expansion as a response to practical necessity surely accords with their vision of the presidency.
While he expanded the authority with which presidents conduct wars, Lincoln also displayed respect for the formal limitations of the Constitution. He clearly advocated for the proper framework for the initiation of hostilities and understood that an attack against the nation activated his war powers. Although he enacted several policies that confronted certain constitutional provisions, such as the suspension of habeas corpus and restrictions of free speech and press, Lincoln defended his actions publicly to allow for judgment by the people and the other branches of government. This open defense also demonstrated Lincoln’s acknowledgment of the importance of the relationship between the president and the people. In particular, he made concerted efforts to make his administration as transparent as possible. He also took account of public opinion in his policy choices, especially on matters of emancipation. According to Hamilton in *Federalist 70*, this two-dimensional dynamic between president and people must be evident in the modern security crisis presidency to serve as a check on the expanded presidential war powers.

As war spread around the globe in the late 1930’s, Franklin Roosevelt drew on the example set by Lincoln for wartime leadership, appreciating the limits of the constitutional war-powers framework, leading the war effort with expanded energy, and maintaining an interdependent relationship with the people; but he also expanded the model to include effective management of the nascent institutional presidency. The growth in the size and scope of the administration meant the president not only had at his disposal more tools with which to conduct the war, but also a greater number of opportunities for exerting unilateral control of the war effort. Roosevelt demonstrated a desirable balance between the two paths, using his power to exert influence in the policy decisions of the administration and to stay personally involved in policy-setting while making full use of the advisors and counselors around him to arrive at the
best possible conclusion. He also increased the intensity of the connection between the president and the people, adding an element of framing public opinion to transparency and respect for popular will in decision-making. Finally, the World War II case also provides a negative example for crisis presidents who would pursue violations of the individual liberties or civil rights guaranteed by the Constitution for the sake of military necessity in the blemish left by Executive Order 9066 and the internment of Japanese Americans.

George W. Bush’s handling of the War on Terror also establishes positive and negative precedents. As he was the first president to handle a security crisis in the globalized world, he certainly faced unique circumstances and a truly unique threat in terrorism. Bush responded to his situation with a wholly unique claim to total unilateral power, including the power to initiate hostilities, control the war effort without external influence, and insulate his administration in secrecy. There was merit to the importance of the consequences of these claims because, to some extent, the power he seized made possible the successful prevention of a second attack on the United States. However, the case illustrates the importance of the historical model developed under Lincoln and Roosevelt and the downfalls of deviance from that model. Foremost, Bush’s instigation of the war in Iraq, his pursuit of warrantless surveillance programs, and the torturous interrogation methods his agencies employed in their search for terrorists have all come under harsh scrutiny and can be related negatively to the historical model as unjustifiable constitutional violations. The controversy surrounding these and other constitutionally questionable policies is likely to dominate any account of the Bush presidency.

Moreover, the circumstances of the development of these policies show marked departure from the previous cases and can account for the failures in the decision-making process. Where Lincoln and Roosevelt sought honest deliberation in their pursuit of policy and only afterward
enforced an image of unity, Bush promoted like-mindedness and insularity in his appointments, his rejection of outside counsel, and his thorough top-down control of administrative decisions. The singularity of vision was focused on the expansion of unitary presidential power based on a flawed interpretation of the Constitution, rendering the pursuit unjustified; and the secrecy maintained about the administration served to undermine Bush’s link to popular support as a source of legitimacy for his actions and inhibit the popular check on presidential energy. Thus, the shortcomings of the Bush administration in conducting the War on Terror simultaneously reinforce the significance of the historical model and delimit boundaries of presidential energy in the modern security crisis.

In sum, any president in the modern, globalized age faced with a threat to national security must exhibit a particular sort of leadership. First, he must embrace the additional constitutional flexibility granted him by the activation of the government’s war powers while adhering to the framework for that activation and avoiding the breaking of constitutional boundaries, especially with respect to individual liberty. Second, he must manage his administration by surrounding himself with reliable advisors, promoting open deliberation of policy matters, involving himself in those deliberations, and resolving internal conflicts to maintain unity of vision. Third, he must understand the necessity of transparency, of respect for public opinion as an influence on policy choices, and of the limited, though, important place of issue framing, each of which ties the president closer to the people so as to place an additional check on his expanded wartime power. Based on the evidence of the three most relevant historical instances of war presidencies, this is a justifiable and desirable foundation for a model of the modern security crisis presidency.
As implied, this model can only be considered a beginning: surely, further additions would be appropriate and certain aspects will require adjusting as the world and the nature of security threats change over time. However, with this model as a basis, the goals of effective, capable national defense, maintenance of the separation of powers, and preservation of individual liberty can be attained fully and simultaneously. The Founders themselves were ultimately focused on this very collective goal in drafting the Constitution. One can conclude, therefore, that this model would accord with their vision, bringing their 18th century system to cope with the threats and demands of the 21st century world.
Bibliography


