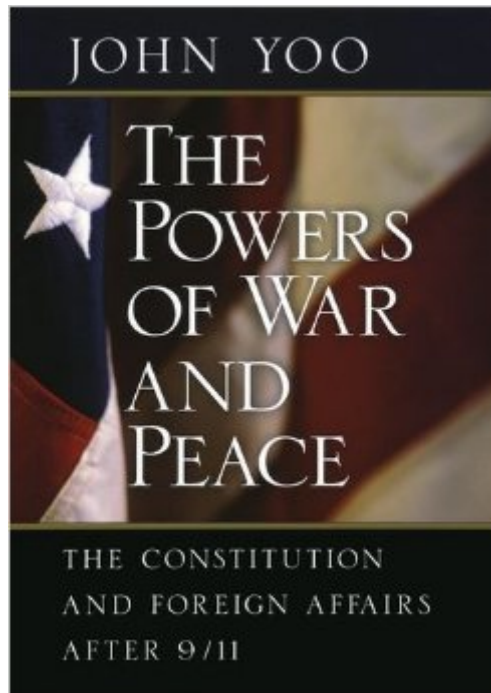


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The Powers Of War And Peace: The Constitution And Foreign Affairs After 9/11



Synopsis

Since the September 11 attacks on the United States, the Bush administration has come under fire for its methods of combating terrorism. Waging war against al Qaeda has proven to be a legal quagmire, with critics claiming that the administration's response in Afghanistan and Iraq is unconstitutional. The war on terror—and, in a larger sense, the administration's decision to withdraw from the ABM Treaty and the Kyoto accords—has many wondering whether the constitutional framework for making foreign affairs decisions has been discarded by the present administration. John Yoo, formerly a lawyer in the Department of Justice, here makes the case for a completely new approach to understanding what the Constitution says about foreign affairs, particularly the powers of war and peace. Looking to American history, Yoo points out that from Truman and Korea to Clinton's intervention in Kosovo, American presidents have had to act decisively on the world stage without a declaration of war. They are able to do so, Yoo argues, because the Constitution grants the president, Congress, and the courts very different powers, requiring them to negotiate the country's foreign policy. Yoo roots his controversial analysis in a brilliant reconstruction of the original understanding of the foreign affairs power and supplements it with arguments based on constitutional text, structure, and history. Accessibly blending historical arguments with current policy debates, *The Powers of War and Peace* will no doubt be hotly debated. And while the questions it addresses are as old and fundamental as the Constitution itself, America's response to the September 11 attacks has renewed them with even greater force and urgency. "Can the president of the United States do whatever he likes in wartime without oversight from Congress or the courts? This year, the issue came to a head as the Bush administration struggled to maintain its aggressive approach to the detention and interrogation of suspected enemy combatants in the war on terrorism. But this was also the year that the administration's claims about presidential supremacy received their most sustained intellectual defense [in] *The Powers of War and Peace*." —Jeffrey Rosen, *New York Times* "Yoo's theory promotes frank discussion of the national interest and makes it harder for politicians to parade policy conflicts as constitutional crises. Most important, Yoo's approach offers a way to renew our political system's democratic vigor." —David B. Rivkin Jr. and Carlos Ramos-Mrosovsky, *National Review*

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Customer Reviews

John Yoo's *The powers of war and peace: the constitution and foreign affairs after 9/11* (2005) employs three true statements to conclude that presidents have "sole authority to initiate hostilities." First, he uses an "original understanding" doctrine to demonstrate that, in the late eighteenth century, Americans, Britons, and others, all understood the initiation of hostilities as a royal prerogative. He documents this fact with contemporary dictionary citations and numerous citations from legal and scholarly works. Second, Yoo notes that presidents have always made the initial decision. Third, Congress has declared war on only four occasions, and not once since WWII. From these three certainly true facts, he concludes that, "Declarations of war serve a purpose, albeit one that does not answer to the sole authority to initiate hostilities. Declarations do simply what they say they do: they declare. To use the eighteenth-century understanding, they make public, show openly, and make known the state of international legal relationship between the United States and another country" (151). Yet, unless one is already predisposed to believe that presidents have "sole authority," it is difficult to agree with Yoo's conclusion. The point he ignores is that, in 1776, the colonists rebelled against all royal prerogatives, thereby radically changing the definition of executive power. Further, in 1787, the Founders drafted a Constitution specifically designed to repudiate kings, their prerogatives, and all the trappings of monarchy, including the royal prerogative to declare war. Consequently, the revolution that is the *Declare War* was drafted specifically to overturn the "original understanding" of previous centuries.

EDITED 17 Oct 07 to add links to ten relevant books. There is absolutely no question but that the author of this book is patriotic, educated (after the American fashion), and well-intentioned. Sadly, this does not mean that he has any common sense, any historical context, any strategic vision, nor

any relevance to the future. Indeed, and I rarely write negative reviews (5 out of 1015+), this book is most useful for understanding the ignorance and arrogance of Presidential sycophants who place loyalty to a single man and office and party (or rather, ideological branch of the party) above their loyalty to the Constitution, the Republic, or the public interests they are supposed to be defending. The book is best summarized by a quote from a White House staffer who is reported to have said, in talking to an expert on foreign affairs, "You must be one of those reality-based people. We are an empire, we make our own reality." The problem with this arrogant and ignorant statement, which is manifested throughout this interesting book, is that a reality based on ideological fantasy and the security of hiding behind the Secret Service completely begs off on confronting the harsh realities of a world in which 5 billion pissed off poor people are inevitably going to sponsor 1 million armed terrorists who know how to create Improvised Explosive Devices (IED) and know how to deliver the "death of a thousand cuts" to US infrastructure (water and fuel pipelines, energy generators, shipping port cranes, key communications switching stations, key banks, etc.

Ever since 9/11, the Bush Administration has been harshly criticized for its War on Terrorism. Many of its critics have taken the position that its wars in Afghanistan and Iraq are unconstitutional. The War on Terrorism combined with the Bush Administration's decisions regarding both the ABM Treaty and the Kyoto accords have provoked strong allegations that the Constitution's framework for foreign policy has been dismantled. The author of *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11*, John Yoo, is a former lawyer in the Bush Justice Department. He argues that the Bush Administration's foreign policy has solid precedent in the actions of previous administrations. Yoo points out that from the Undeclared Naval War With France in 1798 through Bill Clinton's war in Kosovo in 1999, American presidents have often prosecuted armed conflicts without formal declarations of war. He argues that the Constitution grants different powers over foreign policy to Congress, the courts and the presidency, requiring these institutions to negotiate what the country's foreign policy is. Yoo's argument is based on the original intent of the Founding Fathers supplemented with constitutional law and history. For instance, Yoo argues that just because a war is undeclared does not mean that it is unconstitutional. He points out that Congress's power of the purse gives it an effective veto power over executive decisions to go to war. He also points out that the 1973 War Powers Resolution has been systematically violated and has been treated as being *de facto* unconstitutional almost since the day that it was passed.

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