**Background Reading**

**Congress v. President: Who Should Control the Use of Military Power in the absence of a Declaration of War?**

* **Read for Wednesday and make a list of arguments for/ against allowing the president to initiate the use of military in other countries where there is no direct attack on the United States and no declaration of war by Congress.**
* **Tomorrow, you will be presented with President Obama’s February 11, 2015 request to Congress for authorization to use the military against Isil (aka Isis) and we’ll debate his request.**

**What are the president's war powers?**

The U.S. Constitution empowers the president to wage wars as commander in chief while Congress has the power to declare wars--in fact to authorize hostilities at any level--and fund them. Legal scholars largely agree that presidents can order U.S. troops to fight when the country is attacked or attack appears imminent but chief executives from both major parties often differ with Congress over their ability to initiate military force in other combat situations. Presidents have demonstrated greater power to wage wars since the end of World War II. "The president has been commander in chief since 1789, but this notion that they can go to war whenever they want, and [ignore] Congress, that's a post-World War II attitude," says Louis Fisher, scholar in residence at the Constitution Project (and former specialist in constitutional law at the Library of Congress).

Legal experts Noah Feldman and Samuel Issacharoff wrote in March 2007 in Slate that while the Constitution empowered the Congress to make and end war, it intended the president to have the power to wage war effectively, once an authorized war was begun. "In the modern era, no country--not even a parliamentary democracy--has been so foolhardy as to place a war under the [guidance of a legislative body](http://www.cfr.org/publication/12780/), rather than a single, unified command."

But other experts point to established limits of presidential power during wartime, citing the U.S. Supreme Court's 1952 ruling [that struck down](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=343&invol=579) President Harry S. Truman's order to maintain operations of the country's steel mills for national security reasons, which was found to be against the will of Congress. Some point to the Supreme Court's 2006 [Hamdan vs. Rumsfeld](http://www.cfr.org/publication/11090/) ruling--which found special military commissions established by the Bush administration to be illegal--to stress the shared wartime powers of the president and Congress. [Susan Low Bloch](http://www.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=Faculty&Detail=220), a constitutional law expert at the Georgetown University Law Center, says the framers of the Constitution deliberately divided the war powers between the two branches to induce them to work together on such a vital issue.

. . . . <http://www.cfr.org/united-states/balance-war-powers-us-president-congress/p13092>

**What does the War Powers Act require?**

In 1973 Congress passed the War Powers Act—over presidential veto—to try to limit presidential use of troops without congressional authorization. [This was in reaction to perceived presidential abuse of power during the Vietnam conflict]. However, no president has ever acknowledged the constitutionality of the War Powers Act. And the requirements for the president to report to Congress within 48 hours and limit the use of troops to 60 days have never been tested in the courts. The act’s provisions require the following:

* The president must report in writing to Congress within 48 hours after **sending troops into a hostile situation**.
* Congress must provide for the continuation of the use of troops within 60 days by a formal declaration of war or other statutory authorization.
* If Congress does not authorize the continued use of troops within 60 days, the president must withdraw the troops.
* If Congress passes a concurrent resolution directing the president to remove the troops, he must comply.