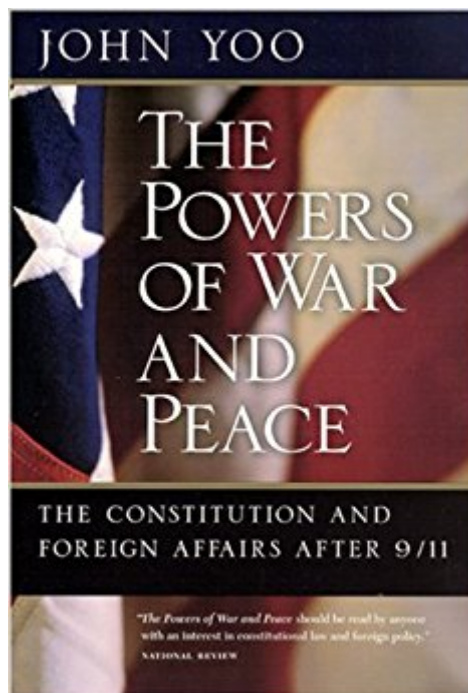




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# The Powers Of War And Peace: The Constitution And Foreign Affairs After 9/11



## 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

"A convincing and judicious case for the need in a post-September 11 era to re-evaluate what the Constitution says about foreign affairs. Mr. Yoo's book covers a broad range of foreign policy areas like international law, treaties and multilateralism and addresses each with clarity and scholarly care. But at its heart, *The Powers of War and Peace* is a scathing criticism of those whom he argues have neglected their constitutional responsibility. . . . A valuable contribution to the tradition of works about the Constitution and foreign affairs. Like *The Prince*, it uses insider knowledge to boldly state political truths that others dare not utter." (Nicholas J. Xenakis *Washington Times* 2005-10-25)"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* 2005-12-11)"There is a refreshing elegance to Yoo's theory. Forgoing hair-splitting doctrinal debates about congressional and executive claims to primacy in foreign affairs, Yoo tells the two branches to duke it out politically, deploying their allocated powers to reach a political equilibrium. By shifting the debate from the legal to the political arena, 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. . . . An impressive scholarly achievement, *The Powers of War and Peace* should be read by anyone with an interest in constitutional law and foreign policy." (David B. Rivkin Jr. & Carlos Ramos-Mrosovsky *National Review* 2005-11-21)"The book argues that the Constitution gives the president a much

larger role in foreign affairs and military operations than the other two branches of the federal government, that the president does not need a congressional declaration of war before placing troops on the ground and that treaties ratified the Senate have no legal impact unless Congress explicitly passes laws saying that they do. — (Neal Katyal Washington Post) --This text refers to an out of print or unavailable edition of this title.

John Yoo is professor of law at Boalt Hall School of Law at the University of California, Berkeley, and a visiting scholar at the American Enterprise Institute. He served as general counsel of the Senate Judiciary Committee; as a law clerk to Justice Clarence Thomas and Judge Laurence H. Silberman; and, from 2001 to 2003, as a deputy assistant attorney general in the Office of Legal Counsel of the U.S. Department of Justice.

Great condition.

Professor John Yoo, an accomplished constitutional scholar, has written a outstanding volume exploring the U.S. Constitution's allocation of powers in matters of war and international affairs. This overview of our Constitution's framework for understanding the roles and relations of the three branches of government is based upon clear reasoning and close attention to history and practice. Yoo deftly analyzes the respective roles of the Executive and Legislative branches in making and declaring war, arguing that the Constitution provides for a great deal of flexibility and latitude in dealings with foreign nations. He aptly deals with the debate over whether international treaties are generally self-executing or require implementing legislation, making a persuasive argument for the latter position as most consistent with the text and structure of the Constitution. Yoo also provides a sensible and coherent constitutional approach to understanding and distinguishing between treaties and congressional-executive agreements. These topics and others are treated in a careful and methodical manner, as Yoo generally argues from the viewpoint that the Constitution should be read in light of the original understanding of its ratifiers. He (wisely) advocates a conceptual framework for understanding our Constitution's approach to foreign affairs that is relevant and resembles actual historical and contemporary practice. (This is something that many scholars and theorists fail to do.) Throughout the book, Yoo demonstrates a mastery of both the constitutional case law in this interesting area and the legal scholarship that precedes his own work. The book is written in a clear and lucid manner, providing repetition on important points while avoiding any sense of repetitiveness. It is accessible to both those who are familiar with

constitutional history and constitutional law concerning the separation of powers as well as those with some historical and legal background in those areas. This review can only scratch the surface in terms of the content of this work. Yoo's book is a first-rate intellectual achievement. And it will likely become a standard, authoritative reference for citizens and scholars (and especially originalists) in the years to come.

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. That the Congress has subsequently been incapable of exercising its responsibilities under the Declare War Clause is both true, and not a reason to celebrate. Rather, it is a reason to rededicate oneself to the unfinished anti-royalist revolution of 1787. Still, if one is already predisposed to believe that presidents have "sole authority to initiate hostilities," then Yoo's account is about as strong a defense of that position as has been made.

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