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## Our Nation and Constitution in Peril

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# OUR NATION AND CONSTITUTION IN PERIL

An Essay and Resolution authored by Craig H. Russell<sup>1</sup>

January 14, 2007

*Craig H. Russell*

## **A Prelude: The Promise**

I remember sitting in Dean Ericson's office over in the Faculty Office Building back in 1983; Jon was sitting in his imperial chair, sliding a contract across his desktop for me to sign so that I could start my new job as a music professor here at Cal Poly. I was thrilled. At one point, however, I discovered that as a condition for employment with the state of California, I had to take an oath promising to defend its constitution and the Constitution of the United States of America.<sup>2</sup> "How laughable!" I thought to myself. "I'm a guitar player, and I teach music appreciation. What am I supposed to do if there's trouble?" At the time, I thought it was rather silly, but I *did* sign my name. I raised my hand and swore that oath.

I made a promise.

## **Threatened Attack on Iran & Syria: The Threat to the Constitution**

Four nights ago, in a televised address to the nation, George W. Bush offered unsettling words in which he threatened Iran and Syria with probable military strikes by U.S. forces. He stated:

Iran is providing material support for attacks on American troops.

We will disrupt the attacks on our forces. We'll interrupt the flow

of support from Iran and Syria. And we will seek out and destroy the networks providing advanced weaponry and training to our enemies in Iraq.

We are also taking other steps to bolster the security of Iraq and protect American interests in the Middle East. I recently ordered the deployment of an additional carrier strike group to the region. We will expand the intelligence sharing and deploy Patriot air defense systems to reassure our friends and allies. We will work with the governments of Turkey and Iraq to help them resolve problems along their border. And we will work with others to prevent Iran from gaining nuclear weapons and dominating the region.<sup>3</sup>

With the arrival of the aircraft carrier *uss Eisenhower* (along with its nuclear submarine, two destroyers, and cruiser), the U.S. has consolidated enormous firepower near the Persian Gulf. Patriot missile batteries are at the ready. Some of them have nuclear “bunker busters.” These weapons cannot be used in combating improvised explosive devices (IEDs), sectarian death squads, or sniper fire in Iraq. No, these naval battle groups are intended to threaten Syria and Iran with a major air attack within their sovereign borders, on the pretext that they are assisting their Shia friends in Iraq (which is probably true). Syria and Iran are influencing events within Iraq, and any rational Middle East policy has to address that. However, a unilateral decision by Mr. Bush to attack Iran or Syria—without prior, unequivocal authorization from Congress—is not only foolhardy and dangerous, but it constitutes a violation of the Constitution of the United States.

Mr. Bush, however, has tried to finesse the issue and dodge the Constitution’s framework by formulating a new and highly dangerous policy known as “The Bush Doctrine.” This perilous theory rests on two flawed arguments: 1) a misreading of precedent set by the *Caroline* incident in 1837; and 2) a controversial theory known as the “unitary executive.”

## **The *Caroline* Incident and the Fallacy of the Bush Doctrine**

George Bush has put forward a theory of “forward deterrence,” also known as “The Bush Doctrine,” in which he asserts that the President (acting as Commander in Chief) has the authority to attack any nation or any group that might pose a future threat to U.S. interests.<sup>4</sup> Condoleezza Rice floated this idea out before the press in the build-up to the Iraq War, when she asserted: “Anticipatory self-defense is not a new concept... You know, Daniel Webster actually wrote a very famous defense of anticipatory self-defense.”<sup>5</sup> She is referring to Daniel Webster’s legal argument made in the aftermath of the *Caroline* incident. In December, 1837, the American ships in New York supplied French Canadians with arms in their rebellion against the British. In trying to stop these arms shipments,

the British boarded the *Caroline* (an American vessel), set it on fire, and sent it over Niagara Falls.<sup>6</sup> They tried to defend this transgression in international waters by stating that it was necessary self-defense. Three years later, however, Daniel Webster (the new American Secretary of State) took a different stance and explained why the British actions were illegal. He acknowledged that anticipatory self-defense could be acceptable, but *only* if the danger is “instant, overwhelming, leaving no choice of means, no moment for deliberation.... It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty.”<sup>7</sup>

For Webster’s stance on the *Caroline* incident to be applicable as a valid precedent here, the perceived threat from Iran or Syria has to meet *all* of Webster’s criteria, not just some.

- 1) The threat must be sudden or “instantaneous.”
- 2) The danger must be “overwhelming.”
- 3) The *only* course left must be immediate, with no time for deliberation.

The growing menace posed by Iran and Syria does not meet any of those criteria. The threat is growing, but not instantaneous. The danger posed by Iran and Syria is serious, but not overwhelming. Although we must act to confront our problems, there still is time for deliberation. We have not even tried direct diplomacy with Iran and Syria as an option (and that was one of the most urgent recommendations proposed by the Baker-Hamilton Iraq Study Group). The President has rattled his saber. If he were to take the next step and order a “preemptive attack” against either nation within their sovereign boundaries, it would be foolish and patently illegal. The *Caroline* incident is not a viable precedent for such a military strike.

### **The Fallacy of the “Unitary Executive” Bush & Cheney — vs. — the Founding Fathers**

In the last six years, Mr. Bush and Mr. Cheney have bestowed upon themselves unchecked powers not explicitly granted in the Constitution, defending their usurpations as allowable under “executive privilege”—also known as the theory of the “Unitary Executive.” For instance, Mr. Bush and Mr. Cheney have argued that since the President is designated the “Commander in Chief” of all military forces by the Constitution, he has inherent authority to do whatever he thinks is necessary—even if those actions are never scrutinized or authorized by Congress nor ever validated by the Courts as being constitutional or legal. Dick Cheney has given verbal acknowledgment of the checks and balances of the Constitution but in the same breath has contradicted those very concepts with the startling assertion, “given the world that we live in...the president needs to have unimpaired executive authority.”<sup>8</sup> In this world of unchecked presidential prerogative we

have seen the following: widespread wiretapping of Americans' phone lines by the National Security Administration without a warrant; the government's spying on citizens by opening their mail without a warrant; the suspension of habeas corpus even in the case of American citizens; the detaining of hundreds of people in Guantánamo without a recognized legal framework that would enable them to know the charges against them or the chance to confront their accusers; the widespread use of "extraordinary rendition" where individuals are kidnapped by American agents and then flown to secret torture camps in "friendly" client nations; hundreds of "signing statements" by a president who signs enacted legislation into law while simultaneously subverting that same legislation by proclaiming that he and the entire Executive Branch are exempt from its provisions. Nowhere in the Constitution are these weighty privileges granted to the Executive Branch on the basis of the President serving as "commander in chief." Nowhere.

And nowhere is government's power more awesome and sobering than its power to make peace and war. It is imperative that we as citizens, as sworn protectors of the Constitution, ask ourselves: on what constitutional authority can a president send our armed forces into conflict without prior congressional authorization? What are the ramifications of a rash and impetuous confrontation against Iran and Syria? What are the long-term implications to our system of government and the inevitable threat to our Constitution that a "preemptive war" against Iran or Syria would present?

### *The Constitution's Separation and Balance of Powers*

Granted, Article 2 of the Constitution gives the power to *direct* a war to the president. However, the Constitution simultaneously assigns the authority to *decide* whether or not to go to war *solely* to the Congress (Article 1, Section 8, Clause 11). The framers of the Constitution thus established a division of powers. Simply stated:

### **Congress declares the wars and the President commands them.**

What would happen if the President were to encroach on the war-waging powers of the Congress? Alexander Hamilton and James Madison debated this very point. Hamilton had served directly under General Washington and wanted to grant him the powers to wage war. Madison was of a different mind. Even though the president in question was George Washington—a man respected and revered by all—Madison was reticent and fearful about granting to the president this formidable power. He explains:

Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether a *war ought* to be *commenced, continued, or concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of the executing from the power of enacting laws.<sup>9</sup>

Madison later makes an even more persuasive point: the president has the most to gain by entering a war, since it will be the commander in chief who will obtain all the glory. Therefore, a judicious congress must keep the president's ambitions in check. He states:

In no part of the constitution is more wisdom to be found than in the clause which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture to heterogeneous powers, the trust and the temptation would be too great for any one man; not such as nature may offer as the prodigy of many centuries, but such as may be expected in the ordinary succession of magistracy. War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to disperse them. In war, the honors and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow that they are to encircle. The strongest passions, the most dangerous weaknesses of the human breast; ambition, avarice, vanity, and the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace. Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states—in proportion as they are free—to disarm the propensity of its influence.<sup>10</sup>

Madison, the chief architect of our Constitution, could not be any clearer. Under no circumstance should a president be allowed to commence a new war or widen an old one by engaging a "new" enemy without the clear, unequivocal mandate from Congress. To do so would be a violation of his sworn oath of office to uphold the Constitution of the United States, and as such would be grounds for impeachment.

President George Washington, the father of our country, warned against the rise of an overly powerful president in his Farewell Address in 1796, urging that we remain faithful to the letter of the law as spelled out in our Constitution. Although he did not use the exact term "unitary executive," he nevertheless directly confronts this concept as dangerous and inimical to our form of government and interests of our nation. Washington raises the alarm and counsels us to guard against the usurpation and seizure of constitutional powers. He explains:

It is important, likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration,

to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositaries, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit, which the use can at any time yield.

Washington is clear: no branch can encroach on the political powers specifically vested in the other branches. If “new threats” or conditions arise, Washington counsels that they should be met by amending the Constitution. He warns, however, that modification of the Constitution through encroachment or usurpation threatens the very fabric of government and democracy. The Bush Doctrine flies in the face of Washington’s admonition. Whenever George Bush becomes the “decider” and unilaterally defines who the enemy is and when they should be attacked, he has intruded on the explicit domain of the Congress. Mr. Cheney and Mr. Bush repeatedly tell us that everything has changed after 9/11. “It’s a new world,” they tell us. It is their theme song. Well, it may be true. But if that is the case, then we must follow President Washington’s advice and meet this new world by deliberation and by amending the constitution, not through passive acquiescence to an ambitious White House that seizes constitutional powers and privileges previously assigned to Congress.

Yet another of our founding fathers, Thomas Jefferson, speaks to our present condition as if he were alive today. He wrote extensively about economic policy and the danger that a swelling national debt poses to the national security. While living in Paris, his extensive correspondence with Madison often touches upon the follies of war in Europe and the

way that despotic rulers sought fame and glory while bankrupting their countries in the process. He eloquently articulates that the chief executive—the president—should not be the one who decides matters of war and peace. That must be the exclusive purview of Congress who controls the purse strings. Writing to Madison on September 5, 1769, Jefferson laments:

[Europe has suffered] contagious and ruinous errors...[due to] armed despots with means, not sanctioned by nature, for binding in chains their fellow men. We have already given in example one effectual check to the Dog of war, by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend [the money] to those who are to pay.

We have then, a trio of voices—all of them presidents—who all unequivocally contradict Mr. Bush's and Mr. Cheney's desire to allow the president to enter into wars, unchecked by prior legislative authorization. Washington (the father of our country), Madison (the chief architect of our Constitution), and Jefferson (the author of the Declaration of Independence) all exclaim in one voice: Congress, not the President, has the right to wage war and peace. The President's role is implementation, not authorization.

## **International Law and its Relation to the U.S. Constitution**

The United States is a signatory to the Charter of the United Nations. Violence and the threat of the use of force are specifically prohibited. Chapter 1, Article 2 states:

SECTION 3: All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

SECTION 4: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Chapter VI of that same Charter is devoted to "Pacific Settlement of Disputes." Two of the most important regulations state:

ARTICLE 33, SECTION 1: The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

ARTICLE 37, SECTION 1: Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

The process is spelled out for us: do not threaten war as a first course, but instead try to seek a solution through diplomacy and negotiation. If that fails, then the next step is to take the impasse to the Security Council. This is not only good advice; this is the *Law of the United States*, for Article VI to the U.S. Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby.

This clause in the Constitution is critical for it places the provisions stipulated in the United Nations Charter under the umbrella of United States law. A clause in the U.N. charter is more than “advice” that we can casually ignore. On the contrary, because we are a signatory, we are bound by its provisions; they become part of the canon of U.S. law. Once again, if Mr. Bush and Mr. Cheney were to launch a preemptive attack on Iran or Syria, it would be in direct contravention of Article VI of the U.S. Constitution.

### **“Norm Transmission” and the Spread of Preemptive War**

If we attack other nations in a preemptive way, then we encourage other nations to do the same. What’s to prevent Pakistan from launching a preemptive attack against India? What would constrain China from invading Taiwan? Would North Korea justify a preemptive invasion of South Korea? Some scholars have called this process “norm transmission” and explain its looming dangers.<sup>11</sup> Charles W. Kegley and Gregory A. Raymond explain that we are the leaders of the world. Everyone looks to us and models their behavior after ours. Kegley and Raymond correctly argue that if America continues to initiate preemptive wars across the globe (pretending that the “Bush Doctrine” makes such a practice legitimate), then that principle will spread just like copycat crimes. The whole world will erupt in a Vesuvius of preemptive strikes. Once the rule of law and diplomacy have been discarded, it will be hard to reestablish them. Is it in the interest of the United States to enshrine preemptive war as a legal basis for international relations?

### **From Afghanistan — to Iraq — to Iran: the Issue of “Mission Creep”**

The Congress authorized the president to take military action against the Taliban and Al Qaeda as a response to the 9/11 attacks on our nation. But within months of successfully confronting our foes in Afghanistan, the President offered us a new enemy that

had nothing to do with the 9/11 attacks, spooking us with rhetoric about weapons of mass destruction. The President, as the self-anointed “decider,” chose to take us into Iraq under a vague and never-defined conflict that he called “The War on Terror.” This is a classic example of “mission creep.” We agree on a common goal, and then it transforms into something different altogether. He beat the drum; we cheered. He was determined; we were compliant. He made his call; we let him do it. Fellow citizens, the President sent the best and the bravest of the American people—the men and women who have volunteered to serve in the U.S. military—to fight, to suffer, and to die in Iraq. It is time to ask, “Why? For what reason?”

There were no weapons of mass destruction. There was no yellow cake. The aluminum tubes were not intended for nuclear enrichment. There was no Al Qaeda presence to speak of in Iraq (but there is now). There were no portable vehicles designed to launch chemical weapons. The invasion has not “paid for itself.” The war did not last six weeks or six months. The Iraqis do not see us as “liberators.” The invasion has not paid for itself through unfettered access to Iraqi oil. There is no “mission accomplished.” There is no “freedom on the march.” We have not “turned the corner in Iraq.” We are not in the “last throes of the insurgency.” We were supposed to establish a functioning, pluralistic democracy in Iraq, yet we have unleashed the horrors of a sectarian civil war.

Citizens, we did not ask the hard questions before the invasion of Iraq. Will we make the same mistakes today and remain silent while we prepare to attack Iran or Syria?

### **Ramifications of a Preemptive Attack on Iran & Syria in the World Community**

An air strike or ground invasion against Iran or Syria would cause determined retaliation in both the short and long terms.<sup>12</sup> An escalating conflict will result in the massive loss of human life on all sides and foment an unpredictable and volatile expansion of the war on all fronts.<sup>13</sup> An attack against Iran or Syria would generate horrific yet incalculable consequences for our nation and the world in the immediate future and for generations to come. It would put our troops in Iraq in grave danger as the Iraqi Shiites rise up in arms to support their kindred Shiites in Iran.<sup>14</sup> It would wreak havoc, for the sectarian civil war—largely confined within the boundaries of Iraq—could transform itself into a regional war where the Iranians join together with the Iraqi Shiites and where the Saudi Arabians, Egyptians, and Jordanians intervene to protect their Sunni brethren.<sup>15</sup> We will have infuriated all sects and factions in the Islamic World, repulsing and estranging our moderate Arab friends and allies, while engendering scores of new enemies where there were none before. We will instantly unify the multitude of warring factions who presently are jockeying for position as they vie with one another for power; a preemptive attack on Iran or Syria will cause the different factions in the Middle East to put aside

their mutual loathing and join together to fight their new, common enemy—the United States of America. As the violence grows—and it will—we will lose our friends and gain new enemies. For many in the Middle East, America would no longer be seen as the beacon of the free world but as a pariah.

Violence against Americans could become widespread and commonplace in many parts of the world, including Indonesia, the Philippines, and many locations in South America and Africa. The mayhem of these conflicts will place brave American soldiers in untenable situations where the enemy is ever changing and perpetually growing in strength, size, and conviction. International trade and commerce will become severely jeopardized. Economic security of American business interests will collapse as turbulent, destabilizing events sweep over the oil-producing regions of the world. Oil prices will skyrocket, and the economic opportunities that we have enjoyed for the last fifty years will wither.<sup>16</sup> The killing will continue, and with each dead Iranian or Syrian, we will spawn generations of fathers and mothers, sons and daughters, all vowing to avenge their loved one's death. The killing will continue, and for each dead American soldier we will generate untold suffering to their families and loved ones.

The Iranians would undoubtedly encourage their surrogates, such as Hezbollah in Lebanon, to ramp up their attacks on Israel, and a full-fledged conflict between Israel and her neighbors could easily spin out of control.<sup>17</sup> Overnight, it could suck into its vortex the resources and fervor of the entire Islamic World. Enraged Muslims might band together to try to wipe Israel off the map, and Israel might respond with its nuclear arsenal—and where would that end?

The “unthinkable” calamity of nuclear war is made even more likely because our president has not disavowed the use of “bunker busters” against Iran's nuclear sites.<sup>18</sup> The United States and Soviet Union used to have a policy promising never to *initiate* the use of nuclear weapons—it was the threat of retaliation and mutually assured destruction that served as an effective deterrent to the use of nuclear arms. Sadly, Mr. Bush has disavowed this policy and has made clear that he considers a first-strike with nuclear warheads to be one of the options in his playbook. According to Mr. Bush, Mr. Cheney, and Ms. Rice, every option is on the table—including a nuclear strike.

## **Epilogue**

Citizens, Mr. Bush has categorically failed with a plan to secure Iraq. He had no plan to secure the peace, and he had no workable plan to end the conflict. He had only infinite certitude and unfounded optimism, and taken by themselves, those two traits are not necessarily virtues. Now, the president is escalating the war in Iraq against the wise counsel of the Iraq Study Group, of Generals Casey and Abezaid, of much of the Congress, and of two-thirds of the American people. Worse, he now threatens to widen the conflict

by spreading the war to new geographic territories and directly engaging new enemies.

Citizens, I fear our nation is about to unleash a Pandora's box of horrific consequences. With the President's ominous threats against Iran, I do not see us moving toward the light at the end of the tunnel: I fear we are approaching the flaming gates of hell.

Citizens, a preemptive strike on Iran or Syria would produce unforeseen and calamitous consequences for the United States and the civilized world—not for years or decades, but for centuries. Yet, we remain silent. Citizens, the Constitution itself is in peril. Yet, we remain silent. It is time for us to speak up, to debate and consider the perils facing our country, to uphold the rule of law, and to defend the Constitution of the United States—as I promised to do, many years ago on my first day of employment at Cal Poly. In this hour of danger, I ask that you join me—come to the aid of our beloved nation—by supporting the following resolution.

**It is time to keep the promise.**

## **Resolution Against an Attack on Iran or Syria Without Prior Congressional Authorization**

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air—ordered by the President and Vice President without prior authorization from Congress—cannot be justified or defended using the theory of anticipatory self-defense as articulated in the legal precedent of the Caroline incident of 1837; and

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air—ordered by the President and Vice President without prior authorization from Congress—is in direct violation of Article 1, Section 8, Clause 11 of the Constitution that states that only “the Congress shall have Power to...declare War”; and

WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air—ordered by the President and Vice President without prior authorization from Congress—is in open defiance of Chapter I, Article 2, Sections 3 & 4 and Chapter VI, Article 33, Section 1 and Article 37, Section 1 of the United Nations Charter, and by extension, is therefore in direct violation of Article VI of the Constitution of the United States; and

WHEREAS: the founding fathers—George Washington, Thomas Jefferson, and James Madison—explicitly warn against the consolidation of power in a single branch of government through encroachment and usurpation, and since a preemptive attack on Iran or Syria without prior congressional authorization will lead to the dangerous consolidation of power in the hands of the Executive Branch by redistributing the war-making powers of Congress to the Executive; and

WHEREAS: the United States should first attempt diplomacy through direct talks with

Iran and Syria before initiating or escalating military confrontation; and  
WHEREAS: a preemptive attack on Iran or Syria by land, sea, or air — ordered by the President and Vice President without prior authorization from Congress — would produce unforeseen consequences that potentially could be ruinous, calamitous, and contrary to the inherent interests of the United States of America; and

WHEREAS: it is our duty as citizens to defend the Constitution of the United States of America in the hour of crisis, when we determine it is threatened; and

WHEREAS: the Constitution of the United States is indeed threatened by a president who claims that he has the inherent right to authorize and initiate an attack on a sovereign nation without prior and explicit congressional approval;

THEREFORE, be it

RESOLVED: that we, as Citizens of the United States of America, defend its Constitution by openly declaring our opposition to the Bush Doctrine as inherently incompatible with the provisions of the Constitution; and be it further

RESOLVED: that we, as Citizens of the United States of America, declare our opposition to any presidential order to execute a preemptive attack on Iran's and Syria's sovereign territories — by either land, sea, or air — without a prior Act of Congress that would specifically and unambiguously include Iran or Syria in its resolution authorizing the use of military force; and be it further

RESOLVED: that we, as Citizens of the United States of America, formally request that the members of Congress reassert their constitutional decision-making powers over the declarations of war and peace as prescribed in the U.S. Constitution; and be it further

RESOLVED: that we, as Citizens of the United States of America, request that the members of Congress challenge the president's unconstitutional usurpation of war-making powers; and be it further

RESOLVED: that we, as Citizens of the United States of America, formally demand of our members of Congress that if and when the President and Vice President initiate a preemptive attack on Iran or Syria without prior congressional authorization that specifically and unambiguously includes Iran or Syria in its resolution authorizing the use of military force, that they submit articles of impeachment against the President and Vice President immediately after the unauthorized and unconstitutional attack. 

## Notes

1. After I drafted the original essay, I showed it to several colleagues who read it and offered valuable comments that have helped improve my approach and my prose. I am indebted to the following individuals for their observant and helpful suggestions: Paul Rinzler, Kevin Clark, Myron Hood, Harvey Greenwald, Steven Marx, David George, and Marty and Lee Goldin.
2. Government Code Section 3102: Oath of Allegiance and Declaration of Permission to Work for Persons Employed by the State of California. "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."  
<http://72.14.253.104/search?q=cache:Q5Gmt2neePMJ:www.documents.dgs.ca.gov/osp/pdf/std689.pdf+California+Government+Code,+Oath+of+Allegiance&hl=en&gl=us&ct=clnk&cd=1>
3. Transcript of President Bush's Address to the Nation on U.S. Policy in Iraq. *The New York Times*, January 11, 2007 (section A18),
4. Charles W. Kegley & Gregory A. Raymond. "Global Terrorism and Military Preemption." <http://www.palgravejournals.com/ip/journal/v41/n1/pdf/8800064a.pdf?file=/ip/journal/v41/n1/pdf/8800064a.pdf>.
5. *New York Times*, 27 Sept. 2002.
6. History News Network (HNN), "Would Daniel Webster Approve an Attack on Iraq," 10-8-02.  
<http://hnn.us/articles/1024.html>.
7. HNN, "Would Daniel Webster Approve an Attack on Iraq."
8. See Vice President Cheney's views as given during James Taranto's interview, "A Strong Executive: Dick Cheney discusses presidential power and foreign policy," *The Wall Street Journal*, January 28, 2006.  
<http://home.nyc.rr.com/taranto/cheney.htm>.
9. James Madison (under the pseudonym "Helvidius") to Alexander Hamilton (under the pseudonym "Pacificus") in the *Gazette of the United States*, August 24, 1793.
10. Madison to Hamilton in the *Gazette of the United States*, September 14, 1793.
11. Kegley & Raymond, "Global Terrorism and Military Preemption," p. 45.
12. For analysis concerning the consequences of an attack, see Seymour Hersh. "The Coming Wars: What the Pentagon Can Now Do in Secret," *The New Yorker*, January 24, 2005; and Peter Baker, Dafna Linzer & Thomas E. Ricks, "US Is Studying Military Strike Options on Iran," *The Washington Post*, April 9, 2006.
13. For one of the most thorough studies of the possible scenarios of how an attack on Iran would play out, consult James Fallows, "Will Iran Be Next? Soldiers, spies, and diplomats conduct a classic Pentagon war game—with sobering results," *The Atlantic Monthly*, December 2004. Sam Gardiner, a retired Air Force colonel who taught at the National War College, delivers the concluding summation: "You have no military solution for the issues of Iran. And you have to make diplomacy work."
14. Kenneth Pollack, of the Brookings Institution stated "one of the things we have going for us in Iraq, if I can use that term, is that the Iranians really have not made a major effort to thwart us...If they wanted to make our lives rough in Iraq, they could make Iraq hell." Quoted in Fallows, "Will Iran Be Next?" See also Seymour Hersh, "The Iran Plans: Would President Bush go to war to stop Tehran from getting the bomb?" *The New Yorker*, April 17, 2006.
15. For a sobering comparison of what might happen if the Iraq civil war becomes a regional one, see Helene Cooper, "The Best We Can Hope For." *The New York Times*, January 14, 2007. Particularly relevant are the concluding statements by Stephen Biddle (who authored *Military Power: Explaining Victory and Defeat in Modern Battle*).

16. "Those in the oil business I spoke to were less optimistic; one industry expert estimated that the price per barrel would immediately spike, to anywhere from ninety to a hundred dollars per barrel, and could go higher, depending on the duration and scope of the conflict." Hersh, "The Iran Plans."
17. Hersh, "The Coming Wars"; Fallows, "Will Iran Be Next?"
18. Seymour Hersh (in "The Iran Plans") confirms, "The Pentagon this winter, calls for the use of a bunker-buster tactical nuclear weapon, such as the B61-11, against underground nuclear sites." He reveals profound misgivings by the top military leaders: "A Former high-level Defense Department official stated, 'There are very strong sentiments within the military against brandishing nuclear weapons against other countries,' the adviser told me. 'This goes to high levels.' The matter may soon reach a decisive point, he said, because the Joint Chiefs had agreed to give President Bush a formal recommendation stating that they are strongly opposed to considering the nuclear option for Iran." Philip Giraldi provides disturbing evidence of the White House's nuclear war plans, stating "Several senior Air Force officers involved in the planning are reportedly appalled at the implications of what they are doing — that Iran is being set up for an unprovoked nuclear attack." Philip Giraldi, "Deep Background," *The American Conservative*, August 1, 2005.