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Establishing the Imperial Presidency: The War of 1812, John Lowell, and the Specter of Perpetual War

Stephen Heidt

Contemporary attention to presidential war power focuses on the possibility of "perpetual war." This essay contextualizes that controversy by returning to the nation's first international crisis - the War of 1812 - to consider the ways James Madison's rhetoric established precedents that empowered presidents to act with rhetorical impunity in international affairs. Analyzing an overlooked but influential anti-war pamphlet written by John Lowell reveals public concerns about Madison's War and the dangers presidential rhetoric poses to the constitutional order. In doing so, this essay revises contemporary thinking about the imperial presidency, the rhetorical presidency, and the nature of perpetual war.

Keywords: *Presidential rhetoric; war rhetoric; imperial presidency; antiwar rhetoric*

James Madison's role in permanently unbalancing constitutional restrictions on presidential war making power is stunning. At the constitutional convention, he had been one of the staunchest defenders of the distribution of war power, proposing changes to the wording of Article I, Section 8 to specify Congress's right to "declare" war rather than "make" war. This proposal generated controversy as participants recognized the new language might constrain presidential efforts to "initiate hostilities" but were concerned about denying "the President the power to respond to surprise attack" (Schlesinger, 2004, np). His principle argument, that "loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad," warned that rhetorically gifted leaders could rationalize a host of executive

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powers by raising security concerns (Schlesinger, 2004, p. xi). Winning the day, Madison's language established a constitutional bulwark restraining presidential war making power that would prevent the rise of an imperial executive and the dangers absolute sovereignty posed to civil liberties. Yet, as president, Madison inched the nation into war with England on the dodgiest of arguments while depicting protesters as unpatriotic, unamerican, and potentially insurrectionist (Ivie, 1982). The founder had become the imperial agent of the state he had sought to avoid.

Scholars of the presidency have long been concerned with the ways presidential rhetoric destabilizes and undermines the constitutional distribution of power between the executive and legislative branches of government. Some have adopted Tulis (1987) framing to emphasize the ways mass media technology permits presidents to reach mass audiences, consolidate policy power in the executive, and undermine the balance of power between the executive and the legislature. Communication scholars have critiqued Tulis' thesis in diverse ways, but they have also endorsed one of its central premises – that presidents have increasingly employed deliberative rhetoric to argue for their policy agendas. Indeed, a dominant approach criticizes presidential rhetoric to center attention on the person of the president and advance claims about their persuasive capacities. This approach has produced a broad catalog of studies related to persuasion, focusing on the rhetorical dynamics of the text and its relationship to place, audience, genre, context, and materialities (Heidt & Stuckey, 2019: pp. 3–6). Focusing on the interiority of the text has isolated the importance of presidential rhetoric, even while it has reinforced embedded aspects of the rhetorical presidency thesis.

Concurrently, scholars have emphasized the ways presidential rhetoric destabilizes constraints on war making. Cognate with Arthur Schlesinger, Jr.'s Imperial Presidency thesis, which warned of the potential for presidential power to "upset" the "constitutional balance … at the expense of presidential accountability," particularly in the area of "foreign affairs," (Schlesinger, Jr., np), scholars argue that presidential war rhetoric employs savage metaphors to short circuit public deliberation and cajole the nation into war (Ivie, 1980). Writing in the waning days of the Vietnam War, Schlesinger declared presidents of the modern era had become imperial by converting "emergency powers … into authority" by claiming those powers as "constitutionally inherent in the presidential office" (np). While Schlesinger's thesis has always been problematic – for example, it ignores Indian wars – scholars have rarely connected the imperial ambitions of early presidents to the constitutional balance of power. For example, Campbell (2008) referred to James K. Polk as the "first imperial president," who established "significant presidential precedents that consolidated important expansions of presidential power" but claimed the designation reflected a pre-modern form (p. 100–101). Others have framed early presidents as lurching in imperial directions but having few opportunities to wield imperial power.

This oversight must be remedied because almost as soon as the constitution was ratified, presidents began to push back against constraints on their power. George

Washington's suppression of the Whiskey Rebellion, for instance, justified Thomas Jefferson's deployment of the navy to counter the Barbary pirates, just as those actions provided Madison rhetorical precedents for his war with England. But, unlike with Washington and Jefferson, Madison's War represented a significant accretion of presidential power and, I argue, the origin of the imperial presidency because it was the first instance in which a president leveraged claims of foreign danger – annoying to commercial interests but no threat to national territory – to secure a congressional war authorization. Doing so jeopardized the balance of power between the Federal and state governments, the constitutional division of powers between Federal branches, and established topoi that enabled future presidents to find the rhetorical means for launching additional wars. In contradistinction to the Whiskey Rebellion and the Barbary pirates, events which Schlesinger claimed "usurped power, and [thus] … create[d] no constitutional precedents," Madison's war declaration asserted and legitimized inherent war powers of the presidency, creating "precedents for the future" (location 103). Reconceiving the president's imperial power as derived from rhetorical precedent adds to scholarship related to the imperial presidency by underscoring the idea that, once damaged, the limited forms of congressional or public constraint on presidential war making do not recover. Even if a subsequent president declines to act upon rhetorical precedent, as with Jimmy Carter, it will always be there for the taking.

To make the case, I analyze a widely circulated anti-war pamphlet published by John Lowell, a Massachusetts lawyer and member of the Federalist party. The pamphlet, titled *Perpetual War, The Policy of Mr. Madison*, critiqued Madison's war message to Congress, parsed the case for war, and warned of the danger presidential rhetoric posed to the constitutional balance between Congress, the executive, and Federal and state governments. Unlike much of the anti-war opposition, Lowell zeroed in on the precedent Madison established. He warned future presidents would mimic Madison's rhetorical approach and create the conditions for perpetual war, or war at the behest of the sovereign rather than as an outcome of deliberative, constitutional processes. Perceptive of the peril posed by Madison's War, his unique addition to the anti-war debate identified the dangers a rhetorical presidency posed to the constitutional balance of power in terms of foreign policy and war making. One of the earliest to voice concerns about the rhetorical power of "danger" – that is, security discourse – and the precedent it set, Lowell specified the true peril of the War of 1812 as the imperial presidency to come.

This essay adds to scholarship related to the rhetorical presidency and the imperial presidency constructs by revealing vernacular concerns related to presidential rhetoric, the constitutional order of the early republic, and American foreign policy in three ways. First, this analysis demonstrates how the presidency has always been rhetorical and imperial. As elaborated, Lowell focused on the dangers posed by the rhetorical assertion of inherent constitutional powers – the power to defend against invasion – to justify the war declaration. Far from deferring to Congress, Madison deployed presidential rhetoric to establish a novel meaning for

understanding "invasion" to mean threats to U.S. persons, commerce, or assets, anywhere in the world. Filling a constitutional void, this expansive definition upset the constitutional balance of power between Congress and the presidency, established a rhetorical precedent, risked converting the president from limited to imperial sovereign, and made perpetual war more likely.

Second, since the early presidency inaugurated both the rhetorical presidency and the imperial presidency, I contend presidential power depends upon military might. Reading the war controversy from this lens recognizes that the U.S. has always been imperial in ways often ignored and that imperial ambitions have always driven presidential power. Those ambitions – what many have called settler colonialism – produced rhetorical exigence compelling presidents to square a genocidal desire for land and resources with the nation's liberal, democratic aspirations (Dunbar-Ortiz, 2014; Immerwahr, 2019). The discourse of insecurity – of savagery – powered colonial ambitions and elevated the presidency to national prominence.

Third, this criticism reveals early American topoi for war resistance. Topoi lay "at the center of rhetoric," because they identify the "'reservoir' of ideas or core images from which specific rhetorical statements can be generated" (Ivie, 1980: p. 281). In spite of anthologies cataloging anti-war opposition, scant attention has been given to analyzing vernacular rhetoric resisting the war. This essay takes public rhetoric opposing the war seriously by paying special attention to Lowell's pamphlet. In doing so, I identify a basic antiwar *topos* that continues to live on in the present.

The Politics of the War of 1812

After years of frustration with the British habit of impressing U.S. sailors into the British navy, James Madison submitted a war message to Congress on June 1, 1812 (Ivie, 1982: p. 241). The message sought a formal war declaration and authorization for the president to defend the nation from aggression. This rhetoric, Ivie (1982) explained, emphasized "British barbarity" to elevate the perceived danger posed by British actions on the high seas (p. 241). It also "convey[ed] a sense of urgency and inevitability about the fate awaiting America" (Ivie, 1982: p. 250). The appeal proved effective in Congress, where Madison won the war vote in the House by a 30-vote margin, even with all of the Federalists and 22 Republicans voting against war. In the Senate, the vote was closer, 19–13 in favor, but the end result sent the nation into a declared war for the first time (Mann, 2010: p. 25).

Often called the Forgotten War, the conflict proved disastrous. Over the ensuing two years and eight months, the United States failed to achieve its primary war aim – a British promise to end impressment – the British stormed Washington, D.C., burned the White House, and inflicted serious losses. But it wasn't a total failure. The war left Madison's Republican Party as the strongest political force in the nation. It elevated the political fortunes of war heroes like Andrew Jackson and William Henry Harrison, as well as countless others (Stagg, 2012: pp. 2–3). It consolidated

American national identity, contributed to "expansionalism," and produced an excess of public commemoration (Clark, 1994; Hickey, 2012: pp. 29–30). And, without the war there would have been no Star-Spangled Banner.

Yet the war was deeply unpopular and gave rise to one of the most significant anti-war movements in U.S. history. Immediate opposition framed it as "an awful calamity" and a "Horrid WAR," producing an "outcry" of public protest including lowering flags, closing businesses, "hanging Madison in effigy" and numerous "town meetings" (Ellis, 2009: pp. 5–6). Those gatherings produced "antiwar resolves," and generated "public fasts" (Ellis, 2009: pp. 8–9). In total, it was "the most unpopular war that this country has ever waged." (Morrison, 1970: p. 3), matching the "opposition … toward any war in American history, even U.S. involvement in Vietnam" (Heidler & Heidler, 2002: pp. 37–38). Opposition focused on the war's impact on commerce, about becoming "an unwitting ally of the despot Napoleon," and of "high expenditures and additional taxes" (Heidler & Heidler, 2002: pp. 37–38). Including Federalists and Republicans, the war was "unique in generating such vehement political opposition" (Hickey, 2012: pp. 27–28).

While rabid, the opposition was unevenly distributed across the nation with "the strongest … in New England" (Heidler & Heidler, 2002: p. 40). One study claimed "the most persistent, organized, and vociferous opposition," could be attributed to a smaller number of "opponents [who] gained a great deal of attention," even while many in the region supported the war. The study pointed to material contributions – armaments, ships, men – to demonstrate New England's role in the war and cast doubt upon the size and strength of antiwar elements (Ellis, 2009: pp. 1–2). Another discounted the significance of the opposition by connecting it to a Federalist "party [that] had been reduced to little more than a narrowly based New England rump of its former self" (Stagg, 2012: p. 8). In spite of differences, virtually all scholarship agrees that the antiwar opposition failed because it didn't stop the war (Mann, 2010: p. 27).

Assessing the antiwar movement a failure, however, overlooks its historical and rhetorical significance. Without a standing army and a limited navy, Madison needed the New England state militias to prosecute the war. Antiwar opposition frustrated the raising and arming of those militias as "the Federalist governors of Massachusetts, Connecticut, and Rhode Island refused to honor [General Henry Dearborn's] requests for militia detachments to be placed on the coast for defense." In one of the central arguments against the war, "the governors asserted that they could see no threat of an invasion" and were thus not required to place the "militia into federal service" (Stagg, 2012: pp. 72–73). Far from ignoring public opposition, these governors responded to it by focusing on constitutional questions. And, when Vermont's governor complied with the requisition order, he was voted out of office (Ellis, 2009: pp. 9–10). In this way, public opposition impeded Madison's ability to prosecute the war and established the terms by which war power could be negotiated.

James Madison, the Imperial Presidency, and the Conditions for Perpetual War

Into this fray stepped John Lowell. Renowned for his eloquence, he had already published more than a dozen political missives about the early nation and its presidents. Published under various pseudonyms including "Citizen of Massachusetts," "Massachusetts Lawyer," "Layman," and "Yankee Farmer," these documents enacted a species of rhetorical criticism – contemporary scholars might call it argument criticism – by responding to official pronouncements made by government officials. The pamphlet opposing the War of 1812, typical for its genre and time, adopted a legal, argumentative style that critiqued Madison's war message, undermined the president's credibility, raised questions about the case made for war, and bolstered public opposition. This approach litigated the particulars of the conflict, isolated Madison's rhetorical power and the danger it posed to the constitutional order, and discussed the long-term consequences of a rhetorically sophisticated presidency with imperial ambitions.

Lowell's treatise opposing the war was one of several such attempts by Federalists to push back against Madison's War. A cohort of Federalist legislators, for example, issued an "eleven-thousand-word document" opposing the war, criticized Madison's arguments, and contended the British posed no threat to national integrity (Mann, 2010: p. 25). Federalist newspapers papered Madison with vituperative personal attacks (Rudanko, 2011). Many duplicated the arguments of New England governors to characterize the conflict as "a 'war of conquest, a war for the acquisition of territory and subjects'" (Mann, 2010: p. 24). Presbyterian minister Elijah Parish "denounce[d] James Madison for going to war against Britain, which he saw as the bulwark against Napoleonic absolutism." Echoing George Washington, advocates highlighted the danger of siding with an imperial power – Napoleon – and warned of the disastrous potential foreign entanglement could pose (Benn, 2005: p. 81).

Lowell's text stands out, however, because it specifically warned of the dangers posed by the rhetorical assertion of inherent presidential powers – the power to defend against invasion – to justify the war declaration. Pointing to the precedent established by Madison's novel definition of "invasion" to signify threats to U.-S. persons, commerce, or assets, wherever they occur in the world, Lowell warned this expansive definition could be employed by future presidents with even greater imperial ambitions.

Litigating the Case for War and Redefining the Crisis

The rhetorical and imperial presidency constructs elevate the significance of presidential rhetoric, even if neither names the rhetorical forms that dominate presidential foreign policy rhetoric. While those forms vary, the power of the president to define situations in ways that propel deliberation inexorably toward war plays a central role. As Zarefsky (2004) has argued, facts are not externally given, they are selected by advocates (p. 611). Selecting some facts, values, or perspectives and not others defines a situation or an issue in ways that can influence policy debates.

Since the presidency is a primary source of symbols about public policy issues, as Zarefsky intimates, definitional rhetoric determines which issues become national ones and shapes how those issues are understood. According to Carol Winkler (2008), definitional processes occur in three ways. Rhetors argue about definitions when they discuss what a particular category should be or mean; rhetors argue from definition when they argue about the elements that fit within the parameters of a given definition; and, rhetors argue by definition when presenting a perspective as an indisputable fact not open to contestation. Since the public is generally less knowledgeable of international policy, presidential definitional strategies gradually move publics in ways that serve their overarching strategic objectives (Hariman & Beer, 1996).

While virtually all studies of presidential definitional power have parsed the words of the president, this essay elucidates the ways Lowell's pamphlet identifies and critiques Madison's definitional discourse before offering alternative, resistant definitions. The need to modify, shift, or subtly alter the implications of a terminology but not having the legal or political power to enact a new and formalized definition leads advocates to dissociate the original terms of the controversy from the assumed meaning those terms share (Perelman & Olbrechts-Tyteca, 2008: p. 412). This process operates by "breaking … a seemingly unitary concept" into its constituent parts and then "pairing" one component with "value" that shifts the way the original term is understood (Zarefsky, 1986: p. 9). This shift in meaning, what Perelman and Olbrechts-Tyteca (2008) call a "profound change in the conceptual data" (p. 412) privileges the new over the old by "maintain[ing] a given lexicon while changing its referent" (Schiappa, 2003: p. 39). This redefinitional tactic engages "multiple associations and dissociations" as in search of language capable authorizing a policy approach or, in this case, for unraveling and opposing Madison's case for war (Asen, 2010: p. 130). Lowell offered alternative framing for understanding England's policies toward the U.S. by providing alternative definitions of the key terms of the dispute. By shifting meanings about terms like "danger" and "invasion" and raising concerns about the precedent those terms established, he offered a path forward for abandoning the principles that led the nation into war and contributed to the expansion of presidential power.

Lowell's attempt to redefine the war and its causes proceeded along two axes. First, he challenged the notion that the war was an act of self-defense and raised concerns about the implications a war of choice had on the constitutional order. To that end, he asked, "what part of the United States, has been threatened with, or in imminent danger of invasion?" Elaborated via a series of rhetorical questions related to the location and attitude of British ships, this argument questioned the president's use of the word "invasion" and proposed an alternative meaning for the term. He contended "invasion," as "contemplated by the Constitution," justified calling out the militia as a response to a continuous danger posed by a foreign force and not as a means to counter "a temporary, occasional descent, by a privateer or a frigate" since the "*local* militia [are] … amply competent, to repel small enterprises." Citing

several examples of local militias responding to small incursions into U.S. territorial waters, Lowell distinguished between inconvenient acts of violence and "serious danger" (A New-England Farmer, 1812: p. 84). Arguing from definition, this approach suggested an alternative read on British actions, undermined Madison's war message, and invalidated the constitutional basis for calling forth the militia. Calling for a strict constitutionalist approach also preserved the balance of power between the Federal government and the states.

This redefinitional strategy also attacked Madison's principle rationale for war – impressment of U.S. sailors by the British navy – by raising the possibility that the sailors Madison sought to defend were not Americans in any sense. Lowell contended that, coming so soon after the Revolutionary War, the national identity of the sailors pressed into service remained ambiguous. As he put it, a key question about "what should constitute a *British seaman* – whether a residence of one day, or of two years, in the United States, together with the mysterious operation of an act of Congress, and an oath before a county court, should transform a Scotch or Irish sailor into a genuine American" remained unsettled. The nationality of a sailor, established by a procedural act in a court of law, could not resolve the key question. Could a new oath, he asked, "*sever* the *inseparable* allegiance which every man owes to his native country?" (A New-England Farmer, 1812: pp. 98–99). For Lowell, this question traversed Madison's rationale for war. If sailors engaged the "fraudulent abuse of naturalization," to evade impressment, then Madison had no cause of "self-defense" (A New-England Farmer, 1812: p. 99). The sailors in question were not real Americans. Even swearing a new allegiance to the United States didn't simplify the issue because the U.S. recognized naturalization but Great Britain did not. Thus, sailors who naturalized and swore allegiance to the United States remained subject to British law. As he explained, in custom law, "*allegiance* is perpetual … [and] not weakened or affected by *time, place*, or *swearing allegiance* to another power" (A New-England Farmer, 1812: p. 100). Indeed, this was Britain's argument. As Lowell recalled, "Great Britain disclaims the pretence [sic] of taking *American seamen*, and only claims the right to take *her own* subjects out of merchant ships, on the high seas, and in her own ports" (A New-England Farmer, 1812: p. 100). Rendered as such, the precarious national status of the impressed sailors warranted diplomatic endeavors, not war.

Lowell also challenged Madison's central claim that one could reasonably fear "an invasion" from Great Britain. The claim, he wrote, was "groundless, insulting" because "Great Britain, occupied by Spain, and in the Baltick [sic], and pressed … by the tools of France … will scarcely be able to defend her colonies, from butchery, and plunder and conquest." Madison's war message, then, "was a repetition of the old [Aesop] fable of the sick lion," in which Britain is only capable of eating those who came close (A New-England Farmer, 1812: p. 85). Lowell criticized Madison's method as "pettifogging quibble[s]" in which claims of "invasion" shift to "an *imminent danger of one*" and, when challenged, become concerns about the danger having "*increased* since his first demand," even while, in truth, "Madison knew there

was none" (A New-England Farmer, 1812: p. 86). Inventing a danger of invasion to justify the war, Lowell explained, gave way to a "monstrous and novel construction." When pressed to show the danger, Madison responded by claiming "that war having been commenced, there resulted from the *very fact of war*, a danger of invasion" (A New-England Farmer, 1812: p. 87). In essence, Lowell claimed Madison's prevaricating approach prophesized war and then worked to ensure the prophecy came true. Once the war had begun, the theoretical danger became real. The war with Britain, then, was the ultimate self-fulfilling prophecy. Reflecting how presidential rhetoric and war power work together, Lowell's criticism warned that, if permitted to stand, presidents could invent novel definitions of danger and then, once hostilities had commenced, return to originalist versions.

Having attacked the claim of danger, Lowell's second definitional axes contested Madison's argument that this was a defensive war. Arguing about the definition of the conflict itself, Lowell claimed Madison had "impelled [Congress] reluctantly to the declaration of an *offensive* war against Great Britain" (A New-England Farmer, 1812: p. 4). Backing this statement with a complex conspiracy claim about U.-S. dealings with France, Lowell suggested that Madison had acted in concert with, or at the behest of Napoleon. Pointing to the presence of U.S. naval assets in France and allegations that the U.S. negotiator in Paris had warned Napoleon the U.S. would declare war 30 days prior to the event, he claimed Madison had only trotted out a "parade of negotiation" so that he could demonstrate "a pacifick [sic] disposition" and "*secure the reelection of the Author of this War to the Presidency*" (A New-England Farmer, 1812: p. 14). For Lowell, the evidence of American maneuvers in France signaled a fundamental dishonesty in Madison's case for war and meant the president could not be trusted. And, since Madison employed "insidious and unfounded aspersion on the citizens of *his own* country," Lowell suggested the speech "habitually inclines to the views and interests of France more than becomes" Madison's station as president. The war, then, was "in effect a *French* war, and not an American one." (A New-England Farmer, 1812: pp. 6–7). This indictment of Madison connected the president's known affinity for the French during the Revolution and beyond to redefine Madison's motivations and undermine his authentic claim to American leadership.

Lowell expanded upon this thesis by examining the deliberative process that resulted in the war declaration. This retelling exposed how Madison's definitional moves related to national self-defense manipulated a small group of legislators into voting for war out of a concern for the people. Claiming "the President … has ventured to insult their understandings, by pretending, that this case of invasion, or imminent danger thereof, has existed, in the true spirit of the constitution, which every school-boy, and every timid girl … would laugh at and ridicule," Lowell implied there must have been something other than a legal argument at work (A New-England Farmer, 1812: p. 82). As per the Constitution, he continued, "the invasion must actually exist, and the militia, can only be kept in service, so long as is necessary to REPEL it" (A New-England Farmer, 1812: p. 82). Since state governors

retained the ultimate sovereign authority over militias, Lowell's interpretation meant that militias could be recalled as soon as the British had been driven off American land. To think otherwise, he argued, would render the Constitution's "restrictive words" meaningless, "and the constitution, might as well have given the *whole* command to the United States, without any limitation" (A New-England Farmer, 1812: p. 83). His concern over precedent emphasized the president's rhetorical role in defining the danger posed by external antagonists. Madison's war, in this context, served as warning: "If to 'repel invasion' means the danger of *possible* invasion when there is no *probability* of it, and if the President is the exclusive judge upon this point, then the limited powers of the constitution are of no avail, and the President is the absolute commander of every man in the United States, and may keep him in service so long as he chooses to have a war on foot with any nation, from the meanest tribe of savages to the *conqueror of Europe*" (A New-England Farmer, 1812: p. 88). For Lowell, the war imperiled the Constitution's attempt to restrict presidential and federal war making power. Either governors had the right to refuse to call forth militias to prosecute Madison's war or the states had no legal rights or ability to resist national war plans at all.

The president's power to define the context did not end with the war declaration, of course, and Lowell specifically identified ways in which skillful presidents could manipulate public sentiment to maintain war fervor. In one instance, Madison raised the figure of "the troops" to dismiss anti-war arguments and excite a certain form of nationalistic patriotism.[1] For Lowell, this spoke to the rhetorical power of public appeals beyond their veracity. As he put it, the idea that naval victories could force Britain to sue for peace "is absolutely false … our naval successes will procrastinate the period of peace, and render all attempts at negotiation … abortive … but some men may be led to believe that Great Britain can be humbled on the ocean, of which there is as *little* prospect" (A New-England Farmer, 1812 p. 112). Lowell's point was that rhetoric can generate "enthusiasm [and that] has its uses, but it may produce its evil" (A New-England Farmer, 1812, p. 113). Toward that end, he compared the system of forced conscription in France – where conscripts are rounded up like "cattle" – and the U.S. where conscripts are recruited and paid (A New-England Farmer, 1812). This comparison suggested that both were victims of tyranny but that presidential appeals demonstrated something fundamental about the American experiment and the rhetorical presidency. Where the monarchs of Europe forced commoners into armies, the United States merely had to convince men to join and fight. The distinction between the two systems, according to Lowell, was rhetorical.

Presidential Rhetoric, the Imperial Presidency and Perpetual War

By representing rhetoric as epistemological, a force that shapes public views about the world, Lowell worried about the dangers posed by such a form of presidential power. In the latter half of his pamphlet, his concern about the perils of presidential rhetoric gave way to a general concern about the viability of constitutional

restrictions on the Federal government's ability to wage war. Any break from the enumerated powers – enacted via presidential war rhetoric – jeopardized the balance of power between the Federal and state governments and risked upsetting the foundation of the Union itself. As is well known, presidents enjoy exclusive constitutional jurisdiction over the execution of military power abroad, but the power to wage war is reserved to Congress. Campbell and Jamieson (2008) explained war declaration "formally vests the president with the broad powers of the commander in chief," a role that authorizes the president to manage war and negotiate the peace (p. 217). Yet, in the early nation, waging war required state governors to organize militias. The Federal government had a limited navy and no standing army.

Thus, Lowell's legalistic objections to the war contained a continuous and sustained emphasis on Madison's rhetoric. Sprinkled throughout his criticism, Lowell enacted a stylized form of rhetorical criticism to undermine Madison's credibility as interlocutor. This vein of criticism identified the "amicable, generous and noble professions of the author," as instrumental in compelling audiences to accept the war message. Beyond undermining Madison, however, Lowell isolated the power of presidential address not in its argumentative proofs but rather in its power to define and characterize the situation in artful prose. To Lowell, "the art of appearing to be what one is not – of assuming virtues and principles which are foreign to our character," required criticism focused on "stripping [the speakers] of this disguise, by comparing carefully their conduct with their professions" (A New-England Farmer, 1812, pp. 9–10). Pointing to Madison's underlying motivations for the war, Lowell pinpointed the problem that presidential rhetoric poses to the constitutional order. As he put it, the persuasiveness of the speech served as evidence that the war was a forced case since, "no art which could have a tendency to inflame the passions … has been overlooked or left unurged" (A New-England Farmer, 1812, p. 10). In this rendering, the more flowery and impassioned the rhetoric, the less an audience should trust it, and the more danger it posed to the polity.

This concern for presidential rhetoric intertwined with Lowell's theory about the long-term implication the war could have on the nation. He worried the precedent established by a perfidious president who had juked the nation into war would weaken resistance to future war designs. As he put it, "Mr. Madison is the first President who has ventured to give an alarming and dangerous construction to the powers of the constitution. If his construction be right, we never need talk in future of the consolidation of the states – the state sovereignties are extinct. We have one vast military consolidation; and the only remedy and bulwark, which the constitution provided against the usurpation of an ambitious and unprincipled President, is gone … we shall fall prey to our own domestick [sic] usurpers, who will be as hard task-masters as a foreign potentate could possibly be" (A New-England Farmer, 1812, pp. 72–73). No matter the outcome of the conflict, Madison's theory of executive power – that the president could call up the militia in response to any type of danger they identify – neutered state resistance and fostered the conditions for additional conflicts, as dictated by the

whims of the executive. As a relatively new nation, with an executive officer designated as an agent of the state, submissive to the will of the people – that is, not a monarch – Lowell feared skillful presidents could manipulate the people to support any type of military endeavor. And, since state governors, the last line of defense against an imperial executive, had failed to check Madison's war making power, he worried neither the people nor the states could restrain the imperial ambitions of a willful president.

This argument conceived of the president as severely restricted by the enumerated elements of the Constitution while warning against rhetorical expansions. To wit, Lowell defined the president as a "*limited sovereign*" prohibited from "by way of *incidental and implied powers*, the extension of any powers or authority which are the subject of *express provision* in the instrument defining the authority to be delegated. A grant of a *limited power* over a particular subject, *excludes* any further constructive or incidental power over the same subject" (A New-England Farmer, 1812, p. 77). No amount of rhetorical finesse could – or should – authorize the president to step outside of the limits placed on the president because the founding document narrowly prescribed the role of the executive. This narrow interpretation of the Constitution restricted Congress's power to call forth a state militia. As Lowell explained, the "constitution [has] given them that power only in three specified cases … to execute the laws of the union, suppress insurrections, and *repel invasions*" (A New-England Farmer, 1812, p. 77).[2] With Federal power limited in this way, Lowell claimed Congress could not call forth the militia in "*other* cases" because that "would be like any other illegal assumption of power, void" (A New-England Farmer, 1812, p. 78). He also warned about entangling the nation in the politics of European nations to convey the stakes of the shift Madison had instituted. Being in cohorts against the "*common enemy*" long before the start of the war, he contended, recalled Washington's warning about "foreign entanglements" (A New-England Farmer, 1812, p. 110). Not beholden to the people, European monarchies exerted power arbitrarily, subject to the whims of the ruler rather than constitutional designs. Lowell inferred that Madison had acted similarly. Thus, his warning encompassed two domains of concern – the risks posed to the nation by fickle European empires and the potential for an American president to replicate a *de facto* monarchical rule via rhetorical appeals.

Adding to the problem was the speed of presidential rhetoric. In Lowell's view, Madison ramrodded the war prior to having an army able to prosecute it. Had he taken the time to prepare an army, he wrote, "probably Congress would not have been persuaded to declare [war]" (A New-England Farmer, 1812, p. 90). Claiming that the president should raise his own army and navy and not rely on state militias served Lowell's purpose in two ways. First, requiring the existence of a national army prior to declarations of war would severely limit presidential war making power by subjecting presidential desires to public deliberation. Those deliberations would have a scope broader than the *casus belli* justifying conflict and would include discussions about how to raise and equip a national army and navy. Deliberations would also

preserve the constitutional balance and distribution of powers between the executive and legislative branches by elevating Congress's role in launching military endeavors. Second, by reserving state militias for situations of "invasion," Lowell contemplated a balance of power in which the president could only call upon state militias when external forces endangered the territorial integrity of the nation or to suppress insurrection. This reasoning sought to restrain the president by preserving and extending an originalist version of constitutional power that envisioned the president as a significantly constrained actor, rather than a democratic regent. The stakes exceeded the particulars of the War of 1812 because, if accepted, Madison's interpretation of presidential power meant "the people will have no means of defence left to them against the ambition of a corrupt President – because the principle on which they are ordered out they may be kept in service during the whole of any and every war which the President and a majority of Congress may see fit to declare" (A New-England Farmer, 1812, pp. 90–91). Lowell feared that future presidents would adopt Madison's rhetorical approach to "grossly abuse" their power to launch wars of aggression and destroy "the liberties of the people" (A New-England Farmer, 1812, p. 91).

To sustain his claim, Lowell pointed to Madison's attacks on war protesters. These attacks delegitimized protesters by raising the specter of danger and imputing the manliness of the citizenry. As Madison (1812) put it in his Fourth Annual Message, "to have shrunk under such circumstances from manly resistance would have been a degradation blasting our best and proudest hopes … [and shown] the American people were not an independent people, but colonists and vassals." This rationale – that the U.S. had to fight to show its independence – sparked concerns about the prospect of constitutional constraint on presidential war making. As Lowell put it, Madison's attack that "these *wretches* [the militia] dared to talk of the *constitution*, when their country was in danger" quelled protest rather than responded to it. Lowell mocked the nature of the threat and wondered why "a Quixotick [sic] expedition into a foreign country was a proof that the country was in danger," but, in doing so, illuminated a central, rhetorical power of the president. Even when the homeland faced no significant security threat, presidents could invoke security to mobilize the country to war. And, as he put it, "the constitution is to be no safeguard to the citizen when he most needs it" (A New-England Farmer, 1812, p. 73). The states had no remedy to the power of presidential rhetoric because once begun, the president could force militias into war.

Early Topoi For Resisting War

Throughout the document, Lowell pointed to the ways Madison's rhetoric creatively defined the problem with Britain to justify the war declaration. These arguments attacked Madison's case for war and warned about the dangers presidential appeals posed to the balance of powers between the legislative and executive branches. But they also established a basis from which future activists could argue against war. This

rhetoric cohered into a topoi – an archive of the sayable from which common ground can be established between interlocutor and audience – for antiwar arguments (Ivie, 1980). The argumentative or rhetorical bases from which specific representations derive (Cisneros, 2008), the topos of war rhetoric focuses on depicting the enemy as savage and the U.S. as beneficent (Carney & Stuckey, 2015). Scholars have cataloged the topoi presidents have "employed to justify American military action," including that of the "reluctant warrior" (Smith & Dionisopoulos, 2008, p. 522), the continuity of the "topoi of force versus freedom" across U.S. history (Fowler, 2017, p. 45), and the "contrastive features" between us and them (Edwards et al., 2011, p. 342). Establishing "predictability of war discourse," this reservoir of argument recurs across history because it works (Winkler, 2007, p. 304)

Lowell's document established early American topoi for antiwar rhetoric that continue to exist, in some form, today. These topoi raised practical, democratic, and procedural objections while avoiding the appearance of overt partisanship. In the first instance, Lowell's anti-war argument focused on the impracticalities of getting involved in a conflict with a European power. The controversy had stretched on for years and Britain was the preeminent power of the time. The president's failure to prepare sufficient naval and armed forces, Lowell concluded, meant the nation had no business taking on the era's dominant naval power (A New-England Farmer, 1812: p. 5). The lack of preparation, he continued, also raised questions about the efficacy of the war strategy itself. Assuming the U.S. could take Canada, Lowell doubted it would change British behavior on the seas, mostly because Canada was of lesser importance to the British. This ineffective and inadequate war plan, Lowell concluded, made the war an ill-advised blunder (A New-England Farmer, 1812, p. 12). Harkening to contemporary debates about George W. Bush's decision to invade Iraq with no plan for victory, Lowell's criticisms appeared as objective and nonpartisan. The appearance of objectivity expanded the potential audience for antiwar opposition beyond the Federalist party, inviting a diverse array of partisans to oppose Madison's War.

In addition to litigating practical aspects of planning and strategy, Lowell contended public opposition demonstrated the war ran cross purpose with the desires of the nation, outweighed the president's assessment of the danger posed by Britain, and was undemocratic. Presidents habitually speak for the people to advance their own agendas, manage public desires, strengthen narratives, and define contexts (Mehltretter-Drury, 2014). They also raise the figure of the people for constitutive ends (Stuckey, 2004 pp. 3–4), particularly in moments of crisis to facilitate national unity to defend against security threats (Bostdorff, 1994). For example, George W. Bush's speech to the nation on September 20, 2001, represents a prototypical example of how presidents employ crisis terminology to mobilize the polity to support policy goals (Murphy, 2003). While notions of "the people" may always be, a "contested terrain," (Stuckey, 2004, p. 15), "the people" has served as key resource in the president's persuasive arsenal.

Lowell objected to this form of presidential rhetorical power and, once again, employed acts of redefinition to undermine it. Specifically, he claimed, "the *country* is opposed to the war … the *country* knows that it is a question grossly exaggerated … the *country* does not wish to protect British seamen." Piling on, he wrote, "the measures lately adopted by a small majority of our national rulers … are a misapplication of the power entrusted to them." Given the polarizing nature of the war, the solution remained vested in the people. "It belongs to us, the people," he contended, "to decide whether such measures deserve our approbation and support, or whether they will justify us in a temperate but firm and decided opposition" (A New-England Farmer, 1812, p. 4). Raising the figure of the people inferred that protest in New England represented the nation. The president had asserted support within his political party demonstrated the will of the people. Contesting Madison's synecdoche with his own, Lowell reimagined the people as New Englanders, united in opposition to the conflict, and the war as an undemocratic whim of national leadership.

More broadly, this attempt to shift political authority from the president to the people rationalized and normalized public acts of war opposition. As the first declared war in the nation's history, no one could anticipate how the government and people would react to antiwar protest. In the absence of precedent, Lowell argued that protest was just, necessary, and patriotic rather than un-American. Anticipating Madison's response, he stated protesting the war doesn't protest the country or the troops. Rather, protest targets "a few men in *power and place*, men whose power thrives by war" (A New-England Farmer, 1812, p. 7). He added that one can enjoy the "highest feelings of approbation, [for] the gallant efforts of our naval officers and seamen," while also "reflecting" on the war and possibilities for peace. The danger, again, is that "an artful administration will convert this natural and generous enthusiasm into the means of promoting their own views. Already we are told … that our naval victories 'will dispose Great Britain to peace'" (A New-England Farmer, 1812, p. 112). Articulating protest in this capacity rendered public opposition more democratic than Madison's war message – peace reflected the will of the people – while undermining claims that opposing the war amounted to an "insurrection" (A New-England Farmer, 1812, p. 4). This strategy also demonstrated how antiwar protest distinguished between opposition to conflict and support for soldiers, a rhetorical tactic that continues today.

Similar to contemporary activism, Lowell recognized the challenge in defending the constitutional order with "the will of the people." The problem, he explained, is that Congress and the Supreme Court provided flimsier checks on presidential power. Having already dismissed Congress as overtly partisan, he excluded the possibility of the judiciary arbitrating disputes about presidential power because the Supreme Court "sits but twice a year, and which might consume many months in deliberation." While deliberating "an invasion might lay waste the country … or a rash President might seize the militia, send them to board ships, to fight on the borders of the Dwina, or on the sands of Africa – or … might carry civil war, fire, and sword, into the state which dared to assert their constitutional rights" (A New-England Farmer, 1812, p. 79). Only the

"people" could respond quick enough. The challenge was in finding ways to mobilize the people against executive overreach. As he had already made clear, the war previewed presidential maneuvers to invade and exposed a central problem with constitutional constraints on presidential war power – the facility with which presidents could manipulate time to advance war goals. For that reason, stopping future wars required the preservation of state militias and the power of governors to refuse presidential requests for troops. Lowell warned that if the president could rhetorically convince Congress to go to war *and* usurp the power of state militias, war would recur. Directing public attention to the democratic motivations for "the revolt of the American colonies," Lowell concluded that the Federal government should not enjoy the power to call on states and individuals to join the fight (A New-England Farmer, 1812, p. 76). Foreshadowing 20th century debates about the draft and the all-volunteer military, Lowell urged activists to resist forced military inscription.

The Imperial Presidency and the Potential for Perpetual War

This essay began by expressing surprise and shock that Madison, one of the staunchest advocates for constitutional restraint on presidential power, would become the architect of the rhetorical and imperial presidency. Rather than ponder the contradictions implicit in his twin role as founder and president, however, it is more productive to recognize that his concept of the presidency was produced through those contradictions, not in spite of them. Madison's justification for the war – and for presidential power itself – points to the ways violent systems generate political logics that differentiate between political acts, even while establishing precedents that expand the domain of the possible. In this instance, Madison's War shifted the presidency from an institution responsive to the people to a sort of absolute sovereign capable of any and all kinds of military acts because that was what was required under empire. As a contest between two imperial powers for continental supremacy, it advanced and institutionalized the rhetorical power of the presidency. Presidential definitional power, in particular, squared the constitutional circle by naturalizing presidential military power as the appropriate and logical response to the condition of insecurity.

This revision of Lowell's antiwar treatise underscores two features of the rhetorical and imperial presidency that remain understudied. First, contemporary scholarship, even while concluding the presidency has always been rhetorical, continues to emphasize how mass media communication technology alters the scope of the presidency, expands the reach of presidential audiences, and unravels constitutionally derived separation of powers between the executive and legislative branches. Yet Lowell's pamphlet – an exemplar of a genre of pamphleteering criticism – demonstrates significant and sustained public engagement with the president's rhetoric during the War of 1812. Future studies of presidential rhetoric should read public criticisms to better understand how audiences receive presidential messages. This would inform scholars about how messages empower certain types of audiences to participate in acts of public reason.

Second, just as the presidency has always been rhetorical, so too has it always been imperial. While historians have demonstrated America's imperial ambitions from the start,

Lowell's brief demonstrates that politically empowered publics in the premodern era knew and understood national desires for land. They also recognized that this imperial orientation was a choice. As Lowell argued, Madison prosecuted his imperial ambitions as he saw fit, trampling the deliberative process, and providing future presidents the precedent necessary for additional acts of militarism. With presidential rhetoric the mechanism for orchestrating those imperial ambitions, Lowell's treatise pointed to the precedent Madison's definitional rhetoric established for future presidents and the potential for the presidency to evolve from democratic actor to imperial sovereign. This warning marked Madison's president as the first imperial presidency and raised the prospect of perpetual war, as future presidents could act upon Madison's assertion of constitutional war power by elaborating novel definitions or interpretations of insecurity. And, indeed, that is what happened. Presidents have since employed novel definitions related to danger, asserting their constitutional responsibility "for the defense of the nation," to define virtually any form of foreign danger a matter of self-defense (Campbell & Jamieson, 2008, p. 218).

Finally, this essay points to the origins of contemporary preoccupation with forever war. While Lowell's antiwar rhetoric was foundational to the topoi of war resistance discourse dominant in contemporary times, his anti-war pamphlet indexes the rhetorical history of a discourse resistant to the normalization of military invasion and conquest. Contemporary scholars worry the war on terror enables political leaders to continue to pursue the culprits of 9/11, endlessly (Stern, 2015) in a conflict that "has no temporal limits" (Dudziak, 2012, p. 113), and lowers the bar to future, semi-permanent acts of military aggression (Terrill, 2011). Lowell's critique reveals the need to recall the legacy of anti-war activism and the limits of protest stretching from 1812 to the present. Violence has been both a continuous process and an event orchestrated by political elites in pursuit of national goals. Resistance to violent statecraft means recognizing the continuity of violence, the nuanced forms it takes, and the intricacies of rationalizations articulated in service of an imperial executive. Antiwar activists should recall this history and widen their critiques to include the imperial power of the presidency. The only hope for halting the inevitable progression of violent statecraft is to unravel and overturn the implicit assumption that presidents can "and should" lead the nation into war in pursuit of imperial aims.

Notes

1. See, for example: James Madison, Fifth Annual Message, December 7, 1813. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/204541
2. This distinction excluded the Whiskey Rebellion from Lowell's concern about an Imperial Presidency.

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