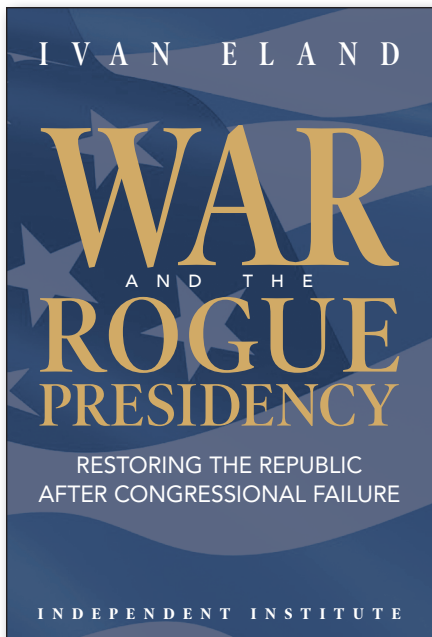


# WAR AND THE ROGUE PRESIDENCY

RESTORING THE REPUBLIC AFTER CONGRESSIONAL FAILURE

BY IVAN ELAND



## Book Highlights

- **The executive branch of the U.S. government has grown far beyond the scope authorized by the Constitution, undermining the proper operation of a democratic republic.** This unacknowledged constitutional crisis is the proverbial elephant (or donkey) in the room that Republican and Democratic lawmakers are too timid to confront and rein in. Yet, tame it they must if the American people are ever to reach the promised land of peace, prosperity, and liberty. Explaining how we got here—and charting a new and better course—is the central task of presidential scholar Ivan Eland in his eye-opening book, *War and the Rogue Presidency: Restoring the Republic after Congressional Failure*.
- **The U.S. presidency's accretion of power has eroded political representation and accountability while often encroaching on cherished liberties.** Contrary to popular thought, the Constitution gave most of the authority for handling defense and foreign policy to Congress, not the executive branch. Yet, presidents now unilaterally start wars, kill people overseas (including Americans) without legal due process, and are dominant even in Congress's area of primary responsibilities—funding federal activities. Instead of just requesting legislation, a president now issues executive orders, national security directives, executive agreements with other nations, and proclamations so it can act quickly and without congressional approval. This conflicts with the limited role for the executive as outlined in the Constitution.
- **War has been the main impetus for the growth of presidential power. During wartime, the president's resources and ability to act quickly give the executive branch an advantage over Congress and the judiciary.** Since the twentieth century, large and long conventional wars, the forty-five year Cold War, and the Global War on Terror have been the main precipitating causes of bigger government and the imperial presidency. Wars have led to large increases in taxes, regulation, and government spending, both for the military and for unrelated domestic programs. This tendency should concern Americans of every political stripe, perhaps especially small-government conservatives.
- **The leading culprit for presidential aggrandizement isn't the presidents themselves. It's Congress and its abdication of constitutional duties.** Especially during wartime, Congress has become enormously deferential to the executive branch. Rather than initiating key legislation more proactively, it often responds after the fact (and with poor oversight of executive actions). One reason is its collective-action problem: Congress's large size and bicameral structure, burdened by fragmented committees and subcommittees, discourage a quick response to national and international crises. Yes, presidents have seized crises as opportunities for unilateral action and more power. But such power grabs result mainly from Congress's shirking of its responsibilities as set forth in Article I of the Constitution.

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### Synopsis

The Office of the President of the United States of America isn't what it used to be—it has morphed into an overgrown beast. Originally envisioned as a branch of government that would mostly just carry out the will of Congress, it is now in many ways the dominant player, presiding over a bureaucracy with vastly more resources and powers than were authorized by the Constitution. Ironically, the main cause of this transformation is Congress itself.

In *War and the Rogue Presidency: Restoring the Republic after Congressional Failure*, presidential scholar **Ivan Eland** (*Eleven Presidents, Recarving Rushmore, The Empire Has No Clothes*) traces the trajectories of the executive branch and Congress, from the Constitutional Convention to the Obama and Trump years, cataloguing the de facto transfer of power from “the people’s branch” to an increasingly emboldened “rogue” presidency. The result is a landmark study that answers the lingering

mystery of U.S. history: How, in a nation whose founders championed a limited government constrained by checks and balances, did the presidency acquire powers not enumerated in the Constitution?

Congress’s perennial in-fighting often inhibits passage of promising legislation and effective oversight of the executive branch. Moreover, Eland shows, the legislature is especially prone to shirking its constitutional responsibilities during wartime, when Congress is all too willing to let presidents set the agenda, often even on domestic issues and at the expense of constitutional protocol. As a result of this inaction and cowardice, wars have become major inflection points in the growth of executive power at home and abroad, enabling presidents to reach into realms once viewed as constitutionally off-limits. The consequence for the American people has been a growing sense of frustration with a federal bureaucracy less responsive to their needs, rather than confidence in a responsive government closely directed by their elected representatives.

More than a history of executive branch transformation, *War and the Rogue Presidency* points out precisely how Congress has failed the people—thus enabling future lawmakers to avoid similar pitfalls. Offering numerous recommendations to put Congress back in the driver’s seat of the federal government, Eland’s analysis is an important contribution toward fulfilling the Founders’ mission of creating “a more perfect union.”

### Imperial Presidency, Rogue Presidency

To explain the rogue presidency—and its causes, consequences, and cures—Eland notes that we must first understand its profound reach. Today, the executive branch of the U.S. government is a sprawling bureaucracy that accounts for 99 percent of federal employees and spends the equivalent of about 17 percent of the country’s gross domestic product. More importantly, it commands far more power

than the Constitution’s framers enumerated in the nation’s federal charter. But when and how did the executive branch’s transformation begin?

Although the growth spurt in the executive branch accelerated during the twentieth century, U.S. foreign policy from its onset was plagued with “creeping despotism.” Beginning with George Washington, presidents have acted as if they possessed the extra-constitutional “inherent power” championed by Alexander Hamilton. Washington’s Neutrality Proclamation, for example, usurped Congress’s constitutional prerogative on the question of whether the United States would get involved in England’s war with France. Similarly, Thomas Jefferson’s Barbary War, James Polk’s provocation of war with Mexico, and Franklin Pierce’s coerced opening of trade with Japan also usurped Congress’s responsibility for setting defense and foreign policy. New assertions of presidential power, however, were often met with congressional pushback, including immediately after the two world wars.

Not until Truman and the Korean War did the presidents take their country into massive wars without congressional approval. Modern presidents also claim “executive privilege” to initiate covert operations unsanctioned by Congress, top-level agreements with foreign nations, and executive orders with no enabling legislation. This status quo is taken for granted. Most popular coverage of the Oval Office accepts the broad powers of the presidency as “the natural order of things,” even though they run counter to the president’s authority as spelled out in Article II, Sections 2 & 3 of the Constitution.

### War Is the Health of the State

Muckraking journalist Randolph Bourne famously quipped a century ago that “war is the health of the state”—meaning that governments gain tremendous power at the

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expense of civil society during wartime. War causes government to grow even at home, and war is especially a tonic for the growth of the executive branch.

Eland traces the history of federal domestic programs launched during wartime. The list is staggering, beginning with taxes. The income tax, progressive taxation, double taxation, tax withholding, tax expenditures (a.k.a. tax loopholes), the estate tax, gas taxes, and the IRS all have their origins in wartime. Social programs originating during wartime include relief for the poor and public works, Social Security, expansion of Medicaid to cover preventive care for children, public housing and rent control, federal involvement in daycare, grants-in-aid to states, and even federal involvement in regulating marriage.

Federal domestic efforts begun during wartime to address the economy more broadly include measures to combat unemployment, price controls, healthcare market interventions, nationalization of industries, involvement in labor relations, inflationary money printing, financial bailouts, regulation of food and alcohol, “wars” on prostitution, and even daylight saving time.

## Reclaiming Congressional Authority

The expansion of executive power—especially since the dawn of the Cold War—is due less to presidential power grabs than to Congress’s dereliction of duties. The presidency isn’t inherently imperial, it’s contingently imperial. How might Congress regain its role as spelled out in the Constitution? Eland offers numerous recommendations.

Congress as currently structured has numerous flaws that create perverse incentives or otherwise impede its ability to act. Some of these flaws could be fixed by Congress itself. The committee structure, for example, decentralizes power to such a degree that important bills can wither on the vine. Centralizing congressional power, eliminating the seniority system, ending the “horse trading” that accompanies the congressional budget process, and making it harder for legislators to add special-interest riders to legislation—all would give congressional leaders greater control of their chambers, better enabling Congress to counter the aggrandizement of executive power. Congress should also more aggressively seek information held by the executive branch.

Congress, Eland argues, should repeal

the confusing War Powers Resolution and strictly enforce the Constitution and the Authorization for Use of Military Force that presidents have abused in their prosecution of the War on Terror, including by conducting warrantless spying on Americans. More broadly, Congress should establish a statutory charter for the intelligence community, outlaw the covert destabilization of other governments during peacetime, and require that funding for intelligence agencies be made public. Eland offers several additional recommendations for Congress, as well as changes for the federal judiciary and structural changes in the executive branch itself.

With these and related changes, Congress could better deter presidential usurpations and abuses of power. And with congressional power properly restored, citizens could hope for a legislature more responsive to their needs.

“James Madison’s system of checks and balances, enshrined in the Constitution, can be revitalized if the aforementioned measures are taken to restore Congress’s standing and if the federal courts abandon their fear of pushback on executive aggrandizement in the national security and foreign policy arenas,” Eland writes.

### Praise for *WAR AND THE ROGUE PRESIDENCY*

“Since World War II and then with the post-9/11 ‘War on Terror,’ the enormous expansion of presidential powers to wage permanent wars around the world has had ruinous effects on U.S. foreign policy and the liberties and security of both Americans and people worldwide. Ivan Eland’s superb book *War and the Rogue Presidency* could not be more timely in examining in depth the history of the congressional-executive tug-of-war over U.S. security policy, how the imperial presidency has created and perpetuated major defense and foreign policy failures, why reclaiming congressional oversight is essential, and what specific measures can and should be adopted to restore an effective national defense and constitutional liberties. I highly recommend *War and the Rogue Presidency* for anyone.”

—**DANIEL ELLSBERG**, author, *Secrets: A Memoir of Vietnam and The Pentagon Papers* and *The Doomsday Machine: Confessions of a Nuclear War Planner*

“In *War and the Rogue Presidency* Ivan Eland chronicles the rise of the imperial presidency with great insight. But does he have a solution? It’s worth pondering.”

—**MIKE M. MOORE**, former Editor, *Bulletin of the Atomic Scientists*; author, *Twilight War: The Folly of U.S. Space Dominance*

“In the well-written and thought-provoking book, *War and the Rogue Presidency*, Ivan Eland convincingly demonstrates that the expanding power of the executive branch, which has resulted in the creation of the imperial presidency, is a result of our increasing involvement in foreign wars. A must read for those concerned about the decline of the checks and balances envisioned by our Founding Fathers.”

—**LAWRENCE J. KORB**, former Assistant Secretary, U.S. Department of Defense; Senior Fellow, Center for American Progress; former Senior Fellow and Director of National Security Studies, Council on Foreign Relations

## Praise for *WAR AND THE ROGUE PRESIDENCY*

“After seventy years of a monolithic, interventionist foreign policy that has ruled Washington elites, the superb book *War and the Rogue Presidency* is calling for an essential, realist American foreign policy emphasizing a robust diplomacy, military restraint, and increased congressional oversight. Author Ivan Eland has assembled an outstanding and lucid, critical examination of how the Executive must be reined in from being granted unprecedented powers to wage perpetual war globally that is subverting the Constitution, costing trillions, harming millions, trampling on civil liberties, and creating more and more enemies who endanger America. *War and the Rogue Presidency* is must reading for anyone seeking a safer, freer, and more peaceful world.”

—**RAND H. PAUL, M.D.**, U.S. Senator and Member of the Committee on Foreign Relations and Committee on Homeland Security and Government Affairs

“Ivan Eland’s learned and balanced book, *War and the Rogue Presidency*, identifies war as one of the chief threats to the Republic, whether we win or lose, given the effect of war on presidential power. Few subjects are worthy of greater public debate.”

—**RICHARD SHENKMAN**, Founder, History News Network, George Washington University

“The seemingly permanent mobilization of American society since the Second World War to manage global security has produced a bloated, intrusive, and increasingly imperial and unresponsive federal government. In his book *War and the Rogue Presidency*, Ivan Eland sees clearly the danger to our freedom and outlines the Congressional and other reforms needed to find the path back.”

—**HARVEY M. SAPOLSKY**, Professor of Public Policy and Organization Emeritus and former Director of the Security Studies Program, Massachusetts Institute of Technology

“*War and the Rogue Presidency* is an invaluable history of the constitutional basis for Congress’s war-making power that has been all but forgotten and ignored in the last two decades; and as a bonus the book also makes a compelling case linking unapproved administrative-state operations abroad with the development of the administrative state domestically—both products of congressional abdication.”

—**C. BOYDEN GRAY**, former U.S. Ambassador to the European Union; former Counsel to President George H. W. Bush; former Special Envoy for European Affairs and Special Envoy for Eurasian Energy at the Mission of the U.S. to the European Union; former Counsel to the Presidential Task Force on Regulatory Relief; former Chairman of Administrative Law and Regulatory Practice of the American Bar Association



## About the Author

**IVAN ELAND** is Senior Fellow at the Independent Institute and Director of the Independent Institute’s Center on Peace & Liberty. Dr. Eland is a graduate of Iowa State University and received an M.B.A. in applied economics and a Ph.D. in Public Policy from George Washington University. He has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including stints as an investigator for the House Foreign Affairs Committee and Principal Defense Analyst at the Congressional Budget Office. He also has served as Evaluator-in-Charge (national security and intelligence) for the U.S. General Accounting Office (now the Government Accountability Office), and has testified on

the military and financial aspects of NATO expansion before the Senate Foreign Relations Committee, on CIA oversight before the House Government Reform Committee, and on the creation of the Department of Homeland Security before the Senate Judiciary Committee. Dr. Eland is the author of *Eleven Presidents: Promises vs. Results in Achieving Limited Government, Partitioning for Peace: An Exit Strategy for Iraq, Recarving Rushmore: Ranking the Presidents on Peace, Prosperity, and Liberty, The Empire Has No Clothes: U.S. Foreign Policy Exposed*, and *Putting “Defense” Back into U.S. Defense Policy*, as well as *The Efficacy of Economic Sanctions as a Foreign Policy Tool*. He is a contributor to numerous volumes and the author of 45 in-depth studies on national security issues.

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